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Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

House Passes HEALTH Act—Would Reform Medical Malpractice System

On July 29, 2005, the House passed the Help, Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2005 (HR.5). Among other reforms, the HEALTH Act would significantly transform the medical malpractice

tort system by creating a “Fair Share Rule,” which would limit each party’s liability to its share of damages in proportion to its responsibility. If enacted, the HEALTH Act would also cap non-economic damages (for example, pain and suffering) at \$250,000, but it

would not place any limit on economic damages (for example, the costs associated with required medical care resulting from the injury). Senate leadership introduced the Senate’s companion bill, S.4, earlier in the

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Congress Passes Patient Safety Bill; P4P Bill Introduced

Prior to summer recess, Congress passed patient safety legislation and GNYHA met with key staff of the Senate Finance Committee to discuss pay-for-performance (P4P) legislation that had been introduced in June.

Patient Safety: Signed into law by President Bush on July 29, 2005, the Patient Safety and Quality Improvement Act of 2005 (S.544) creates a national certification system for patient safety organizations (PSOs). Under the bill, a PSO is defined as an organization whose primary mission is to conduct activities to improve patient safety and the quality of health care delivery. To encourage participation in the submission of patient safety and medical error information, the bill requires that such information be privileged and confidential. The bill also requires the Secretary of the U.S. Department of Health and Human Services to facilitate the creation and maintenance of a network of patient safety databases. GNYHA has supported this bill (and

its numerous predecessors) for many years, and is very pleased that Congress has passed the bill overwhelmingly.

Pay-for-Performance: GNYHA met with key staff of the Senate Finance Committee on July 28 to discuss the Medicare Value Purchasing Act (MVPA) of 2005 (S.1356). Introduced at the end of June by Senators

Grassley and Baucus, Chairman and Ranking Democrat of the Finance Committee, respectively, the bill would build upon current Medicare requirements that tie a hospital’s payment update to reporting of quality measures. As reported previously in *Skyline News* (July 11, 2005), the legislation

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Medicare Releases Acute Inpatient PPS Final Rule for FY 2006

On August 1, 2005, the Centers for Medicare & Medicaid Services (CMS) released the final rule for the Federal fiscal year (FY) 2006 acute inpatient prospective payment system (IPPS), which begins on October 1, 2005. GNYHA is extremely disappointed with the rule, which will reduce payments to member hospitals compared with current payment policy, and will continue to advocate stren-

uously on the hospitals’ behalf. Some key provisions of the final rule are:

- **PACT policy.** Against overwhelming industry opposition, CMS expanded the post-acute care transfer (PACT) policy from 29 diagnosis-related groups (DRGs) to 183 DRGs.
- **Wage index.** CMS will fully implement the new wage index labor markets in FY 2006, although the agency may consider GNYHA’s recommendations for expand-

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New York City Expands Immunization Registry

Effective August 18, 2005, all providers, including hospitals and clinics, will be required to report immunizations given to children in New York City from birth through 18 years of age to the New York City Department of Health and Mental Hygiene immunization registry. Providers are currently required to report immunizations given to children age seven and under. Immunizations must be reported within 14 days of administration. Providers may report

all immunizations given to individuals who are 19 years of age or older, provided that consent to report has been given. Providers immunizing children outside

New York City are not subject to the New York City Health Code reporting requirements. If you have any questions, please contact Doris R. Varlese at GNYHA. ■

AROUND

Marna Borgstrom has been named President and Chief Executive Officer of Yale-New Haven Hospital. She will succeed Joseph Zaccagnino, who is retiring in September after 35 years at the organization. Ms. Borgstrom is currently Executive Vice President and Chief Operating Officer at the hospital and its parent organization, Yale New Haven Health. ■

House Passes HEALTH Act *continued from page 1*

week. This comprehensive bill includes many provisions in addition and unrelated to medical malpractice reform, such as pay-for-per-

formance, health information technology grants to states, and programs and tax credits for the uninsured. Since medical malprac-

tice reform is one of its highest legislative priorities, GNYHA is pleased that the House passed HR.5. GNYHA will be working closely with Senators and their staffs to support the passage of S.4. ■

Comparison of NYS Law and the Proposed Federal HEALTH Act of 2005

PROVISION	NEW YORK STATE	FEDERAL LEGISLATION	PREFERRED PROVISION
Cap on noneconomic damages	No cap	\$250K cap, regardless of number of parties, claims, or actions	Federal legislation
Cap on punitive damages	No cap	Greater of \$250K or double the amount of economic damages	Federal legislation
Periodic payment of future damages (structured settlements)	If case goes to trial, future damages paid in periodic payments through an annuity, except for: 1) damages related to loss of services, consortium, wrongful death; 2) pain and suffering of less than \$500K and 35% over \$500K; 3) 35% of economic damages	At the request of any party, all damages equal to or exceeding \$50K in the aggregate (without reduction to present value) may be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act	Federal legislation
Statute of limitations, adults	2 years, 6 months after the date of the act that gave rise to the injury	3 years after the date of manifestation of injury or 1 year after the claimant discovers or should have discovered the injury, whichever occurs first	New York State law
Statute of limitations, children	2 years from 18th birthday up to a maximum of 10 years	3 years after manifestation of injury or prior to 8th birthday, whichever provides a longer period	Federal legislation
Contingency fee cap	30% of the first \$250K; 25% of the next \$250K; 20% of the next \$500K; 15% of the next \$250K; 10% of the amount over \$1.25 million. This yields a maximum fee of \$275K for awards up to \$1.25 million, \$275K plus 10% of amounts over \$1.25 million for awards over \$1.25 million	40% of the first \$50K, 33-1/3% of the next \$50K, 25% of the next \$500K, 15% of any amount in excess of \$600K	New York State Law
Collateral source benefits	Evidence of collateral source benefits must be presented at trial and may be used to reduce awards	Prohibition against collateral sources seeking repayment for benefits paid to plaintiff; House bill exempts Medicare and Medicaid, Senate bill does not; bill allows state law to prevail	Federal legislation more advantageous but allows more restrictive NYS legislation to prevail; preferred position is to delete exception for Medicare and Medicaid and to pre-empt State law
Standard of proof for punitive damages	Gross negligence or wanton, reckless, or willful conduct	Clear and convincing evidence of malicious intent to injure or deliberately failed to avoid unnecessary injury that the defendant knew the claimant was substantially certain to suffer	Federal legislation better but punitive damages have never been awarded in a medical malpractice case in New York
Joint and several liability	If any co-defendant's liability is 50% or less of total liability, the liability of that defendant for noneconomic damages will not exceed the defendant's share; if defendant's liability is 51% or more, that defendant is a guarantor of the payment of all non-economic damages; defendants are jointly and severally liable for all economic damage regardless of their percentage share of actual liability.	Each party shall be liable only for that party's share of damages in direct proportion to the party's percentage of responsibility; applies to economic as well as noneconomic damages	Federal legislation

SHRPC Approves Member Projects and Discusses Part-time Clinic Regulations

At its meeting on August 4, 2005, the State Hospital Review and Planning Council (SHRPC) gave approval to the following GNYHA member projects: **NYU Downtown Hospital**, approval to implement a hospitalwide information system to replace the existing information system provided by NYU Medical Center. SHRPC also approved the following GNYHA members as designated stroke centers: **Benedictine Hospital, Hudson Valley Hospital Center, John T. Mather Memorial Hospital, Kingston Hospital, Lenox Hill Hospital, Metropolitan Hospital Center, Northern Westchester Hospital, Southside Hospital, and St. Vincent's Midtown Hospital**. The following members were given conditional approval as designated stroke centers: **Bellevue Hospital Center, Franklin Hospital Medical Center, Lincoln Medical and Mental Health Center, North Shore University Hospital at Glen Cove, North Shore University Hospital at Plainview, North**

Shore University Hospital at Syosset, St. Vincent's Hospital Manhattan, and Westchester Medical Center.

Part-time Clinic Regulations: At a special SHRPC Codes Committee meeting held on August 4, 2005, the committee discussed draft permanent part-time clinic regulations. The draft regulations eliminated language that would have limited part-time clinics to caring for conditions that do not require extended treatment regimens and prohibited part-time clinics from providing physical therapy, occupational therapy, speech pathology, audiology, and routine prenatal care or other ongoing routine medical and health services. If the regulations that were discussed are adopted, part-time clinics would be permitted to continue to provide those services because that language is being eliminated.

New Members: Thomas E. Holt, President and CEO of Lutheran Social Services Group, Inc., has been appointed to SHRPC. ■

Patient Safety; P4P *continued from page 1*

would make a portion of a provider's future Medicare requirements conditional upon meeting quality performance goals. GNYHA's meeting with key Committee staff confirmed that the Chairman's goal is to include the bill in budget reconciliation legislation later this year. Additionally, the Committee staff was extremely clear that value-based payments would be budget-neutral and that Chairman Grassley would not support an increase in Medicare spending for this purpose given current budgetary constraints. GNYHA expressed concern over the lag built into the bill between the timing of hospital payment reductions to create a value purchasing pool and the time payments from the pool are made, which could conceivably be longer than an entire fiscal year. GNYHA also stressed the importance of adopting transparent, replicable, and actionable quality measures, and suggested that, because of limitations in existing risk-adjustment methodologies, preferences for the weighting of different types of measures should be left to the Secretary based on state-of-the-art quality measurement. Given the intense Congressional interest, the political momentum surrounding this issue, and the subsequent potential impact on GNYHA members, GNYHA will be working closely with Congress on this important legislation in the coming months. ■

SNF Final PPS Rule Yields Mixed Results

On July 29, 2005, the Centers for Medicare & Medicaid Services (CMS) released its final rule regarding the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2006. Earlier, CMS had proposed two major changes to the PPS—implementing a new 53-category Resource Utilization Group (RUG) case-mix system while simultaneously eliminating the existing temporary add-ons to rates, and using revised labor market areas to determine the labor component of the rates. The Continuing Care Leadership Coalition (CCLC), in its comment letter on the rule, weighed in particularly strongly against the full implementation of the revised labor market areas in FY 2006, which would generate losses for NYC-area SNFs of close to \$12 million annually.

In the final rule, CMS incorporated CCLC's recommendation that there be a transition period for implementing the revised labor market areas. This modification in the final rule will cut in half the projected \$12 million loss for NYC-area providers. Of concern, however, is a change in the final rule, compared with the proposed rule, that recalibrates the case-mix indices for the 53 RUG groups in a manner that reduces payment from some rehabilitation RUG categories and reallocates it among other categories. An initial analysis by CCLC of the case-mix reallocation indicates that it would increase losses to providers across the State. CCLC is further assessing the impact of this change and will be advocating as necessary to ensure fairness and equity in the new SNF case-mix system. ■

Inpatient PPS Final Rule

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ing the reclassification policy to allow hospitals to form core urban areas in a future proposed rule.

- **Hospital market basket.** CMS updated the cost component weights as proposed, which reduced the labor share of the standardized amount from 71.1% to 69.3%.
- **Quality data.** CMS will promulgate its data validation process as proposed and did not adequately address concerns raised by GNYHA and others about the integrity of the process.

GNYHA will provide more detailed analysis and commentary on the final rule in a member letter. ■

Nexera Consulting Launches New Name

Nexera Consulting, Inc., a NYC-based national health care consulting firm—formerly known as GNYHA Consulting, Inc.—announced its new name and brand at the 43rd annual Association for Healthcare Resources and Materials Management Conference and exhibit in Anaheim, California on July 24. As part of the launch, Nexera Consulting also introduced its new Web site, www.nexeraconsulting.com.

In the two years it has been in business, Nexera Consulting has achieved more than \$27 million dollars in real savings for its clients. The company's mission is to offer

affordable, supply chain-focused services, with an emphasis on implementation. Unlike other consulting firms, Nexera Consulting hires staff with clinical experience and business expertise. With actual physicians and nurses on staff, Nexera Consulting brings a unique knowledge of hospital culture and is better equipped to implement solutions that will help hospitals run more efficiently.

Nexera Consulting services include supply chain cost-reduction (development and implementation of cost-reduction strategies); outsourcing (short-term and long-term staffing services from support to execu-

tive positions); project management (managing resources, staff, and timelines for small, time-sensitive projects to large, complex ones); and technology (assisting with evaluation of technology use, data cleansing, benchmarking, system planning, and writing and overseeing the Request for Proposal process).

With supply chain cost-reduction services, Nexera Consulting offers clients a range of payment structures, including a no-risk payment program. Nexera Consulting also offers hybrid "at risk" business arrangements, including 100% contingency work on specific initiatives, as well as upfront payment terms that reduce a portion of the overall payment. ■

Upcoming GNYHA Member Briefings

Commission on Healthcare Facilities in the 21st Century

Date: Monday, August 15, 2005

Time: 2:00 p.m.—4:00 p.m.

Location: GNYHA Conference Center, 555 West 57th Street, 15th Floor

The Commission on Healthcare Facilities in the 21st Century is charged with making recommendations to realign health care resources in NYS, including recommendations for restructuring and possibly closing facilities in the hospital and nursing home sectors. The Commission has been presented with extensive data about those sectors and individual organizations, which are accessible through the

GNYHA Web site at www.gnyha.org under the Commission section. GNYHA has advised member hospitals to examine utilization information in particular and to submit corrections to the SPARCS bureau. At this members-only briefing, GNYHA staff will review the issues that the Commission is expected to consider, will discuss what institutions should be doing with respect to data corrections, and will invite active participation by attendees. For more information contact Patricia Wang, Esq., and to register contact Theresa Simon, at GNYHA. *Separate meetings on the Commission are planned for nursing home members by the Continuing Care Leadership Coalition.* ■

DOH to Implement Family Health Plus Co-pays

The NYS Department of Health (DOH) expects to implement Family Health Plus (FHPlus) co-payments effective Sept. 1, 2005, when hospitals and other providers will be expected to collect co-pays from FHPlus clients, unless the client or service falls into one of the exception categories. The 2005–06 NYS Budget established these co-pay requirements (see table at right).

Exceptions to the co-pay requirements include individuals under 21 years of age, pregnant women, permanent residents of nursing homes, and residents of community-based residential facilities licensed by the Office of Mental Health or the Office of Mental Retardation and Developmental Disability. DOH guidance also specifies that providers may not deny services based on an individual's inability to pay the co-payment amount.

The following services will also be exempt from co-pay requirements: emergency services provided in the emergency room, family

planning services and supplies, mental health clinics, chemical dependence clinics, psychotropic drugs, tuberculosis drugs, and prescription drugs for residents of Adult Care Facilities licensed by DOH.

DOH must receive approval from the Centers for Medicare & Medicaid Services before implementing these co-pay requirements. GNYHA will alert members if the Sept. 1 implementation is delayed. ■

FHPlus Co-pay Requirements, by Type of Service

SERVICE	AMOUNT
Inpatient hospital stay	\$25.00 per stay
Non-urgent emergency room visit	\$3.00 per visit
Clinic visits	\$5.00 per visit
Covered medical supplies	\$1.00 for each
Lab tests	\$.50 per test
Radiology services	\$1.00 per radiology service
Physician visits	\$5.00 per visit
Brand-name prescription drugs	\$6.00 for each prescription and each refill
Generic prescription drugs	\$3.00 for each prescription and each refill
Covered over-the-counter drugs	\$.50 for each
Dental visits	\$5.00 per visit up to a total of \$25 per year