



APRIL 17, 2006

Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

Governor Pataki Moves to Impose Draconian Health Care Cuts; Vetoes Legislature's Funding Restorations

On Apr. 12, New York Governor George Pataki exercised his line-item veto authority 76 times to eliminate major portions of the State Legislature's health and mental hygiene budget for the State fiscal year that began Apr. 1. The Governor vetoed every Medicaid funding restoration passed by the Legislature and all new health care spending. He also declared the Legislature's restorations unconstitutional,

and stated that his vetoes are "not subject to override by the Legislature," implying that even if the Legislature overrides his vetoes when it returns to Albany on Apr. 24, he will

"The Governor's cuts will mean more hospitals and nursing homes will be shuttered and communities will be denied health care services."

—Kenneth E. Raske, President, GNYHA

implement his budget cuts as proposed.

The funding restorations the Governor vetoed include, among others, Medicaid inflation, or "trend" factors for hospitals and nursing homes; the length-of-stay offset for hospital volume adjustments; graduate medical education payments; inpatient detox; specialty outpatient mental health rates; the mental health alternative rate methodology; nursing

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CMS Proposes Major Overhaul of Medicare Inpatient Payments

On Apr. 11, the Centers for Medicare & Medicaid Services (CMS) released its proposed rule for Federal fiscal year 2007, which begins Oct. 1, 2006. Key provisions include an overhaul of the way in which CMS computes diagnosis-related group (DRG) weights. Rather than basing the weights on the relationship between each DRG's national average charge per case and the average charge per case of all DRGs com-

bined, CMS would use an original methodology that it named the "Hospital-Specific Relative Value for Cost Center" (HSRVcc) approach. This methodology aims to remove perceived distortions in the weights that result when hospitals have different mark-ups from cost to charges. While the change would be budget-neutral to the Medicare program, GNYHA estimates that it would redistribute roughly \$1.7 billion, or 3% of Medicare inpa-

tient acute care payments, and that hospitals with a substantial investment in cardiac services would see the greatest losses. In another key provision, CMS would expand the number of evidence-based measures for which hospitals are required to submit chart-abstracted data from 10 to 21 measures and increase the penalty for not submitting valid data from 0.4% to 2.0%. These

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HUBBARD AND BERGER TO SPEAK AT GNYHA ANNUAL MEETING

WHEN:
April 18, 2006, 7:30 a.m.
(registration)—12:00 noon

WHERE:
Roosevelt Hotel
New York City,
Madison Avenue at
45th Street,
Manhattan

The keynote address at GNYHA's 2006 Annual Meeting will be given by **Allan Hubbard**, Assistant to President George W. Bush for Economic Policy and Director of the National Economic Council. Mr. Hubbard is spearheading the Bush Administration's policies on transparency in health care pricing and health savings accounts, and his keynote address will be an excellent opportunity to hear firsthand about those initiatives.

At the meeting, GNYHA President **Kenneth Raske** will update members on the State budget situation and a massive advocacy campaign that GNYHA is undertaking with 1199 SEIU United Healthcare Workers East (see story above).

The meeting will also feature **Stephen Berger**, Chairman of the Commission on Health Care Facilities in the 21st Century, discussing and answering questions about the Commission's work.

The other distinguished speakers at this year's meeting will be **Philip K. Howard**, Founder and Chair, Common Good, who will talk about "health courts," a medical malpractice reform proposal intended to provide fair and reliable justice for patients and physicians alike, and **Robert Wachter, M.D.**, Professor of Medicine, University of California, San Francisco, and a nationally known author, who will discuss why medical errors occur and what can be done to eliminate them.

Please contact John Wedeles at wedeles@gnyha.org if you have not registered and would like to attend. ■

House Budget Vote Falls Apart

As members of the U.S. House of Representatives worked to reach a consensus on the fiscal year (FY) 2007 budget resolution prior to adjourning for spring recess on Apr. 7, the process fell apart, leaving members with yet one more item on their agenda when they return on Apr. 24. Conservatives within the Republican party cited budget spending as too high, while GOP moderates including Ways & Means Health Subcommittee Chairwoman Nancy Johnson (R-Conn.) thought spending was too low. Additionally, appropriators led by Appropriations Chairman Jerry Lewis (R-Calif.)

expressed concern regarding budget process changes that would limit their authority. The House Budget Committee had previously approved a \$2.8 trillion budget with nearly \$7 billion in reconciliation instructions, including \$4 billion from the Ways & Means Committee. While Republican leadership has stated publicly that Medicare and Medicaid programs will not be affected, the reconciliation instructions do leave the Medicare program vulnerable to cuts because it falls under the jurisdiction of the Ways & Means Committee. The Senate version does not include any payment reductions to providers.

Majority Leader John Boehner (R-Ohio) has pledged to resume budget talks again once the House returns in hope of passing its resolution, which will still need to be reconciled with the Senate version that passed in March. Although not required by law, the annual passage of the budget resolution each spring by Congress provides a road map for appropriators for the FY 2007 budget. If Congress fails to adopt a budget resolution, each chamber will vote on a “deeming resolution,” which will set the discretionary spending limit in each house. Those different amounts could complicate the conference negotiations in the fall, when the 11 spending bills are reconciled. ■

Health Care Cuts *continued from page 1*

home 300-bed-and-over and hospital-based rate add-ons; nursing home adult day care payments; and nursing home case mix. The Governor also vetoed new spending, including the Medicaid emergency department rate increase, quality improvement funding for nursing homes, the Legislature’s nursing home rebasing proposal, and home health worker recruitment and retention funding.

In his January budget proposal, the Governor proposed cutting hospitals by \$440 million and nursing homes by an equivalent amount. He also proposed approximately \$100 million in cuts to low-income New Yorkers through changes to the Medicaid and Family Health Plus programs. The Legislature rejected all of those cuts. The Governor’s vetoes place hospitals, nursing homes, and the patients they serve at risk of actually bearing the full burden of these devastating cuts.

“We have already seen a rash of hospital and nursing home closings and bankruptcies

across New York,” said GNYHA President Kenneth Raske. “The Governor’s cuts will mean more hospitals and nursing homes will be shuttered and communities will be denied health care services. This will lead to tragic situations all across the State.”

Major Campaign: The Healthcare Education Project, a joint initiative of GNYHA and 1199 SEIU United Healthcare Workers East, is conducting a massive advocacy campaign urging all members to contact their State legislators to 1) thank them for their support so far; and 2) override the Governor’s vetoes. GNYHA is also urging members to attend its Annual Meeting on Apr. 18 (see page 1), where Mr. Raske will give an update on the State budget situation and the GNYHA/1199 campaign.

Potential Litigation: The Governor has claimed that many of the provisions of the Legislature’s budget are unconstitutional. To support this claim, he points to several recent State Court of Appeals decisions. One of the decisions, *Silver v. Pataki*, affirmed that the Governor has broad budgetary powers and

outlined the ways in which the Legislature may—and may not—alter the Governor’s budget bills. In another decision, *New York City Council v. Bloomberg*, the Court of Appeals held that the Mayor need not implement laws he deems to be illegal. Taking those decisions together, Gov. Pataki vetoed a variety of provisions of the budget bills on the grounds that they were unconstitutionally drafted, under *Silver v. Pataki*, and, even if the Legislature overrides his vetoes, he need not implement the provisions he deems to be unconstitutional, under *New York City Council v. Bloomberg*. This potentially means that the Governor may implement some, if not all, of the Medicaid reimbursement rate cuts contained in his original budget proposal, despite any successful veto overrides.

The Healthcare Education Project has retained counsel to pursue litigation in the event the Governor implements his cuts, despite veto overrides, or refuses to implement new spending, including the Medicaid emergency department rate increase and other spending items. GNYHA strongly believes that the Legislature followed *Silver v. Pataki* to the letter and that the findings in *New York City Council v. Bloomberg*, which dealt with State pre-emption of local laws and local contracting issues, not State budget or State constitutional issues, cannot be used by a Governor to unilaterally ignore duly enacted legislation. GNYHA will do everything it can to ensure that GNYHA members are not exposed to the Governor’s budget cuts and have access to critical new funding as intended by the State Legislature. ■

AROUND

Lee Goldman, M.D., M.P.H., an internationally recognized expert in health outcomes research and public health, has been named Executive Vice President for Health and Biomedical Sciences and Dean of the Faculties of Health Sciences and Medicine at the Columbia University Medical Center, effective June 2006. Dr. Goldman will also hold dual appointments as Professor of Medicine in the College of Physicians & Surgeons and Professor of Epidemiology in the Mailman School of Public Health. He currently serves as the Julius R. Krevans Distinguished Professor and Associate Dean for Clinical Affairs at the University of California in San Francisco (UCSF) School of Medicine, and chairs the school’s Department of Medicine. Prior to joining UCSF in 1995, he was a Professor of Medicine at Harvard Medical School and Professor of Epidemiology at the Harvard School of Public Health. He was also Vice Chair of the Department of Medicine and later Chief Medical Officer at Brigham & Women’s Hospital, in Boston. Dr. Goldman succeeds **Gerald D. Fischbach, M.D.** ■

New GNYHA Nurse Staffing Survey Shows that Vacancy Rate Remains Stable While Demand for Nurses Increases

GNYHA will release its *Survey of Nurse Staffing, 2005* at its Annual Meeting on Apr. 18. The survey, which is the fifth in a series, contains information on nurse vacancy and turnover rates in GNYHA member hospitals as of Oct. 31, 2005, as well as information on best practices for recruitment and retention of nursing staff, skill mix, nurse demographics, and scheduling patterns.

The findings of the 2005 survey demonstrate that the nursing shortage continues to be a serious cause for concern, particularly in light of the aging nurse workforce, increased levels of patient acuity, and predicted increases in the proportion of the population aged 65 and older. The data indicate that 60% of the registered nurse (RN) and 81% of the nurse manager workforce are 40 years of age or older, and 27% of RNs and 39% of nurse managers are 50 years of age or older, indicating a wave of retirement over the next 10–20 years. Exacerbating this situation is the limited number of nurses currently under age 30: Only 3% of nurse managers and 13% of direct care staff nurses

were reported to be under 30 years of age.

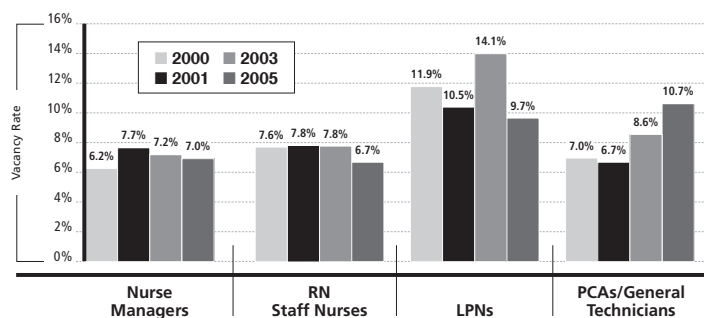
Another notable finding is that, for the hospitals that responded to the previous GNYHA surveys in 2001 and 2003, the aggregate number of direct care RNs and nurse managers has increased by 13% but the vacancy rate for RNs is 7%, only slightly lower than the rate reported for 2003. While the increased aggregate number reflects the success of strategies that hospitals have used to recruit nurses over the past four years, hospitals' demand for nurses has also increased (in part because of an increased level of acuity among the inpatient population), as shown by an increase in the number of budgeted positions, and the need for additional nurses has outpaced the ability to train and hire them.

Other highlights of the survey findings include the following:

- Turnover rates of 9% for RN staff nurses and 11% for nurse managers are up from 8% and 6%, respectively, in 2003.
- The most effective recruitment strategy continues to be flexible scheduling.
- Hospitals continue to have the most difficulty recruiting for the operating room, emergency department, and critical care units, with the highest vacancy rates occurring for the overnight shift.
- The majority of hospitals report an increased use of all forms of supplemental nurse staffing to cope with existing vacancies.

For more information or a copy of the full report, contact Terri Straub at GNYHA. ■

Inpatient Nurse Staff Vacancy Rates, 2000–05



Note: Total N = 54.

SHRPC Approves Member Projects; DOH Agrees to CON Reform

At its Apr. 6 meeting, the State Hospital Review and Planning Council (SHRPC) approved, in some cases with conditions or contingencies, the following GNYHA member projects: **St. John's Riverside Hospital**, add 24 chemical dependency beds to its Park Care Pavilion; **Staten Island University Hospital–North**, expand and renovate the emergency department and related services; **Catholic Health Care System**, establishment approval to become the active parent of seven residential health care facilities and one hospital; **Hebrew Hospital Home of Westchester, Inc.**, assume operation of the adult day health care program of **Hebrew Hospital Home, Inc.** and **Richmond Community Support Organization, Inc.** (a to-be-formed voluntary corporation) to establish and construct a multi-purpose diagnostic and treatment center

that is currently operated as an extension clinic of **St. Vincent's Hospital Staten Island**. The following GNYHA member hospitals were approved as Designated Stroke Centers: **Northern Dutchess Hospital**, **Our Lady of Mercy Medical Center**, and **Vassar Brothers Medical Center**.

CON Reform: The NYS Department of Health (DOH) informed GNYHA that it is planning to move ahead with proposed changes to Certificate of Need (CON) regulations. GNYHA has been advocating for changes to the CON regulations because of member concerns about increased processing time, particularly for administrative review of CON applications. DOH will move forward with most of GNYHA's recommendations, which include revisions to equipment regulations and regulations regarding "non-clinical" applications. All the proposals will require regulatory

changes and will, therefore, be subject to the usual regulatory approval process, including review and adoption by SHRPC.

Dialysis Services: At the Apr. 6 meeting of the Joint SHRPC Planning Committee/Public Health Council Establishment Committee, DOH gave a presentation on dialysis services. DOH indicated that hospitals treat patients who need higher levels of care than freestanding, non-hospital providers. For-profit providers of dialysis services said they favor a proposed legislative change that the committee is considering whether to support, which would permit direct establishment of publicly traded for-profit dialysis centers. Commenters indicated that they thought the legislation would make NYS more attractive to for-profit providers, thereby increasing competition and quality, and one supporter of the legislation indicated that the current model of Article 28 control over for-profit dialysis providers (the current "representative governance" model) imposes barriers to quality. ■

Comprehensive Health Insurance Reform Passes in Massachusetts

Will New York Follow?

Massachusetts Governor Mitt Romney signed into law last week a sweeping health reform bill that aims to extend health insurance coverage to 95% of the State's 500,000 uninsured residents within three years. The package uses a combination of measures, including a requirement that all Massachusetts residents have coverage, the creation of affordable health coverage options for lower-income workers, and increased Medicaid reimbursement for hospitals and other health care providers. The Governor vetoed a provision in the bill that requires all businesses with more than 10 employees to either contribute to their workers' health coverage or to pay a modest assessment to the State, but the Legislature is expected to override his veto. Enactment of the legislation makes Massachusetts the first state in the nation to require that all citizens have some form of health insurance.

A broad coalition representing labor, health care providers, consumers, health plans, and some business leaders participated in the negotiations leading to the final plan, which represents a compromise between a comprehensive health reform proposal that Gov. Romney introduced last year and equal-

ly expansive but different bills introduced by the House and Senate leaders in the Democrat-controlled Legislature. Gov. Romney's plan included a mandate on individuals to obtain insurance, but did not call for an assessment on businesses that do not offer coverage. Massachusetts lawmakers are optimistic that enactment of this legislation will qualify the State for \$385 million in Federal Medicaid matching funds, which, according to the Centers for Medicare & Medicaid Services, is contingent on the State showing substantial progress in reducing its uninsured numbers.

The legislation calls for uninsured residents to purchase health insurance by July 1, 2007, or forfeit their personal state tax exemption that year. Individuals who do not buy coverage in subsequent years would pay a fine equal to half the monthly premium of an affordable plan, with "affordability" to be defined by a new State commission. To ensure that all residents have access to insurance, individuals with incomes up to 300% of the Federal poverty level—roughly \$48,000 for a three-person family—would be eligible for a new State-subsidized health insurance program. As a corollary provision to the coverage expansion, the legislation calls for reduced reliance on the State's Uncompensated Care Pool, which reimburses health care providers who treat the uninsured. When the numbers of the uninsured drop and uncompensated care subsequently declines, the State intends to funnel surplus pool funds into insurance subsidies for low-income working families.

In New York, GNYHA, in conjunction with 1199 SEIU United Healthcare Workers

East, is sponsoring its own comprehensive health insurance expansion proposal—*Cover New York*—which calls for many of the same reforms as the Massachusetts bill. *Cover New York* includes provisions that would expand affordable public and private health insurance programs; require that all businesses with more than 100 employees contribute to their workers' health coverage; and require that all New Yorkers have health insurance, similar to the requirement that all drivers have car insurance, once affordable insurance is available. ■

Legislative Digest

The NYS Legislature recently took action on these health care-related bills:

Liability Protections. The Assembly passed Bill A. 7643-A, which protects health care professionals from criminal liability and professional discipline for prescribing and administering pain medication when acting within accepted professional standards. The bill has been referred to the Senate Health Committee.

• **Patient Restraint.** Bill S. 6706, pending in the Senate, authorizes a physician assistant, under a physician's supervision, to order the restraint of a patient in a behavioral health setting. This bill is on the Senate Calendar.

• **Interpretation Reimbursement.** Bill A.10222, pending in the Assembly Ways & Means Committee, provides Medicaid reimbursement for interpretation services given by hospital inpatient and outpatient departments. GNYHA strongly supports the bill.

• **Health e-Links New York Act.** S. 6859 intends to provide leadership and coordination of all health information exchange and technology initiatives by establishing the Office of Health e-Links New York within the NYS Department of Health. This bill has been reported out of Senate Health and is in the Senate Finance Committee. ■

Medicare Inpatient Payments

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changes were mandated in the Deficit Reduction Act of 2005. Comments are due by close of business, June 12, 2006, and may be submitted electronically. ■

Upcoming GNYHA Member Briefings

Document Storage and Shredding Solutions

Date: Wednesday, April 26, 2006

Time: 3:00 p.m.–4:00 p.m.

Location: GNYHA Conference Room C or via Webcast

GNYHA Services, Inc. has a group purchasing agreement with CitiStorage and U.S. Document Security, Inc. (USDS) to offer their comprehensive document storage and shredding solutions to GNYHA members under favorable pricing terms. According to the companies, GNYHA members that have switched to CitiStorage, USDS, or both have often realized savings of up to 25–50% less than what they were paying previously. This briefing will describe their services. To register and obtain log-in information, contact Adam Daehnke at adaehnke@gnyha.org.

Revisions to NYS Regulated Medical Waste Regulations

Date: Friday, April 28, 2006

Time: 1:00 p.m.–3:00 p.m.

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

At this briefing, Delton Courtney from the NYS Department of Health's Bureau of Hospital and Primary Care Services will review the revisions to the State's regulated medical waste regulations as adopted on March 15, 2006, and provide a compliance assistance packet to assist with implementation. For more information, contact Susan Stuard at GNYHA; to register, contact Cynthia Araujo at araujo@gnyha.org.

Pediatric Disaster Toolkit: Hospital Guidelines for Pediatrics in Disasters

Date: Tuesday, May 2, 2006

Time: 9:00 a.m.–12:30 p.m.

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

GNYHA is holding this briefing in conjunction with the NYC Department of Health and Mental Hygiene and the NYC Centers for Bioterrorism Preparedness Planning Pediatric Task Force. The toolkit was created to help all hospitals prepare for emergencies involving pediatric patients. The recommendations in the toolkit, which are not specific to NYC, will be of interest to all GNYHA members. For more information, contact Doris R. Varlese at GNYHA; to register, send an e-mail to Laurie Sangirardi at sangirardi@gnyha.org. ■