



MARCH 24, 2003

# Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

## GNYHA 2003 Annual Meeting Set for April 10; NYC Health Commissioner Thomas Frieden to Give Timely Address

The GNYHA 2003 Annual Meeting will be held on April 10, 2003, at the Sheraton New York Hotel on Seventh Avenue in Manhattan, with registration beginning at 8:00 a.m.

**Program:** The program will begin with a breakfast and annual business meeting from 8:30 to 9:00 a.m., during which the membership will elect new officers and Board members for the 2003–04 Association year and will confirm the current slate of officers and Board members elected to fill vacancies that arose during the 2002–03 Association year. GNYHA President Kenneth E. Raske will then make some comments about the extraordinary challenges facing the New York health care community, followed by New York City Department of Health and Mental Hygiene Commissioner Thomas Frieden, M.D., M.P.H., who will deliver a timely address. Dr. Frieden will speak about a variety of public health and emergency preparedness issues.

**Special Sessions:** Following Dr. Frieden's presentation will be a special session entitled "Planning for Terrorist Attacks: Difficulties and Vulnerabilities." Kenneth W. Watman, Ph.D., Director, War Gaming Department, U.S. Naval War College, will show that when organizations—including health care facilities—prepare for a terrorist attack or similar

event, common difficulties and vulnerabilities emerge. Dr. Watman will review recurring themes related to levels of preparedness that have been identified from various war gaming drills devised to help civilian authorities meet the needs of homeland defense.

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## House Passes Medical Liability Reform

On March 13, 2003, the U.S. House of Representatives passed a major medical liability reform bill, entitled the Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2003 (H.R.5). Among other things, H.R.5 would place a \$250,000 cap on non-economic damages that can be claimed in a malpractice suit; require periodic payments, rather than lump sum payments; place a cap on contingency fees; and create a statute of limitations of

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### GNYHA Board Meets

*The GNYHA Board of Governors met on March 20, 2003, and took the following actions:*

- approved a recommendation from GNYHA's Nominating Committee of individuals to serve as GNYHA officers and/or Board members for the 2003–04 Association year, and ratified, approved, and confirmed the current slate of GNYHA officers and Board members elected to fill vacancies that arose during the 2002–03 Association year;
- was briefed on the latest developments in the State budget debate, including GNYHA's efforts to stop the budget's proposed Medicaid cuts and provider taxes, and GNYHA/199 SEIU Healthcare Education Project ads, direct mail, phone banking, forums, and a massive April 1 rally in Albany;
- was briefed on Federal proposals to cut Medicare and Medicaid provider payments, and GNYHA's planned response;
- reviewed the CMS's proposed rule changing the way Medicare cost outlier payments are made to hospitals, and GNYHA's fiscal analysis of the proposed rule;
- was briefed on the recent decision by the New York Supreme Court to dismiss Consumers Union's lawsuit challenging aspects of the conversion of Empire Blue Cross and Blue Shield to a for-profit company;
- reviewed recent liability insurance reform developments, including action in the U.S. House of Representatives, prospects in the U.S. Senate, developments in Albany, and GNYHA activities;
- heard a report on CMS's recently launched hospital report card pilot program;
- was briefed on the expected release of CMS's proposed rule for the Medicare Inpatient Psychiatric Prospective Payment System;
- was briefed on GNYHA's initiatives to improve the revenue cycle, including advocacy with payers and individualized hospital assistance;
- was briefed on GNYHA's activities to help members prepare for possible terrorist attacks, including the preparation of guidelines on measures providers should take within each threat alert level. ■

## Report Shows Many More Uninsured in New York Than Estimated Previously

According to a report by the health care consumer group Families USA, nearly 5 million New York State residents—30% of New Yorkers under the age of 65—were uninsured at some point during 2001–02, a majority of them for at least six months. The report, released by The Robert Wood Johnson Foundation as part of its kick-off for the Covered the Uninsured Week campaign (March 10–17, 2003; see *Skyline News*, March 10, 2003), reveals that New York's situation mirrors that in the rest of the nation, where nearly 75 million Americans, or 30% of the population under age 65, had no coverage during that time period. As in New York, a majority of U.S. residents were without health coverage for at least six months, and nearly one-fourth (24%) were uninsured throughout the two-year period.

These statistics suggest that the uninsured problem in the United States is far more widespread than is commonly thought. Unlike the frequently cited Census Bureau estimate that 41 million Americans were without health insurance throughout 2001, the Families USA report measured the number of people without coverage for all or part of a two-year period, and calculated the average length of time during which they were uninsured. These estimates, according to the authors of the report, provide a more thorough picture of how many people are directly affected by lack of health coverage.

As noted in this and many other recent reports, the vast majority of uninsured Americans live in families where the head of the household works, and most are low-income. White, non-Hispanic people are the largest category of uninsured (52%), though Hispanic and African American individuals are disproportionately represented among those without coverage.

For a full copy of the report, *Going Without Health Insurance: Nearly One in Three Non-Elderly Americans*, go to [www.familiesusa.org](http://www.familiesusa.org). ■

## House Passes Medical Liability Reform *continued from page 1*

three years after the manifestation of an injury. GNYHA strongly supported H.R.5. In a letter to the New York Congressional Delegation, GNYHA President Kenneth E. Raske stated, "Hospitals in New York are reporting double-digit increases in premium costs. Premiums in New York are already among the highest in the nation. . . . In addition, Medicare cuts at

the Federal level and Medicaid cuts at the state level have limited the ability of providers to absorb escalating premium costs." The Senate is expected to consider S.607—the companion to H.R.5—in the coming weeks. GNYHA is grateful to members of the New York Congressional Delegation who voted for this important piece of legislation. ■

## GNYHA, ABNY, and UHF Co-Host "Challenging Times Facing the New York Health Care Community"



Left to right: Kenneth I. Berns, M.D., Ph.D., Peter W. May, Richard T. Roberts, Frank A. Bennack, Jr., Herbert Pardes, M.D., Kenneth E. Raske, and James R. Tallon, Jr.

On March 13, 2003, GNYHA, the Association for a Better New York (ABNY), and the United Hospital Fund (UHF) co-hosted a breakfast program for hospital and nursing home trustees and business leaders on the "The Extraordinarily Challenging Times Facing the New York Health Care Community." After ABNY Chairman William C. Rudin welcomed the audience, UHF President James R. Tallon, Jr., discussed the myths and realities about New York's Medicaid Program. Following that presentation, GNYHA President Kenneth E. Raske and GNYHA's Senior Vice President Karen S. Heller discussed the financial condition



William C. Rudin, Chairman, ABNY



James R. Tallon, Jr., President, UHF



Kenneth E. Raske, President, GNYHA



Karen S. Heller, Senior VP, GNYHA

of New York's hospitals and nursing homes and the damaging impact of the proposed 2003–04 State Budget health care cuts. Later in the program, a number of prominent trustees and CEOs from area hospitals joined the discussion, including Frank A. Bennack, Jr., Vice Chairman of the Board of Trustees, and Herbert Pardes, M.D., President and CEO, New York-Presbyterian Hospital; Peter W. May, Chairman of the Boards of Trustees, and Kenneth I. Berns, M.D., Ph.D., President and CEO, Mount Sinai Medical Center; and Richard T. Roberts, Chairman of the Board of Directors, New York City Health and Hospitals Corporation. ■

# New York State Department of Health Presents New Certificate of Need Application

At GNYHA's Health Planning Committee meeting held on March 19, 2003, the New York State Department of Health (DOH) presented its new Certificate of Need (CON) application. The application updates and replaces the nine documents that DOH uses currently for full, administrative, and limited CON reviews of health care facilities governed by Articles 28, 36, and 40 of the Public Health Law and those governed by Article 7 of the Social Services Law. DOH's current CON application had not been wholly updated since 1986. The application was the result of a collaborative effort on the part of

DOH's CON Revision Workgroup, on which GNYHA served. The revised application will be available on DOH's Web site by the end of March. Until December 31, 2003, facilities will be permitted to use either the current CON application or the revised application. DOH plans to eventually permit CON applications to be submitted electronically.

**Other Planning News:** DOH has released another draft of the permanent part-time clinic regulations. The regulations would entirely prohibit part-time clinics from operating in private physicians' offices. The regulations would also limit the number of part-

time clinic visits provided by an operator. The annual aggregate number or amount of outpatient visits provided by an operator in all of its part-time clinic sites in the aggregate would not be permitted to exceed 20% of all outpatient services visits provided by such operator in all of its Article 28 sites. (At least 80% of all outpatient visit services provided by an operator would be required to be provided at its main site of operations and/or approved extension clinics.) The regulations were discussed at the March 20, 2003, State Hospital Review and Planning Council Codes Committee meeting and will continue to be discussed by the Committee. For a copy of the draft regulations, please call Doris R. Varlese at GNYHA. ■

## Healthcare Education Project Campaign Continues; Delivering 2 Million Pieces of Mail to Voters' Homes

The GNYHA/1199 SEIU Healthcare Education Project continued its statewide advertising and grassroots advocacy campaign to urge Albany lawmakers to reject the nearly \$2 billion in Medicaid cuts, provider taxes, and other revenue reductions proposed in the State Budget with a massive direct mail initiative to 2 million New Yorkers' homes. The various direct mail pieces—which warn that the proposed cuts will mean fewer nurses, longer lines, reduced services, disrupted emergency preparedness activities, and possibly even hospital and nursing home closures—follow a series of television and radio ads that began airing on March 5, 2003. The direct mail pieces also assert that there is a better choice for lawmakers to consider: closing corporate loopholes and increasing taxes on wealthy New Yorkers. They include postcards addressed to Governor Pataki and members of the State Legislature urging them not to cut health care funding. The mail pieces also encourage New Yorkers to attend a massive health care rally in Albany on April 1, 2003 (see below).

The direct mail campaign complements a second round of television and radio ads currently in production, a statewide telephoning initiative, and numerous community

forums and other grassroots initiatives throughout the State.

**April 1 Rally:** On April 1, thousands of concerned citizens will join the Healthcare Education Project in a massive rally to protest the devastating health care cuts proposed in the NYS budget. The Healthcare Education Project has rented out the Pepsi Arena, where numerous elected officials and health care leaders are scheduled to address the crowd. After that event, there will be a march to the

State Capitol, where an overflow crowd from the statewide health care community will hold a rally on the Capitol steps. All employees of the hospitals and nursing homes in GNYHA's membership are invited to attend, including 1199/SEIU members, members of other unions, and all exempt employees. Members of community boards, auxiliary boards, and retirees are also welcome. For more information, call David Rich or Lloyd Bishop at GNYHA. ■

## GNYHA 2003 Annual Meeting Set for April 10 *continued from page 1*

The meeting will conclude at approximately 10:00 a.m. for hospital members.

For continuing care members, there will be an additional session, called "Beyond Diversification: Reinventing the Nursing Home for the 21st Century." A panel of nationally recognized continuing care experts will explore the forces—demographic, economic, and regulatory—that are driving revolutionary changes in nursing homes. Continuing care providers who are implementing bold new approaches—from evolutionary culture changes to a total reconceptualization of the nursing home itself—will talk about what it means to implement and sustain their visions. The panel will consist of Rose Marie Fagan, Executive Director

of the Pioneer Network; Robyn I. Stone, Dr.P.H., Executive Director of the Institute for the Future of Aging Services; and Arthur Y. Webb, President and Chief Executive Officer, Village Care of New York. Audrey Weiner, D.S.W., President and Chief Executive Officer of Jewish Home and Hospital Life-care System, will moderate the discussion.

**Registration:** All attendees must pre-register by mail or fax for this event no later than April 4, 2003. The Annual Meeting is free of charge for all GNYHA members and \$175 per person for non-members. All *Skyline News* subscribers will receive a GNYHA 2003 Annual Meeting brochure and registration form. If you have not received a registration brochure, please contact Barbara Marino at GNYHA. ■

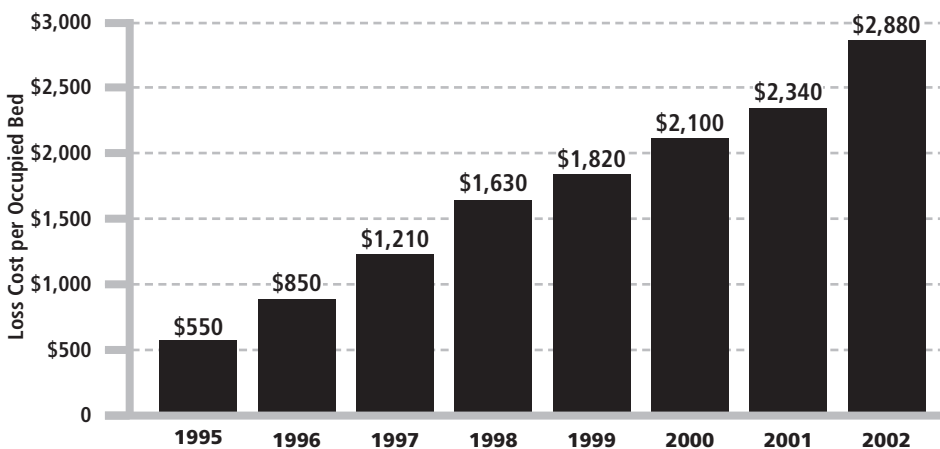
# LTC Liability Trends Cause Alarm

An actuarial report by Aon Risk Consultants released on March 17, 2003, found that direct and associated costs for general and professional liability insurance for nursing facilities nationwide have increased significantly and that these costs have absorbed 21% of any increases in the average Medicaid reimbursement rate from 1995 to 2002. The study demonstrated that over this eight-year period the costs per occupied bed of general and professional liability losses—settling and defending claims—are increasing at an annual rate of 24% per year (see graph below) and that the costs represent a \$4.8 billion diversion of funds out of patient care. The study showed that Florida and Texas maintain the highest costs for liability losses and that nursing facilities nationwide face liability losses that exceed the rate of inflation in other areas of tort liability, such as malpractice. In addition, the study concluded that the annual commercial general and professional liability insurance premiums for nursing facilities increased 143% in 2002 (\$130,086) and 130% in 2001. The Aon report was released on the heels of the publication of a national study in the March/April 2003 issue of *Health Affairs* conducted by the Harvard School of Public Health. The study found that the recently growing number of lawsuits against nursing facilities is an alarming trend and that the costs of nursing home litigation are substantial in the aggregate and per claim.

Researchers concluded that this trend raises concerns about the effect of these costs on the quality of resident care. Surveying attorneys nationwide involved in 4,677 claims, the study found that residents' children are the prime motivation for claims (60%) and that the average payment rate (85%) was nearly three times greater than the average rate observed in medical malpractice litigation. Additionally, the U.S. Department of Health and Human Services released a report on March 3, 2003, *Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care*, which calls for reform of the medical litigation system to improve access and quality of health care.

The above studies will stimulate the liability insurance debate set to begin in the U.S. Senate following the U.S. House of Representatives' passage of the Help Efficient, Accessible, Low-Cost, Timely Healthcare Act of 2003 (H.R.5) by a vote of 229 to 196 on March 13, 2003 (see story on page 1). Although the Act—and its companion bill in the Senate, S.607, introduced by Senator John Ensign (R-NV)—is commonly known as the Malpractice Liability Act, it has an impact on a broad range of health care entities including physicians, hospitals, nursing facilities, insurers, pharmacy companies, and medical device companies. GNYHA will continue to monitor and notify members of developments regarding this issue. ■

General/Professional Liability Loss Cost per Occupied Nursing Facility Bed, United States, 1995–2002



Source: Aon Risk Consultants, March 2003.

## Upcoming GNYHA Briefings

### Rapid HIV Testing in the Labor and Delivery Setting

**Date:** Wednesday, March 26, 2003

**Time:** 2:00 p.m.–4:00 p.m.

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

GNYHA will be holding this briefing at the request of the New York State Department of Health (DOH). The U.S. Food and Drug Administration recently approved a new generation of rapid HIV tests, which provide test results within 20 to 40 minutes, and DOH is encouraging hospitals to utilize the tests in the labor and delivery setting. At the briefing, Guthrie S. Birkhead, M.D., M.P.H., Director of the DOH AIDS Institute, will provide an update on perinatal HIV transmission in New York State and will discuss the advantages of using rapid testing in the labor and delivery setting. Representatives from DOH will also discuss Wadsworth Center Laboratories' requirements for rapid testing in the labor and delivery setting and implementing rapid HIV testing in the labor and delivery setting. A representative of a GNYHA member will discuss improving prenatal HIV testing programs and HIV testing programs in the labor and delivery setting. For more information contact Doris R. Varlese, and to register contact Barbara Marino, at GNYHA.

### EPA Hospital Inspection and Voluntary Audit Programs

**Date:** Monday, March 31, 2003

**Time:** 2:00 p.m.–5:00 p.m.

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

This briefing is designed to educate members about the hospital compliance inspection and voluntary audit programs announced recently by Environmental Protection Agency (EPA) Region 2. The program will feature the following speakers addressing both the inspection process and the EPA voluntary audit program: Loretta Greenholtz, Assistant Vice President for Environmental Health and Radiation at Columbia University; Susan Campbell, a partner at the law firm of Hughes Hubbard & Reed, LLP; and Adam Smyth, Senior Advisor at Triumvirate Environmental. For more information contact Susan Stuard, and to register contact Barbara Marino, at GNYHA. ■