



JUNE 30, 2003

# Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

## House, Senate Approve Medicare Bills; IME Cut to Be Resolved in Conference

Last week, the U.S. Senate and U.S. House of Representatives passed differing bills designed to provide outpatient prescription drug coverage for Medicare beneficiaries. It will now be up to a conference committee, comprising members of both

houses of Congress, to iron out the differences between the two bills. Congressional leaders would like to pass a compromise bill and send it to President Bush for approval before the August recess.

**Provider Issues:** Besides the critically impor-

tant provisions of the bills that provide prescription drug coverage for the nation's seniors, many provisions in the House and Senate bills affect Medicare reimbursements for hospitals, nursing homes, and home health providers. The Senate bill does not contain any reductions for hospitals, nursing homes, or home health providers. It does contain billions of dollars in new spending on rural

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### GNYHA Board Meets

The GNYHA Board of Governors met on June 26, 2003, and took the following actions:

- discussed, with special guest New York State Attorney General Eliot Spitzer, the priorities of Mr. Spitzer's office and issues of concern to health care providers;
- reviewed the status of Senate and House Medicare legislation in Washington, D.C., including an amendment to restore indirect medical education (IME) funding;
- was briefed on the disposition of State bills of importance to GNYHA members, including legislation mitigating the extremely damaging potential impact of the verdict in the medical liability case known as *Desiderio v. Ochs* (see story at right);
- authorized the GNYHA Executive Committee to review new concepts for future GNYHA/1999 SEIU Healthcare Education Project advocacy initiatives;
- authorized GNYHA to develop a work plan to assist member hospitals in improving their billing and collection practices;
- heard a report on GNYHA's recently completed Emergency Department Patient Flow survey;
- was briefed on GNYHA's initiatives to help members prepare for and respond to various emergencies, including a work plan to assist the State, New York City, and its members in addressing the issue of surge capacity, and a

proposed partnership with the Columbia School of Public Health's National Disaster Preparedness Center; and

- was updated on GNYHA's efforts to facilitate smooth implementation of Health Insurance Portability and Accountability Act transaction sets on October 16, 2003. ■



**New York State Attorney General Eliot Spitzer (right) at the June 26 meeting of the GNYHA Board of Governors, with Kenneth Raske (left), President, GNYHA, and Herbert Pardes, M.D. (center), President and CEO, New York-Presbyterian Hospital. Mr. Spitzer discussed some of the priorities of his office, including corporate governance and compliance issues for government, for-profit, and not-for-profit entities. GNYHA Board members also raised issues of concern among health care providers, such as access to capital and ongoing reimbursement problems.**

## NYS Governor, State Senate, State Assembly Reach Agreement on Desiderio Legislation

Early on the morning of June 20, 2003, New York State Governor George E. Pataki, Senate Majority Leader Joseph Bruno, and Assembly Speaker Sheldon Silver reached agreement on legislation to mitigate the extremely damaging potential impact of the verdict in the medical liability case known as *Desiderio v. Ochs, et al.* (See stories in *Skyline News*, April 21, 2003, p. 3, and June 16, 2003, p. 1.) Following the agreement, Governor Pataki sent an emergency "message of

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# New York State Legislature Addresses Health Care Issues Before Adjourning

The New York State Legislature completed its business for the 2003 session on June 20, 2003. During the final week of the session, the Senate and Assembly took action on several key health care issues of concern to the hospital community.

**Future Damage Awards:** Of critical importance to GNYHA members is the legislation passed during the final hours of the session to correct the calculation of future damage awards in malpractice cases. The legislation resulted from *Desiderio v. Ochs*, in which the

provision in current law led courts to double-count for inflation when calculating future damage awards (see story on page 1). The Governor is expected to sign this legislation.

**Excess Malpractice Insurance:** Both houses passed legislation to extend the excess medical and dental malpractice insurance coverage program through June 30, 2004. Under current law, the program would expire on June 30, 2003.

**Drug Eluting Stents:** Both houses passed legislation to provide hospital pass-through payments for the drug-eluting stent, which is expected to change the treatment and lifetime

costs of coronary artery disease because of its ability to prevent restenosis in affected patients. GNYHA helped draft this legislation and worked with the Legislature to ensure its enactment. It is now critical that the Governor approve the bill and the NYS Department of Health implement it.

**Home Care Reporting:** Both houses passed legislation requiring certified home health agencies (CHHAs) and licensed home care services agencies (LHCSAs) to include in their annual reports information regarding type, frequency, and reimbursement for services provided, including reimbursement from Federal and State governmental agencies. It also extends to LHCSAs the cap on administrative and general costs that applies currently to CHHAs. GNYHA supports the availability of public information regarding the uses of monies paid by government programs such as Medicaid and Medicare for the provision of health services. The final version of the legislation removed a provision opposed by GNYHA that would have capped the portion of an LHCSA's revenue that may be applied to profit.

**Emergency Contraception:** Both houses passed legislation requiring hospitals to provide emergency contraception upon request to rape survivors during emergency treatment. The bill specifies that hospitals shall provide rape survivors with written information regarding emergency contraception, verbally inform survivors of the availability of emergency contraception, and provide emergency contraception upon request, unless contraindicated. Hospitals are not required to provide emergency contraception if the victim is pregnant. GNYHA opposed earlier versions of the emergency contraception bill, which had more stringent requirements.

**Electroconvulsive Therapy:** Both houses passed legislation to require facilities administering electroconvulsive shock therapy (ECT) to report to the Office of Mental Health on a quarterly basis regarding the use of ECT. Because much of the data listed in the bill can be collected through the Statewide Planning and Research Cooperative System (SPARCS) data bank, GNYHA opposed the bill.

**Exemption to the Smoking Ban:** Despite

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## House, Senate Approve Medicare Bills *continued from page 1*

health care providers, as well as approximately \$300 million over 10 years to begin to mitigate the impact of the Medicare indirect medical education (IME) cut that took effect on October 1, 2002. This cut, which will cost teaching hospitals nationwide \$800 million this year, including \$140 million for hospitals in New York and over \$30 million for hospitals in New Jersey, will now be a subject of debate for the conference committee. Senators who support teaching hospitals have been promised that the Senate leadership will try to gain more relief from the cut during the conference between the House and the Senate that will begin this week. The House bill contains no IME provisions, but it does contain Medicare reimbursement rate cuts for hospitals and home health providers. (There are no cuts for nursing homes in the House bill.) Specifically, the bill reduces the market basket update for hospitals and home health agencies by 0.4 percentage point for 2004, 2005, and 2006. The House bill also extends the current law freeze on direct graduate medical education per resident amounts for hospitals with high per resident amounts for 10 years, phases in a national fee schedule for ambulance services, changes the reimbursement methodology for drugs under the outpatient prospective payment system, and imposes copayments on home health services.

**GNYHA Response:** Working with the Association of American Medical Colleges, the American Hospital Association, and teaching hospitals across the country, GNYHA will be

working during the conference to eliminate the market basket update reductions and to ensure the maximum amount of IME relief possible for GNYHA members. GNYHA believes strongly that the IME relief contained in the bills as they passed the House and Senate is wholly inadequate to address the fiscal crisis faced by the nation's teaching hospitals. ■



**America needs teaching hospitals now more than ever.**

The nation's 1,300 teaching hospitals are where medical breakthroughs break through and where Americans receive world-class care. From highly specialized treatments to complex cancer and cardiac treatments, to life-saving burn and trauma care, teaching hospitals also train nearly 300,000 doctors each year. And the millions of Americans without health insurance, and provide comprehensive community health services. Now, as a vital part of tomorrow's security, teaching hospitals must speed efforts to ensure readiness and funding.

But teaching hospitals cannot longer do more and more with less. Unless Congress acts, the \$4.2 billion, six-year federal budget cut that took effect last October will cost the average major teaching hospital \$2 million this year alone and threaten important patient care services.

Prescription drug coverage for seniors is critical. At the same time, funding for the hospitals that help doctors and their staffs. All saving medicines must be restored.

**Senators: Please Support the Hatchison-Kennedy Amendment to Restore IME Funding.**

American Hospital Association | Association of American Medical Colleges

GNYHA, the American Hospital Association, and the Association of American Medical Colleges placed this print advertisement in four Washington, D.C., publications (*The Washington Times*, *Roll Call*, *Congressional Quarterly Today*, and *Congressional Daily A.M.*) last week to urge all United States senators to support restoring IME funding within the Senate's larger prescription drug bill.

necessity” to the Legislature, enabling the Senate and the Assembly to take action on the legislation. Both the Senate and the Assembly passed the bill (S.5697/A.9119) later that day. Enactment of this bill is expected to spare hospitals in New York State from huge increases in medical malpractice premiums.

In the *Desiderio* case, the NYS Court of Appeals upheld a lower court’s decision to increase the jury award for future medical expenses from \$40 million to \$140 million by counting inflation twice and incorrectly determining the present value of the judgment. The Court’s decision involved an interpretation of NYS’s Civil Practice Law and Rules that address how to structure a future damages judgment.

#### **S.5697 and the Health Care Alliance Bill:**

The bill differs in a number of ways from the bill drafted by the Health Care Alliance, a coalition of hospital-sponsored medical malpractice insurance companies. Like that bill, S.5697 eliminates the provisions in current law that led courts to double-count for inflation when calculating future damages and ensures that the present-value calculation takes into account each year’s amount of damages. These were the primary problems that led to the *Desiderio* decision. Like current law, all past damages will be payable in a lump sum. The bill, however, changes current law by specifying that all future damages for loss of services, consortium, and wrongful death will be paid in lump sums, as well as pain and suffering damages of \$500,000 or less. Further, the bill requires lump sum payments of 35% of future damages for pain and suffering (in excess of \$500,000), with the balance paid within a maximum of eight years. In addition, 35% of future economic and pecuniary damages would be payable in a lump sum, with the balance paid through the purchase of an annuity. Under current law, lump sum payments for future damages are capped at \$250,000 and the remainder is paid through annuities.

One of the most significant differences between the Health Care Alliance bill and S.5697 is the effective date. The Health Care Alliance bill would have been effective immediately, thus affecting current cases, whereas S.5697 will be effective 30 days after the Gov-

ernor signs it and will apply only to actions or proceedings commenced on or after that date.

Significantly, the Legislature did not agree to one of the primary demands of the Trial Lawyers Association—increasing the current legal cap on contingency fees. S.5697 does not amend the contingency fee statute.

While falling somewhat short of the health care community’s request, the bill neverthe-

less eliminates the primary problems caused by the *Desiderio* decision. GNYHA is grateful to Governor Pataki, Senator Bruno, and Speaker Silver for resolving this issue before medical malpractice rates skyrocketed. GNYHA is also grateful to Assembly Insurance Committee Chairman Pete Grannis, who strongly supported legislation to resolve this issue. ■

## Naval War College Holds Exercise at GNYHA



On June 24, 2003, representatives of over 80 hospitals; 15 local, State, and Federal agencies; the Medical Society of the State of New York; nursing homes; and home care providers attended a table-top exercise that was conducted by the Naval War College at GNYHA headquarters. The exercise was designed to highlight potential challenges for hospitals in preparing for and responding to possible incidents, and to identify services and support that government agencies might provide and areas that might require strengthening both within a hospital and across the region. GNYHA will be using comments from members regarding the exercise, together with the Naval War College’s “After Action Report,” to direct GNYHA’s future emergency preparedness activities on behalf of its members.

## New York State Legislature *continued from page 2*

broad, bipartisan support, no action was taken to amend the smoking ban law to explicitly exempt patients receiving treatment in hospital inpatient psychiatric units or hospital substance abuse detoxification units.

**Medical Records Fees:** The Senate and Assembly failed to act on legislation that would increase the fees for reimbursement to hospitals, physicians, and other providers for copying medical records. GNYHA believes that the increased reimbursement schedule is fair in that it does not have an impact on patients when they request the

records in order to facilitate their ongoing health care. Furthermore, this legislation would prevent future litigation regarding the issue of medical record copying costs.

**Nurse Staffing Ratios:** The Assembly passed legislation requiring health care facilities to post unit-level staffing ratios. The Senate took no action on this legislation. No other staffing proposals passed either House.

**Not-for-Profit Corporations:** The Legislature took no action on a bill introduced to require executives and boards of directors of not-for-profit organizations to certify financial audits. ■

# NYS Department of Health and IPRO Release Resource Documents on Resident Work Hours

The NYS Department of Health (DOH) and its contracted survey organization, IPRO, recently distributed two documents to help teaching hospitals comply with the State regulations governing resident work hours and working conditions.

## Hospital Compliance Resource Document:

DOH and IPRO have prepared a comprehensive resource document that reviews the many issues and questions that have been raised to DOH and IPRO staff as the surveys have been conducted. The document is in a question-and-answer format and responds to questions regarding specific aspects of the regulations and how DOH assesses compliance with those components of the regulations. Many of these questions have been raised at the numerous DOH-IPRO briefing sessions and meetings held by GNYHA over the past several years.

**NYS-ACGME Comparison Guidelines:** IPRO also prepared a comparison chart that lists the main areas of the State regulations and the new Accreditation Council for Graduate Medical Education (ACGME) duty hour requirements, which go into effect July 1, 2003, and compares the two sets of requirements. The areas of difference that may have a practical impact on compliance efforts among New York hospitals include the allowances for transition time after night call and, in particular, the minimum time standard for required nonworking periods.

The ACGME allows up to six hours for transition time, although the State continues to limit transition time to three hours. In the case of those New York hospitals that choose

to utilize the State's surgical exemption, which allows for an extended work period for surgical programs if certain conditions are met, the ACGME limitation of six additional hours following a 24-consecutive-hour on-call period would mean a maximum of 30 consecutive hours would be allowable in order to be in compliance with both the State regulations and the ACGME requirements. For non-surgical programs and surgical programs not utilizing the State's surgical exemption provision, the State limit of 27 hours (24 consecutive hours, plus up to three hours of transition time) would apply.

Following vigorous advocacy by GNYHA

and others regarding the ACGME's proposed strict nonworking-period minimum requirement of 10 hours, the ACGME modified the requirement in part to indicate that the goal is adequate rest time and teaching institutions *should* try to accommodate 10-hour nonworking periods. In light of that modification, a graduate medical education committee and residency program that believes it is able to provide only the State-mandated eight-hour nonworking period would be expected to document the reasons for needing that accommodation. For copies of the two documents prepared by DOH and IPRO, contact Tim Johnson at GNYHA. ■

## Deadline for HIPAA-Mandated National Standard Claim Format Fast Approaching

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes a single, national standard format for administrative and financial electronic transactions, including claims. The deadline for compliance with the standard HIPAA mandated format is October 16, 2003. GNYHA is working to facilitate members' implementation of these HIPAA transactions. A smooth transition to this new format is important because any breakdown of electronic claims submission would have a negative impact on providers' cash flow, which would burden payers if providers transferred their claims to paper formats.

Despite the importance of a smooth HIPAA implementation, there is growing concern that a transition period will be needed to avoid disruptions in payer and provider operations. Such concerns are based on a vari-

ety of factors involving payers, providers, clearinghouses, and the Federal rules. To date, HHS has not provided any specific guidance. Therefore, GNYHA is asking HHS to provide such guidance on a flexible transition period that would mitigate the risk of cash-flow disruption while payers and providers work toward full compliance. Explicit guidance is needed to assure payers that they can provide needed flexibility. Such a transition period would include the following features: **1)** permit flexibility in complying with new HIPAA *data content* requirements, which are unnecessary for adjudication of the claim; **2)** permit flexibility in complying with new HIPAA *format* requirements, such that payers and providers could continue to exchange necessary data electronically in current formats, if necessary, while working toward full compliance; and **3)** encourage payers to develop an interim payment policy to protect providers against cash flow disruptions resulting from unforeseen systems issues, and to protect payers from resulting paper claims submissions.

GNYHA is also recommending that its members perform HIPAA claims testing as soon as possible, including with Medicare, which is ready to test.

The GNYHA HIPAA Transaction Workgroup meets monthly to facilitate member implementation. For more information, contact Ellen Lukens at GNYHA. ■

### Upcoming GNYHA Briefings

#### "Hazmat for Health Care" Training Session

**Date:** Tuesday, July 8, 2003

**Time:** 9:00 a.m.–4:00 p.m.

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

This "train-the-trainer" session will cover hospital response to hazardous materials incidents. The course is appropriate for all levels of hospital staff, both clinical and non-clinical. North

Shore-Long Island Jewish Health System has received a grant from the Federal government to conduct this course. The subject matter will be identical to the courses that GNYHA held in the spring of 2002 and on June 30, 2003. Since space is limited, please limit attendance to a total of two staff members per facility overall. For more information contact Doris R. Varlese, and to register contact Meg Figley, at GNYHA. ■