



JULY 14, 2003

Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

Liability Reform Bill Dies in U.S. Senate

On July 9, 2003, Republican supporters of medical liability insurance reform in the United States Senate failed to muster enough votes to allow the Senate to proceed to a vote on the Patients First Act of 2003 (S.11), a major medical liability insurance reform bill. Among other things, S.11 would have shortened the statute of limitations for medical malpractice lawsuits, placed a \$250,000 cap on non-economic damages, authorized periodic payments for future damages, and required “clear and convinc-

ing evidence of malicious intent to injure” in order to impose punitive damages on a health care provider. The motion to allow the bill to proceed to a vote, which would have required 60 votes in the 100-member U.S. Senate, failed on a vote of 49–48, with most Republicans voting in favor, and all Democrats voting against. Despite the strong support of the New York and New Jersey health care communities, including GNYHA, all four senators from New York and New Jersey—including Senators Charles E. Schumer, Hillary Rodham Clin-

ton, Jon Corzine, and Frank Lautenberg—voted to kill the bill. The U.S. House of Representatives approved a similar measure, also largely along party lines, earlier this year. Despite the setback in the Senate, Senate leaders have expressed a willingness to try again later in the 108th Congress. ■

Senate Names Medicare Conferees

Last week, leaders of the United States Senate named the senators that will be on the conference committee charged with reconciling the significant differences between the Medicare bills that were approved by the House and Senate late last month. The Senate Republican conferees will include Senate Majority Leader Bill Frist (R-TN), Senate Finance Committee Chairman Charles Grassley (R-IA), Senator Orrin Hatch (R-UT), Senator Don Nickles (R-OK), and Senator Jon Kyl (R-AZ). The Democrats who will be conferees are Senate Minority Leader Tom Daschle (D-SD), Senate Finance Committee Ranking Member Max Baucus (D-MT), Senator John Breaux (D-LA), and Senator John D. Rockefeller, IV (D-WV). House leaders have not yet named the House conferees, although House Speaker Dennis Hastert (R-IL) has announced that the House conferees will be led by House Ways and Means Chairman Bill Thomas (R-CA) and House Energy and Commerce Chairman Bill Tauzin (R-LA). House Majority Leader Tom

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Governor Pataki Signs Medical Malpractice Legislation Into Law

On June 26, 2003, Governor George E. Pataki signed legislation passed by the New York State Legislature to mitigate the extremely damaging potential impact of the verdict in the medical liability case known as *Desiderio v. Ochs, et al.* (see *Skyline News*, June 30, 2003). The Court's decision involved an interpretation of the New York State law that determined how to structure awards for future economic damages, which, prior to the enactment of this new legislation, resulted in double-counting for inflation when determining award amounts. The bill, S.5697, is expected to spare hospitals in New York State from huge increases in medical malpractice premiums. The law is effective immediately,

and applies to all future claims filed.

The Governor also signed A.9009, which extends the excess medical and dental malpractice insurance coverage program through June 30, 2004. This program allows physicians and dentists with hospital affiliations to purchase secondary malpractice insurance, and ensures that New Yorkers will maintain access to high-risk specialty care.

GNYHA is grateful for the Governor's support of these important pieces of legislation.

In other news, the New York State Insurance Department announced last week that it would allow private malpractice insurers to increase physician premiums by 8.5% in the coming year. ■

CMS Issues Guidance on Medicare Outlier Payments

The Centers for Medicare & Medicaid Services (CMS) issued Program Memorandum A-03-058 on July 3, 2003, providing additional information on changes to the Medicare program's payments for extremely high-cost hospital cases. Outlier payments are determined according to how much a hospital's costs exceed its Medicare reimbursement plus a fixed dollar threshold, which is currently \$33,560 on a non-wage-adjusted basis. Hospitals receive 80% of their costs above the threshold. Costs are determined by applying a hospital's final audited ratio of cost to charges (RCC) to current charges. The use of final RCCs, which necessarily lag behind current charges, came under scrutiny after some

institutions, including Tenet Healthcare, were suspected late last year of possible manipulation of their charge structures to maximize outlier payments. Because total outlier payments are fixed by law, excessive payments to some hospitals arguably hurt all other hospitals. The new rules will change the RCCs of a number of hospitals as of August 8, 2003, including **1)** hospitals that had been receiving a higher, statewide average RCC because their actual RCCs were so low that Medicare presumed they were inaccurate, and **2)** hospitals that will be selected by Medicare Fiscal Intermediaries (FIs) if data analysis reveals that they had high outlier payments in the current Federal fiscal year, experienced significant increases in

outlier payments in either of the two prior years, and experienced a certain level of charge increases per case in each of the past two years. As of October 1, 2003, all hospitals' RCCs will be updated, although CMS and the FI will have discretion to further change the RCCs of hospitals where they deem it appropriate. Finally, some hospitals may have the RCCs that were used for payment purposes changed further to match the RCC that is applicable to the service that qualified for an outlier payment if the first RCC used for payment purposes is significantly different from the matching RCC. CMS is expected to publish by August 1, 2003, the fixed dollar threshold that will be applicable to outlier cases as of October 1. ■

State and Federal Criminal Background Check Initiatives Announced

On July 9, Governor George E. Pataki and Attorney General Eliot Spitzer announced an initiative to require non-licensed direct care nursing home and home care staff to undergo criminal background checks. The proposed measure would also prohibit prospective employees who have been convicted of specific felonies involving sexual assault, drug trafficking, and grand larceny, among other serious crimes, from working for New York's nursing homes or home health care agencies. Provider organizations affected by the proposed regulations would have to conduct background checks on non-licensed staff through the Federal Bureau of Investigation (FBI). Federal law allows a nursing home or home health care agency to obtain an FBI check on a person applying for employment in all cases in which the prospective employee would be providing direct patient care. The FBI checks, which cost \$24 each, are capable of providing criminal histories of prospective employees that would include information from all 50 states and the District of Columbia. While GNYHA supports the goal of enhancing the quality of care and the safety of individuals receiving long term care services, it takes the strong position that the new requirements proposed on July 9—which could necessitate background checks on as many as 67,000 workers over the

next several years—must be accompanied by funding to offset the costs of compliance by affected health care providers. In a similar Federal initiative, the U.S. Senate adopted an amendment as part of the Medicare Prescription Drug legislation passed by the Senate on

June 27 that would require background checks on workers prior to employment in skilled nursing facilities, home care agencies, and other long term care facilities, and would mandate that providers be reimbursed for the costs of compliance with the provision. ■

Atlantis Health Plan on NYS Insurance Department Watch List

Atlantis Health Plan, a physician-owned health maintenance organization (HMO) with about 8,000 members enrolled in New York City, has been under active monitoring by the New York State Insurance Department (SID) for an extended period of time as a result of its shaky financial condition. Among other things, SID has required the plan to increase its capital contributions at different points in time to ensure its continued solvency and liquidity, with another capital contribution envisioned by July 15. If these actions fail to restore the plan to financial health, it would be subject to liquidation procedures under the New York State Insurance Law. No steps have been taken to initiate liquidation, but if they were, pre-

dictions are that few, if any, resources would be available to pay creditors, including hospitals that are owed payments for services rendered to Atlantis members. Unlike other insurance companies that have been liquidated by the Insurance Department, however, there is no insolvency or guarantee fund for failed HMOs that would protect consumers or providers in this event. Because the Insurance Law also prohibits providers from billing an insolvent HMO's members for health care services rendered prior to insolvency, providers effectively serve as the guarantee fund for patients by bearing the fiscal burden of a failed HMO. GNYHA has been in constant contact with SID for the past several months regarding Atlantis's situation. ■

GNYHA Conducts Medicaid Managed Care Survey

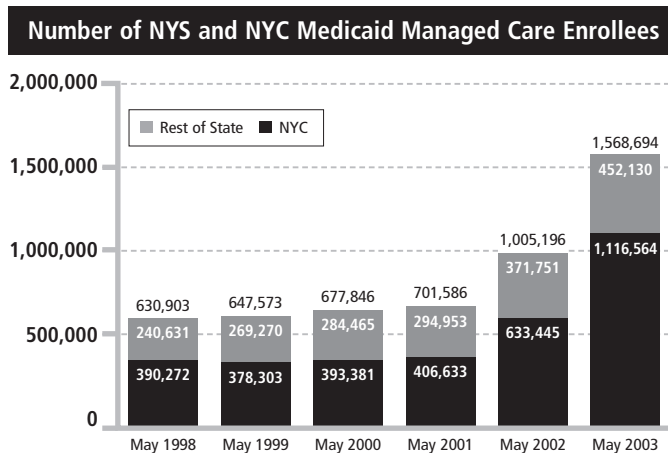
New York State has been phasing in mandatory Medicaid managed care since 1997. Enrollment has increased substantially since then and now tops 1.5 million enrollees statewide, or 64% of the eligible population, with over 1.1 million enrollees in NYC alone (68% of the eligible population).

GNYHA conducted a survey recently to clarify the impact of this expansion on hospitals. The survey results suggest that Medicaid managed care creates additional administrative work for providers who must comply with different plans' varying requirements, which are generally more onerous and labor-intensive than those in fee-for-service Medicaid.

Other issues identified

by survey respondents include difficulty getting accurate information on patient plan eligibility and benefits, incorrect payments, and continuing problems with payment for emergency services, including documentation requirements and payment denials.

GNYHA will work with Medicaid managed care plan representatives and appropriate regulatory agencies to address the pervasive issues identified in the survey. ■



Source: New York State Department of Health, *Monthly Medicaid Managed Care Enrollment Report, 1998-2003*.

New Nursing Home Performance Measures Proposed by National Panel

On July 2, 2003, GNYHA's Continuing Care Quality Forum met to discuss the revised nursing home quality measures (QMs) being proposed by the National Quality Forum (NQF). NQF is under contract with the Centers for Medicare & Medicaid Services (CMS) to identify specific performance measures for use under CMS's Nursing Home Quality Initiative (NHQI). During the initial rollout of the NHQI in October 2002, the NQF was waiting for the results of three validation studies of the QMs that would inform the selection of future measures. CMS nevertheless moved forward in October 2002, using a subset of measures from an NHQI pilot program. In April 2003, with the aid of validation study results, the NQF met to develop a proposed set of revised QMs; NQF members will vote soon on those proposed QMs. At its July 2 meeting, GNYHA's Continuing Care Quality

Forum identified various concerns with these measures, including the elimination of the facility admission profile (FAP) adjuster, which sought to adjust rates of certain measures based on the clinical status of residents upon admission to a nursing home. The proposed chronic care measures eliminate two measures with FAP, include seven new measures, and eliminate the prevalence of infections measure. The proposed post-acute measures eliminate the post-acute measures with FAP and the improvement in walking measure. For additional information about the proposed measures, see the NQF Web site, at www.qualityforum.org/nursing_home_measures.html. GNYHA, a member of the NQF, will submit its vote and comments regarding the QMs by July 28, 2003. Any member who wishes to weigh in on GNYHA's vote must submit comments to Roxanne Tena-Nelson by July 21, 2003. ■

GNYHA Comments on Proposed Part-time Clinic Regulations

GNYHA recently provided comments to the New York State Department of Health (DOH) regarding the proposed permanent part-time clinic regulations. In its letter, GNYHA indicated that the proposed regulations should clarify the permissible scope of services provided by part-time clinics, since the regulations do not indicate clearly what types of services are permissible in part-time clinic settings. GNYHA also indicated that the regulations should not exclude certain sites as being unacceptable locations for the operation of part-time clinics (for example, private physicians' offices and nursing homes). In addition, GNYHA is requesting that when DOH provides information to operators regarding the disapproval and closure of clinics, DOH should make clear to the operator the date on which it will no longer be reimbursing for services. For a copy of the draft regulations, please call Doris R. Varlese at GNYHA. ■

Senate Names Medicare Conferees *continued from page 1*

DeLay (R-TX), Ways and Means Health Subcommittee Chair Nancy Johnson (R-CT), and Energy and Commerce Health Subcommittee Chairman Michael Bilirakis (R-FL) will also be members of the conference committee. GNYHA is working with teaching hospitals from across the country, as well as the Association of American Medical Colleges (AAMC) and the American Hospital Association (AHA), on a variety of issues in conference, including relief from the Medicare indirect medical education (IME) cut that took effect on October 1, 2002. Beginning July 15, 2003, GNYHA, AAMC, and AHA are running a print advertisement campaign in a variety of Washington, D.C., publications urging Congress to restore IME funding. While the conference committee could reach an overall agreement before the August Congressional recess begins, most observers believe the conference will extend into the fall. ■

GNYHA Launches Web-Based Quality and Patient Safety Resource Center

The GNYHA Quality and Patient Safety (QPS) Resource Center was launched recently on GNYHA's Web site, www.gnyha.org. The Web site supports GNYHA members in their efforts to meet the expanding challenge of providing quality patient care and meeting the demands of regulatory and accrediting bodies that measure and report on quality and performance. The QPS Resource Center is designed to provide tools and best practices as well as up-to-date information on research findings and regulatory standards related to the provision of quality health care. The QPS Resource Center also captures the materials that GNYHA has offered at its many educational briefings, as well as its meetings of the Quality and Patient Safety Steering Committee and the Emergency Department Patient Flow, Medication

Safety, and Infection Control workgroups.

The QPS Resource Center provides information under the following categories: Agency and Accrediting Bodies, GNYHA Tools and Techniques for Improving and Measuring Quality and Patient Safety, Patient Safety Topics, Health Care Report Cards, GNYHA Quality and Patient Safety Workgroups, Technology for Quality and Patient Safety, GNYHA Products, Upcoming Quality and Patient Safety Events, and Quality and Patient Safety Related Links.

GNYHA will also be adding information on best practices that will help its members share tools, protocols, and templates to enhance quality and patient safety. GNYHA members can register for a password to the members' section of the Web site by clicking on "GNYHA Member Login," then "GNYHA

Members' Registration." If you would like to post any best practices on the Web site, send them to Terri Straub at straub@gnyha.org. ■

JCAHO Recommends Survey Process Changes

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), as part of its new accreditation survey process, *Shared Visions/New Pathways*, is recommending significant changes to the current survey process. In addition to implementing unannounced surveys by 2006, JCAHO plans to implement, in January 2004, a mandatory periodic performance review (PPR), or self-assessment process, to be undertaken by all accredited organizations 18 months into the accreditation cycle. Due to the nature of the information in the PPR—which may include an accredited organization's acknowledgment of non-compliance with JCAHO standards—and because State laws afford varying degrees of peer review protection to information provided to JCAHO for accreditation purposes, GNYHA, the American Hospital Association (AHA), and several other hospital associations have objected to the proposed PPR process.

Instead, GNYHA has recommended that the JCAHO Board of Commissioners adopt, at its July 2003 meeting, an alternative approach that the JCAHO has put forward, which would require accredited organizations to perform the PPR but would not require (although it would allow) the organizations to share the PPR documents with JCAHO. That is, accredited organizations would be required to do a self-assessment of their compliance with JCAHO standards at the 18-month point in the accreditation cycle, but they could opt not to share the self-assessment information with JCAHO, and choose instead to discuss their findings with JCAHO and implement a corrective action plan. JCAHO would not review the corrective action plan until it came on-site for the triennial accreditation survey, about 18 months later. GNYHA believes that it is important for accredited organizations to have the choice of taking the alternative approach. ■

Senator Bruno Appoints Medicaid Reform Panel

On July 8, NYS Senate Majority Leader Joseph Bruno named the members of the Senate Task Force on Medicaid Reform Advisory Board, which will be charged with making recommendations to the senators who are on the Senate Task Force on Medicaid Reform, co-chaired by Senators Kemp Hannon (R-Garden City) and Raymond Meier (R-Western). GNYHA President Kenneth Raske was named a member of the Advisory Panel's Executive Board. GNYHA members who were also named to the Executive Board include Michael Dowling, President and CEO, North Shore-Long Island Jewish Health System, and Carol Raphael, President and CEO, Visiting Nurse Service of

New York. Dan Sisto, President, Healthcare Association of New York, and Dennis Rivera, President, 1199 SEIU, were also named to the Executive Board. Several GNYHA members were appointed to the full Advisory Panel, including David J. Campbell, President and CEO, Saint Vincent Catholic Medical Centers, and Benjamin Chu, M.D., President, NYC Health and Hospitals Corporation. A press release with the full list of the members of the Executive Board and the Advisory Panel can be found at www.senate.state.ny.us. The Task Force is expected to hold hearings during the next few months with the goal of providing recommendations before the next legislative session, which begins in January 2004. ■

DOH Announces New Medicaid Coverage for the Working Disabled

The NYS Department of Health (DOH) received approval recently from the U.S. Department of Health and Human Services to offer Medicaid coverage to the working disabled population. This new coverage will enable working people with disabilities to obtain Medicaid while still working, through buy-ins in the form of premiums. The program is being offered to indi-

viduals between the ages of 16 and 64 who work and have net incomes up to 250% of the Federal poverty level. In terms of income, working disabled individuals who are single with a gross income of \$46,170 or households of two people with incomes up to \$61,870 would qualify, providing their non-exempt resources do not exceed \$10,000. Individuals may apply for this new coverage through the local social service departments. ■