



MAY 13, 2002

# Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

## House Panels Ready Medicare, Medicaid Bill

The Chairman of the U.S. House of Representatives Committee on Ways and Means, Bill Thomas (R-CA), and the Chairman of the Energy and Commerce Committee, Billy Tauzin (R-LA), are developing Medicare and Medicaid legislation with the goal of full House passage of such legislation by late May or early June. As *Skyline News* went to press, the Medicaid portions of the legislation had not yet been released. GNYHA is supporting a number of provisions to help strengthen the financing of New York's Medicaid program, including an increase in the

Federal Medicaid matching rate and the continued ability of NYS to draw down Federal funding under so-called upper payment limit rules. GNYHA has, however, obtained some preliminary details of the Medicare portions of the legislation, which include a new prescription drug benefit for senior citizens, Medicare reforms, and a number of provider payment provisions, summarized below.

**Hospitals:** The bill would marginally reduce the scheduled cut to teaching hospitals by reducing the indirect medical education (IME) adjustment from 6.5% to 5.8% on

October 1, 2002, rather than 5.5% as required under current law. The Thomas bill would then reduce the adjustment to 5.5% on October 1, 2003. This would still reduce Medicare payments to New York's teaching hospitals by nearly \$100 million in 2003, and by over \$140 million in years thereafter. GNYHA will be working to substantially improve upon this proposal. In addition, the Thomas bill would continue to reduce inflation increases, or "market basket updates," for inpatient hospital rates after current law reductions are due

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## Torricelli, Schumer, Clinton Defend Teaching Hospitals

On May 1, 2002, several U.S. senators led by Senator Robert G. Torricelli (D-NJ), an influential member of the U.S. Senate Finance Committee, took to the Senate floor to express support for eliminating the Medicare teaching hospital cut scheduled to take place on October 1, 2002. The cut, which would result from reducing the indirect medical education (IME) adjustment to Medicare inpatient hospital rates from 6.5% to 5.5% for every 10% increase in the ratio of interns and residents to beds, would cost New York teaching hospitals approximately \$140 million annually, and New Jersey teaching hospitals approximately

\$31 million. Eliminating the cut is one of GNYHA's top priorities. As a member of the Senate Finance Committee, which has jurisdiction over the Medicare program, Senator Torricelli has made eliminating the cut a priority as well. Joining Senator Torricelli on the Senate floor were New York's senators, Hillary Rodham Clinton and Charles E.

Schumer, who have long championed the needs of New York's teaching hospitals. "Few issues are as important as the hospitals that teach our future doctors, develop new technologies and treatments, and provide many community services," Senator Torricelli said. He continued, "I strongly urge the Senate to

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## State Budget Talks Nearing Conclusion

New York State legislators are working feverishly to finalize provisions of the State fiscal year 2002-03 budget with the goal of passing a budget this week. As *Skyline News* went to press, a number of funding issues were still outstanding. In particular, a number of legislators have been eyeing the pools of funds created by the Health Care Reform Act of 2000 (HCRA) to fund

other, non-HCRA-related programs. Specifically, a proposal has been floated to borrow \$200 million from unspent HCRA funds to help defray the costs of the disaster relief Medicaid program created in the wake of September 11. In addition, legislators have been eyeing HCRA funds to pay for public health programs, cost-of-living increases for State

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# CMS Seeking Comments on LTC Feeding Assistant Proposal

On March 29, 2002, in the *Federal Register*, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule that would allow states the flexibility to permit long term care facilities to use trained feeding assistants. GNYHA will be submitting comments in support of the proposed rule within the 60-day comment period. Currently, CMS requires that nursing staff—registered nurses (RNs), licensed practical nurses (LPNs), and certified nurse aides (CNAs) provide assistance with eating and drinking. Although volunteers, who are often family members, may also feed residents, non-nursing staff may not help with feeding. Anecdotally, this policy has caused great frustration for facilities seeking to provide optimal care during meal times. In the proposal, CMS proposes permitting nursing homes to use specially trained staff

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## Torricelli, Schumer, Clinton Defend Teaching Hospitals

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restore the IME reductions and include this provision in any Medicare provider legislation considered by the Senate this year. I will be working closely with members of the committee to insure that IME is at the top of the list of health care priorities.”

**New IME Bill:** On May 2, Senators Torricelli, Schumer, and Clinton joined with a bipartisan group of 12 other senators, led by Senator Richard Durbin (D-IL), to introduce the Teaching Hospital Preservation Act of 2002 (S.2447). Like the American Hospital Preservation Act (S.839), this bill would eliminate any future reductions in the Medicare IME adjustment for teaching hospitals, but unlike S.839, the bill would not repeal the scheduled 0.55 percentage point reduction in the

Medicare inpatient hospital market basket update that will take place in 2003. GNYHA strongly supports both of these bills, and is extremely pleased that Senators Torricelli, Clinton, and Schumer have taken leadership roles on this issue.

**Teaching Hospital Advocacy Day:** On May 15, the Association of American Medical Colleges, in conjunction with the American Hospital Association, will be hosting a teaching hospital advocacy day in Washington, D.C., designed to stress to members of Congress the importance of teaching hospitals and the need to eliminate the IME cut. GNYHA will be participating, and strongly urges all members to attend. For more information, call David Rich at GNYHA. ■

AROUND

**Jerome M. Hauer** has been named the Director of the Office of Public Health Preparedness of the U.S. Department of Health and Human Services (HHS). He assumes the position vacated by **D. A. Henderson, M.D.**, who will continue to serve as HHS Secretary Tommy Thompson's Principal Science Advisor for Public Health Preparedness and Chairman of the Secretary's Council on Public Health Preparedness. Mr. Hauer was the first Director of the New York City Mayor's Office of Emergency Management. ■

## House Panels Ready Medicare, Medicaid Bill *continued from page 1*

to expire. Specifically, current law would reduce inpatient market basket updates by 0.55 percentage point in 2003, and then allow for full market basket updates thereafter. The Thomas bill would reduce updates by 0.55 percentage point through 2007 by taking the current projections for those updates, reducing them by 0.55 percentage point, and then fixing the resulting updates in statute. Other hospital proposals include continuing the current law freeze on direct graduate medical education payments for hospitals with per resident amounts above 140% of a regionally adjusted per resident amount through 2007. Under current law, updates for such hospitals are constrained only through 2005. In addition, the Thomas bill would “redistribute” vacant residency slots, calculated by comparing current residents trained in each hospital with the number trained in 1996, from suburban and urban hospitals to rural residency

programs.

**Continuing Care:** The Thomas bill would allow both the 16.66% add-on to the nursing component of the skilled nursing facility (SNF) prospective payment system rate and the 4% add-on to expire as scheduled on October 1, 2002; however, the Thomas bill would then create an 8.0% add-on to the nursing component of the rate that would last for three years, through 2005. In addition, the Thomas bill would repeal the 15% cut in home health rates, scheduled for October 1, 2002; however, to help pay for this, the Thomas bill would reduce market basket updates to home health providers for three years. Finally, the Thomas bill would create three separate caps of \$1,500 for physical, occupational, and speech therapy services.

**Reactions:** The hospital community nationwide has reacted with alarm to the hospital-related provisions of the bill, causing a num-

ber of Congress members, including 11 Republican members of the New York Congressional Delegation, led by Congressman John Sweeney, to express major concern to the Republican leadership in the House about the provider-related portions of the bill. GNYHA is working with members of the Ways and Means Committee to improve the hospital and continuing care-related portions of the bill to ensure that GNYHA members do not suffer any new cuts in Medicare reimbursement this year. ■

## State Budget Talks

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workers, the partial repeal of the nursing home tax, and other purposes. GNYHA has been assured by Pataki Administration officials, Senate Majority leader Joseph Bruno, and Assembly Speaker Sheldon Silver that all HCRA and HCRA-related funding obligations will be met. ■

# NYS Files for Extension of 1115 Medicaid Waiver

New York State has applied for a three-year extension of its section 1115 Medicaid demonstration waiver, under which it has been phasing in mandatory managed care enrollment of eligible Medicaid clients statewide. The original waiver commenced in the fall of 1997, and its five-year term would expire later this year. Under its extension request, the State reported that Medicaid managed care enrollment had grown from 650,000 in July 1997 to 900,000 as of March 2002. Mandatory enrollment began in October 1997 in upstate counties and in August 1999 in New York City. Most recently, the State requested that the last two phases of mandatory enrollment in the City, in upper Manhattan and central and south-eastern Queens, be merged and that mandatory enrollment commence later this spring. Pursuant to rules established under the Balanced Budget Act of 1997, the 1115 waiver extension would be made under the same terms and conditions as were applicable to the original waiver, and so no programmatic changes are being sought. According to the State's waiver application, there are now more primary care physicians participating in the Medicaid managed care program than in the Medicaid fee-for-service program, and man-

aged care physicians appeared to be better qualified than those in the fee-for-service program as indicated by board certification rates, completion of accredited residency programs, and percentage with hospital admitting privileges. The extension request reported data reflecting improved quality in the program, expanded benefits and coverage to 240,000 persons formerly enrolled in the State-only Home Relief program, and, pursuant to the Health Care Reform Act of 2000, potentially expanded coverage to

620,000 eligible adult New Yorkers under the Family Health Plus program. The State estimated that, under the extension, Family Health Plus enrollment would reach 254,300. With respect to financing, in 2000 the average surplus for prepaid health services plans (PHSPs) was 5.2%, and for HMO Medicaid lines of business it was 8.6%. As of the third quarter of 2001, the average PHSP surplus was 2.2% and for HMOs it was 1.9%. Almost 70% of plans reported a net surplus as of September 2001. ■

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## FDA Blood Donor Deferral Recommendations Implemented

The following blood donor deferral recommendations, which are contained in a guidance document issued by the U.S. Food and Drug Administration (FDA), are being implemented on *May 31, 2002*:

- Defer blood donors who have spent a cumulative period of three months or more in the United Kingdom from 1980 through the end of 1996.
- Defer blood donors who have spent a cumulative period of five years or more in France from 1980 to the present.
- Defer blood donors who, as current or former U.S. military personnel, civilian military employees, and their dependents, have lived for six months or more at U.S. military bases in northern Europe (Germany, the United Kingdom, Belgium, and the Netherlands) from 1980 through 1990 or elsewhere in Europe (Greece, Turkey, Spain, Portugal, and Italy) from 1980 through 1996.
- Defer anyone who received a blood transfusion in the United Kingdom from 1980 to the present.

Those blood donor deferral recommendations are being implemented due to concerns about transmission of bovine spongiform encephalopathy (BSE, or the human form of mad cow disease) in humans through blood transfusions. Additional restrictions on donors who have spent a

cumulative total period of five years or more in Europe from 1980 to the present will be implemented on *October 31, 2002*. The guidance document may be accessed via [www.fda.gov/cber/blood/bldguid.htm](http://www.fda.gov/cber/blood/bldguid.htm), the FDA Web site. ■

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## CMS Seeking Comments

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to help residents eat and drink. The purpose of the proposed change in regulation is to free up CNAs and other health care personnel for more complex tasks, not to substitute nursing personnel. The proposed requirements include the completion of a state-approved training course requiring non-nursing-related services and items that are currently part of the nurse aide training such as communication and interpersonal skills and safety and emergency procedures. The feeding assistants would also be required to be under the direct supervision of an RN or LPN. The proposed regulation would not affect the status of volunteers who wish to help feeding residents, but would not exclude volunteers from being trained. For more information, or to submit comments to GNYHA regarding this proposal by May 21, 2002, please contact Roxanne Tena-Nelson at GNYHA. ■

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## CMS Proposes FY 2003 Inpatient Rates

On May 9, 2002, the Centers for Medicare and Medicaid Services (CMS) published the proposed rule for fiscal year (FY) 2003 hospital inpatient operating and capital rates in the *Federal Register*. The operating rate increases by 2.85% compared with the FY 2002 rate, while the capital rate increases by 4.65%. Wage-adjusted operating and capital rates for hospitals in the New York City metropolitan statistical area are proposed to increase by only 1.31% and 2.86%, respectively, because of reductions in the wage index including an accelerated elimination of teaching data. GNYHA will distribute a full summary of the policy provisions in the rule. Comments are due to CMS by July 8, 2002. ■

# HHS Announces 9/11-Related Grants

On May 8, 2002, U.S. Department of Health and Human Services (HHS) Secretary Tommy G. Thompson held a press conference at a New York City firehouse to announce 12 grants worth \$10.5 million to fund research and training to address health concerns related to the September 11 terrorist attacks. Secretary Thompson also announced the availability of more than \$2 million in special grants for mental

health and substance abuse services for firefighters, police, and other rescue workers who responded to the terrorist attacks. These funds will be awarded to as many as six applicants serving public safety workers in New York and other states affected by the September 11 attacks.

## **Worker and Community Health Protection:**

The following organizations were awarded grants to address the need for immediate and long-term worker and community health protection arising from the September 11 attacks: University of Medicine and Dentistry of New Jersey, Mount Sinai School of Medicine, New York University, Johns Hopkins University, Columbia University, International Association of Firefighters, International Union of Operating Engineers, National Puerto Rican Forum, Laborers-Associated General Contractors Education and Training Fund, Center to Protect Workers Rights, and the University of North Carolina. These grants will be funded by the National Institute of Environmental Health Sciences, which is part of HHS's National Institutes of Health.

## **Mental Health and Substance Abuse Services:**

HHS's Substance Abuse and Mental Health Services Administration (SAMHSA) will award as many as six grants to support services for public health workers in states that were directly affected by the September 11 attacks—New York, Pennsylvania, and Virginia—and in nearby states Connecticut, Maryland, Massachusetts, New Jersey, and Rhode Island, as well as the District of Columbia. The grants will total more than \$2 million in the first year and could be extended up to three years. This funding announcement is one of a number of grant programs that have recently been announced by SAMHSA. The deadline for receipt of applications for most of these programs is June 19, 2002. Interested parties can request an application kit by visiting [www.samhsa.gov](http://www.samhsa.gov). ■

## Upcoming GNYHA Briefings

### **HIPAA Briefing on Entity Structuring, Security Requirements, Business Associates**

**Date:** Thursday, May 23, 2002

**Time:** 1:00 p.m.–4:00 p.m.

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

This briefing to help GNYHA members learn more about the privacy regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will feature Richard Marks, from Davis Wright & Tremaine, LLP, and Tom Hanks, from PricewaterhouseCoopers, LLP. The program will cover the pros and cons of entity structuring under the Privacy Rule (how health care facilities may designate themselves as organized health care arrangements, affiliated covered entities, and hybrid entities), the security requirements that are part of the Privacy Rule, and some advanced issues in business associate agreements, such as chain-of-trust considerations, trading partner agreements, and electronic data interchange. For more information contact Susan Stuard, and to register contact Barbara Marino, at GNYHA.

### **Legal and Compliance Issues in Clinical Research**

**Date:** Tuesday, June 25, 2002

**Time:** 8:30 a.m.–12:30 p.m.

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

This workshop will feature the following experts in clinical research issues: Mark Barnes, from the law firm of Ropes & Gray; Stephen J. Immelt, from the law firm of Hogan & Hartson; and Sara Krauss, from the law firm of Proskauer Rose, LLP. The following issues will be addressed: basic conflict-of-interest matters, billing and fraud and abuse issues, administrative requirements (for example, grant issues), and regulatory requirements (such as FDA issues). The workshop is designed for all personnel involved in clinical research, but given its concentration on legal issues, GNYHA has applied for 4.5 continuing legal education (CLE) credits from The New York State Continuing Legal Education Board. For more information contact Doris R. Varlese, and to register contact Barbara Marino at GNYHA. ■

## Reminder!

### **GNYHA 2002 Reception and Cocktail Buffet:**

- Thursday, June 13, 2002, 5:30 p.m.
- The Regent Wall Street

## Nurse Workforce Lobby Day in Albany

On April 30, 2002, GNYHA and the Healthcare Association of New York State led an advocacy day in Albany to lobby against legislation that would prohibit the use of mandatory overtime for nursing staff and that would impose nurse staffing ratios. Nursing directors and managers from several GNYHA member hospitals joined representatives from upstate hospitals for a full day of meetings with Assembly and Senate committee and leadership staff to educate them about the clinical factors influencing nurse staffing decisions in health care settings. The hospital representatives explained how they plan for nursing staff coverage weeks in advance, and what actually happens when they are faced with immediate situations in which there might not be enough nurses, or enough nurses with the clinical skills necessary to care for the patients on hand.

GNYHA has consistently opposed legis-

lation prohibiting mandatory overtime because the bills would eliminate the flexibility needed by health care facilities to provide for the safe care of acutely ill patients with changing needs and because these proposed laws fail to consider the serious nurse shortage. GNYHA has also maintained that, even in light of the nursing shortage, health care facilities do not rely on mandatory overtime to a great extent. Each of the hospital representatives at the Albany meetings indicated that mandatory overtime is a tool of last resort, not a usual practice. Data from GNYHA's own 2002 *Survey of Nurse Staffing in Hospitals in the New York City Region* support those assertions, showing that mandatory overtime accounts for less than 1.6% of all overtime hours.

GNYHA will continue to advocate in Albany on this issue, including efforts to support nurse education and other proposals to expand the pool of nurses. ■