



MAY 27, 2002

# Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

## Governor, New York State Legislature Approve Budget

On May 16, 2002, both houses of the New York State Legislature approved a consensus budget for State fiscal year 2002–03. The final State budget, which was negotiated with Governor George Pataki, maintains all the obligations made to the health care community pursuant to the Healthcare Workforce Recruitment and Retention Act that was passed in January, despite an increasingly dire State financial situation. These obligations include the promise of no new Medicaid cuts for hospitals or continuing care providers and Medicaid rate increases to help hospitals and nursing homes recruit and retain health care personnel. GNYHA is extremely grateful that Governor Pataki, Assembly Speaker Sheldon Silver, and Senate Majority Leader Joseph Bruno were able to craft a final budget that maintains essential investments in New York's health care system.

**Workforce Bill Improvements:** The final budget improves upon the January workforce legislation in several ways. First, it exempts Medicare revenue from the nursing home gross receipts tax, effective October 1, 2002. This will relieve the State's nursing homes from approximately \$22 million in unreimbursed taxes in this fiscal year, and \$75 million annually thereafter. The budget also ensures that new nursing homes that did not submit 1999 institutional cost reports will be eligible for work-

force recruitment and retention funding. Second, the final budget contains a number of provisions to allow provider groups that were not included in the original workforce legislation—including certified home health agencies, long term home health care programs, AIDS home care providers, hospices, freestanding substance abuse clinics, freestanding methadone maintenance clinics, occupational health clinics, and private duty nursing agencies—to receive increased payments to help with worker recruitment and retention activities. The budget also includes funds for uncompensated care provided by dental clinics associated with universities.

**Malpractice:** The budget legislation also includes a change to require that physicians, surgeons, and dentists who participate in the excess medical malpractice program participate in a proactive risk

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### GNYHA Board Meets

*The GNYHA Board of Governors met on May 22, 2002, and took the following actions:*

- approved applications for Institutional Membership by 1) Center for Pediatrics and Rehabilitation, New York Foundling Hospital, 2) Bialystoker Center and Home for the Aged, 3) Southampton Care Center, 4) United Hebrew Geriatric Center, 5) San Simeon by the Sound, and 6) Ferncliff Nursing Home, Inc.;
- approved the audit report of the 2001 financial statements of GNYHA and its subsidiaries and affiliates;
- was briefed on GNYHA's activities in Washington, D.C., to provide relief for members from Medicare cuts scheduled for October 1, 2002, as well as the Association's efforts to secure additional Federal funding for the State's Medicaid program;
- heard a report on the details of the final New York State budget for fiscal year 2002–03;
- was updated on GNYHA's activities in the area of graduate medical education;
- heard a report on GNYHA's work to enroll as many New Yorkers as possible in available health insurance programs;
- was briefed on GNYHA's comprehensive emergency preparedness and disaster relief activities; and
- heard a report about the Leapfrog Group's selection of the New York metropolitan area as a roll-out region for its quality initiatives. ■

## Teaching Hospitals Go to Washington to Fight Medicare Cuts

On May 15, 2002, teaching hospital executives from across America converged on the nation's capital to urge Congress to pass legislation to stop scheduled Medicare reimbursement rate

cuts for teaching hospitals from taking effect on October 1, 2002. The Teaching Hospital Advocacy Day, in which GNYHA participated, was organized by the Association of American Medical Colleges (AAMC) with help from the American

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management program by July 1, 2002, rather than 2003, as under current law. The budget does not include a repeal of the caps on contingency fees that lawyers may charge in malpractice suits, as had been rumored earlier. Given very real concerns about increasing malpractice costs in New York State, it is extremely important to make sure that changes that will increase malpractice costs do not become law.

**HCRA Funds:** During the budget debate, State officials identified approximately \$1.9 billion in Health Care Reform Act (HCRA)-related revenues that have not been spent. In the end, the final budget includes a \$200 million loan from these HCRA funds to offset costs relating to the disaster relief Medicaid program created in the aftermath of the September 11 tragedy and another roughly \$150 million to fund a variety of health care programs and other Medicaid costs. In addition, it is estimated that more than \$70 million in HCRA funds will be lost due to a depression in the State's revenue as a result of the expected drop in cigarette sales following the increase in the New York City cigarette tax from 8 cents to \$1.50. Despite this loss, the Governor, Senator Bruno, and Speaker Silver have assured GNYHA that the funds for these new purposes are indeed "excess" HCRA funds and that all HCRA and workforce obligations will be met. GNYHA is grateful that the State leaders have once again given their assurances that obligations to the health care community will be met. ■

## Congress Approves Bioterrorism Bill

Last week, both houses of the U.S. Congress approved a compromise bill designed to provide funding to states and health care providers to enhance preparedness for bioterrorism and other public health emergencies. The President is expected to sign the bill, entitled the *Public Health Security and Bioterrorism Preparedness and Response Act of 2002* (PHSBPRA), shortly.

The PHSBPRA authorizes \$1.6 billion in funding in 2003 to states, localities, and health care providers, of which \$520 million is authorized to be spent on hospitals, clinics, health centers, or other primary care providers for bioterrorism and other public health emergencies. States, localities, and other entities are required to expend readiness funds in accordance with each state's bioterrorism readiness plan. In addition, the Secretary of Health and Human Services (HHS) is authorized to make grants to "Partnerships for Community and Hospital Preparedness," which must consist of one or more hospitals, clinics, health centers, or primary care facilities and one or more local governments, one or more states, or both. A local government can be a part of only one partnership. The partnership is required to prepare its application in conjunction with the governor of the state. Preference will be given to entities that submit applications that will enhance coordination among hospitals, local governments, and state governments and will serve the needs of a defined geographic area. Funds may be used to prepare a regional plan, to prepare a plan for triage and transport management, to enhance the training of health

care professionals, to enhance training and planning to protect the health and safety of health care personnel who respond to biological attacks, to develop and implement trauma care and burn center care components of the state plan, and other purposes. The bill also requires HHS to develop core curricula for the recognition and identification of bioterrorism events, creates scholarships and internships for the education and training of people in health professions that are needed to respond to public health emergencies, and gives the HHS Secretary the authority to waive certain Medicare, Medicaid, and State Children's Health Insurance Plan requirements that relate to providers when they are dealing with a public health emergency. ■

## State to Finalize 1983-87 Uncompensated Care Pool Distributions

The NYS Department of Health (DOH) is preparing to make a distribution of \$54 million to hospitals around the State. These amounts represent reserves from the 1983-87 hospital bad debt and charity care (BDCC) pools that had been withheld from distributions to eligible hospitals at that time and have not since been released. About half of these reserve amounts will be used to implement complicated regulations—which have since expired—that required hospitals with increases in annual uncompensated care costs to receive additional BDCC payments, which in turn are required to come from hospitals that reported decreases in such costs. The so-called maintenance of effort (MOE) regulations were the subject of several years of litigation that did not substantially affect the original requirements. The "winning" hospitals under MOE will receive their portion of pool reserves plus a portion of reserves otherwise allocable to "losing" hospitals. Both categories of hospitals will have about \$50 million in remaining receivables or liabilities after these distributions are made, which are expected to be addressed in subsequent pool reconciliations and actions. ■

### Legislative Digest

In recent weeks, the New York State Assembly and the New York State Senate took action on the following health-related pieces of legislation.

**ECT:** Bill A.9081-C, which would expand the requirements for overseeing and regulating electroconvulsive therapy (ECT), is on the full Assembly calendar. GNYHA opposes this bill based on the fact that existing statutes and regulations already address the issues of capacity and informed consent, making A.9081-C duplicative and unnecessary. GNYHA is also concerned that this legislation represents a precedent-setting action that would create laws to regulate and control an established and legitimate medical treatment in a way that is not done for other medical treatments, including those that are controversial or present greater risks than ECT. •

**Consent for Observation:** The Senate passed S.4106, which requires the consent of any patient with a disability to any visual observation that occurs during the ordinary course of a hospital stay. GNYHA opposes this bill because it seriously interferes with the medical education conducted at teaching hospitals. ■

## Teaching Hospitals Go to Washington to Fight Medicare Cuts *continued from page 1*

Hospital Association (AHA). The highlight of the day was a meeting in the afternoon hosted by Senators Edward M. Kennedy (D-MA), Arlen Specter (R-PA), Charles E. Schumer (D-NY), Hillary Rodham Clinton (D-NY), Jon Corzine (D-NJ), and Joseph Biden (D-DE), with the Administrator of the Centers for Medicare and Medicaid Services, Thomas Scully, and teaching hospital chief executive officers from around the country. During this meeting, the senators and the CEOs made the case for repeal of the Medicare indirect medical education (IME) adjustment cut that will cost teaching hospitals over \$800 million annually, beginning October 1. Teaching hospitals in New York State would lose \$140 million per year, and teaching hospitals in New Jersey would lose \$31 million. All participants received a copy of a report, commissioned by GNYHA and AAMC, entitled *Medicare Reimbursement for Teaching Hospitals: Understanding the Implications of Indirect Medical Education Payment Policy*, which warns of the potential dangers of Medicare reimbursement rate cuts on teaching hospitals. The report can be found on GNYHA's Web site at [www.gnyha.org](http://www.gnyha.org). In addition, the AHA released a report projecting that by 2005, 51% of teaching hospitals will have negative overall operating margins, largely because Medicare, Medicaid, and private payers are cutting payments at a time when teaching hospitals are facing rising prescription drug prices, workforce shortages, increasing liability insurance premiums, and the need to prepare for potential disasters, including biological, chemical, and nuclear terrorism. New York CEOs participating in the day's events included GNYHA Board Chair Theresa Bischoff, President, NYU Hospitals Center, and GNYHA Board member Herbert Pardes, M.D., President and CEO, New York-Presbyterian Hospital. GNYHA is grateful for the active participation of Senators Schumer, Clinton, and Corzine in the Teaching Hospital Advocacy Day. ■

## Engel Introduces Medicaid Resolution

On May 14, 2002, Congressman Eliot Engel (D-NY) and Senator Paul Wellstone (D-MN) introduced joint resolutions designed to overturn a January 18, 2002, Federal regulation that will sharply curtail the amount of Federal Medicaid funding states will be able to receive for their public hospitals. Congressman Engel's action was precipitated by a Federal District Court ruling that allowed the regulation to go forward, after a group of hospital associations, led by the National Association of Public Hospitals and Health Systems, the American Hospital Association, the Association of American Medical Colleges, and the National Association of Children's Hospitals, sued unsuccessfully to stop it. The lawsuit did, however, delay the implementation of the regulation by two months, providing an addi-

tional \$300 million in Federal Medicaid funding to states nationwide, including New York and New Jersey. The Engel and Wellstone bills have been cosponsored by a number of New York and New Jersey lawmakers, including Senator Hillary Rodham Clinton (D-NY) and Representatives Amo Houghton (R-NY), Maurice Hinchey (D-NY), Carolyn Maloney (D-NY), Carolyn McCarthy (D-NY), John McHugh (R-NY), Mike McNulty (D-NY), Frank Pallone (D-NJ), Charles Rangel (D-NY), Louise Slaughter (D-NY), José Serrano (D-NY), Edolphus Towns (D-NY), Nydia Velazquez (D-NY), and James Walsh (R-NY). GNYHA strongly supports these resolutions, and is grateful to Congressman Engel and the other New York and New Jersey lawmakers for their support in attempting to stop this damaging regulation. ■

### State GME Update

**GME Incentive Pool:** At its most recent plenary meeting, the NYS State Council on Graduate Medical Education (COGME) discussed recommendations from its Subcommittee on Health Reform regarding two new components for Year 5 of the GME incentive pool program. The GME incentive pool—which was authorized as part of the Health Care Reform Act (HCRA) of 1996 and reauthorized in HCRA 2000 at a lower funding level and with slightly different requirements—rewards teaching hospitals and GME consortia for progress toward, and achievement of, State policy goals. The HCRA 2000 version of the program authorized \$31 million in funding per year and removed downsizing of the number of residents as a threshold requirement for receiving funding from the pool. The first pool distribution from the HCRA 2000 version of the program, referred to as Year 4, occurred last week. The Year 5 program design is expected to include additional components in the areas of cultural competency training for residents, and the promotion of research. The NYS Department of Health (DOH) is expected to finalize the exact requirements for these two new components in the next several weeks. • **Designated Priority Programs:** COGME recently completed its review of 35 applications from residency training programs seeking approval as Designated Priority Programs (DPPs). Twenty-three programs have been recommended to DOH for approval, and 12 for disapproval. DPP approval results in increased Medicaid fee-for-service rates for the teaching hospital in which the training is conducted, and is tied to the State GME incentive pool program and the contract requirements for primary care provider teams under Medicaid managed care, Child Health Plus, and Family Health Plus. A letter from COGME advising each program director of the status of the application was sent out several weeks ago. Seven of the 12 programs were recommended for disapproval solely because of failure to meet the DPP's "outcome requirement," whereby at least 55% of the program's graduates must be engaged in primary care practice as the physician of record for at least 20 hours per week. GNYHA has objected to this requirement on the grounds that it is an inappropriate means by which to judge a residency training program, and in particular as a threshold requirement for DPP approval, as opposed to, for example, one indicator among many that COGME might use to assess a residency program's progress toward, or achievement of, State policy goals. Based on the data that COGME has gathered in recent years, general internal medicine programs seem to have particular difficulty satisfying this requirement. The COGME Subcommittee on Primary Care has recently indicated a willingness to review the outcome measurement requirement in the context of the overall DPP goals. ■

AROUND

**Jo W. Wiederhorn** has been appointed Executive Director of the Associated Medical Schools of New York, a consortium of the 14 public and private medical schools in New York State. She will succeed **Frank Jones**, who will retire at the end of June 2002. Ms. Wiederhorn is currently Deputy Executive Director of The Institute for Urban and Global Health at the NYU School of Medicine. ■

# Governor Proposes Legislation on Assisted Living and Adult Homes

During the week of May 13, 2002, Governor George E. Pataki proposed two separate legislative initiatives dealing with consumer protection standards for assisted living facilities and administrative standards for adult care facilities.

The "Assisted Living Reform Act" defines the term "assisted living" and sets forth general requirements for assisted living facilities that operate in New York. Among the consumer protections in the proposal is the requirement that assisted living facilities use "plain language" contracts—with no "small print"—that fully disclose a facility's ser-

vices, costs, fees, and policies. The measure would also set forth a Bill of Rights for assisted living residents and would require the New York State Department of Health and the State Office for the Aging to develop an assisted living consumer information guide.

The adult care facility proposal would put in place a series of new requirements bearing on the operation of adult care facilities including making the establishment of such facilities subject to approval by the Public Health Council, barring referrals to facilities without a valid operating certificate, requiring the employment of a registered

nurse (RN) to supervise medication management in facilities where 25% of the residents are mentally ill, promulgating indoor temperature standards for adult care facilities, and establishing new civil monetary penalties for adult homes that fail to comply with existing Social Services and Public Health law standards for such facilities. ■

## GNYHA Comments on NQF's Nursing Home Performance Measures

GNYHA's Center for Continuing Care recently provided comments to the National Quality Forum (NQF) regarding the new Nursing Home Performance Measures (PMs) developed by NQF for the Centers for Medicare and Medicaid Services (CMS). The PMs are based on specific sections of the Minimum Data Set (MDS), the assessment tool used under Medicare's skilled nursing facility prospective payment system. For nursing facilities in the six pilot states, the PMs are now published on the Nursing Home Compare Web site ([www.medicare.gov](http://www.medicare.gov)), and CMS plans to publish PMs for all nursing facilities nationwide in October 2002. GNYHA primarily expressed its serious concern over the limited opportunity that the current process will provide before the information is published on the Internet through Nursing Home Compare for nursing facilities nationwide. In addition, GNYHA expressed its specific concern that the current time-frame will preclude an opportunity to fully identify potential shortcomings regarding the PMs, risk adjustment methodologies, and communications processes, both with participating providers and with the public. GNYHA also commented regarding issues related to non-risk-adjusted performance measures and questioned the reliability of appropriate sections of the MDS. GNYHA will continue to monitor the developments regarding the nationwide implementation of PMs for skilled nursing facilities. ■

### Upcoming GNYHA Briefings

#### GNYHA HIPAA Payer Briefings

**Date:** Wednesday, May 29, 2002

**Time:** 9:30 a.m.–12:30 p.m.

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

This member briefing will feature presentations from Medicaid and WebMD (NEIC/Envoy) on their Health Insurance Portability and Accountability Act of 1996 (HIPAA) transaction set implementation strategies and timelines. For more information contact Ellen Lukens, and to register contact Barbara Marino, at GNYHA.

#### HIPAA's Implications for Research

**Date:** Thursday, June 6, 2002

**Time:** 9:00 a.m.–12:00 noon

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

This briefing will address the implications of HIPAA for research, preemption of NYS HIV confidentiality laws, and compliance with Federal drug and alcohol regulations. The program, given by Mark Barnes, Kate Gallin, and Kim Cleaveland from the law firm of Ropes & Gray, LLP, will feature an in-depth discussion of HIPAA's impact on the research approval process, research sponsor contracts, and retrospective medical chart reviews. For more information contact Susan Stuard, and to register contact Barbara Marino, at GNYHA.

#### State Resident Working Hours Limitations for Surgical Programs

**Date:** Thursday, June 6, 2002

**Time:** 1:00 p.m.–3:00 p.m.

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

At this member briefing, IPRO and the NYS Department of Health (DOH) will discuss their overall survey findings for surgery programs, the individual components for satisfying the surgical extension, and the "best practices" that have been seen in the hospitals with surgical programs that had been surveyed and had satisfied or come closest to satisfying the overall requirements and surgical exten-

sion. Veronica Wilbur, B.S.N., M.B.A., Statewide Director, Hospital Compliance Review, IPRO, and Maryellen Evans, Health Program Administrator, DOH, will participate. For more information contact Tim Johnson, and to register contact Cynthia Benchemmar, at GNYHA.

#### Strategies for Improving Patient Safety and Medication Error Reduction

**Date:** Tuesday, June 11, 2002

**Time:** 10:00 a.m.–12:30 p.m.

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

This briefing will provide an overview of the GNYHA Medication Safety Workgroup programs and will highlight initiatives that GNYHA members have undertaken to provide safe medication practices within their facilities. The briefing will include a hospital perspective on working with the Institute for Healthcare Improvement on a medication safety program and presentations from the 2001 NYS Patient Safety and Quality Award winners. For more information contact Terri Straub, and to register contact Barbara Marino, at GNYHA.

#### Radio Systems

**Date:** Monday, June 17, 2002

**Time:** 1:30 p.m.–3:30 p.m.

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

At this briefing, representatives from the NYC Office of Emergency Management (OEM) will give a presentation on the use of New York City's 800 Mhz radio system and the protocol for using it. A representative of the Amateur Radio Emergency Service (HAM radio operators) will also provide information about GNYHA members' use of HAM radio operators as possible resources in the event of telephone system failure. GNYHA members located outside NYC may wish to attend the briefing session to learn about HAM radio operations. For more information contact Doris R. Varlese, and to register contact Barbara Marino, at GNYHA.