



JUNE 24, 2002

Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

Edward Stolzenberg Installed as GNYHA Chairman at Annual Reception; Fallen EMS Workers Honored

Edward A. Stolzenberg, President and Chief Executive Officer of Westchester Medical Center, was installed as GNYHA Chairman at the Association's 2002 Annual Reception on June 13 at the Regent Wall Street Hotel. Mr. Stolzenberg is the first GNYHA Chairman representing an institution from outside New York City.

"We are very fortunate to have Ed Stolzenberg as our new Chairman," said GNYHA President Kenneth E. Raske. "He is a proven leader, and his vision and experience will be invaluable during these challenging times for New York's health care community."

New Officers: Also installed as officers of GNYHA's Board of Governors were **Stanley Brezenoff**, Maimonides Medical Center, Chairman-Elect; **Herbert Pardes, M.D.**, New York-Presbyterian Hospital, Vice Chairman;

Michael Dowling, North Shore-Long Island Jewish Health Care System, Vice Chairman; **Arthur Y. Webb**, Village Care of New York, Vice Chairman; **Peter A. Kelly**, Continuum Health Partners, Inc., Secretary; **David J.**

Campbell, Saint Vincent Catholic Medical Centers, Treasurer; **Benjamin Chu, M.D., M.P.H.**, New York City Health and Hospitals Corporation, Assistant Treasurer; **Theresa A.**

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House Panels Approve Medicare, Medicaid Legislation

In the early hours of June 19, 2002, the House Ways and Means Committee approved, by a vote of 22 to 16, legislation that would create a Medicare outpatient prescription drug benefit and provide some adjustments to Medicare reimbursement rates for health care providers. The Energy and Commerce Committee approved similar legislation. The health care provider changes of

most importance to GNYHA members are summarized below. The bill also marginally reduces planned reductions in Medicaid disproportionate share hospital (DSH) spending, scheduled to take effect on October 1, 2002. The full House of Representatives is expected to pass the bill before the July 4 recess, scheduled to begin on June 28, 2002. The Senate hopes to take up its version of Medicare legislation some time in July.

Hospitals: The House bill would reduce the 2003 inpatient market basket update reduction from market basket minus 0.55 percentage point to 0.25 percentage point, with no

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New GNYHA Board Chairman Edward Stolzenberg accepts the gavel from outgoing Chair Theresa Bischoff at GNYHA's Annual Reception.

New York State Legislature Considers Health Care Legislation in Final Days

The NYS Legislature is expected to complete its 2002 session this week, and has acted upon or is considering several bills of importance to GNYHA members. **Neutrality in Union Organizing:** Both houses are considering a bill to prohibit the use of

State funds, including Medicaid funds, to assist, promote, or deter union organizing. For hospitals and continuing care providers, that prohibition effectively means that any employee whose salary or benefits are partial-

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ly covered by Medicaid revenue would be prohibited from speaking to employees about the pros and cons of unionization. In addition, the bill (A.11784/S.7718) requires all State contractors, which includes all Medicaid providers, to sign so-called neutrality agreements, under which employers would agree to take no position on organizing efforts at their facilities, even if they believe that unionization is not in the best interest of their employees. The bill provides for penalties of up to three times the amount of the State funds received by the contractor. GNYHA strongly believes the bill violates the established principles and rights set forth in the National Labor Relations Act, which contains a free speech provision intended to permit employers and employees to articulate their views on union activities. The bill would clearly require employers to give up their right to free speech as a condition of receiving State funds, and the neutrality provision requires employers to give up their free speech rights whether or not they use State funds to articulate their views. In addition, GNYHA takes the position that Medicaid funds are provided to hospitals and nursing homes to take care of low-income New Yorkers, regardless of the union status of their employees.

Patient Consent: The Senate has passed S.4106, which would make it an unlawful discriminatory practice for a hospital to allow residents or other personnel to visually observe patients with disabilities unless the patient or the patient's representative has been informed of the names and positions of all personnel who may visually observe the patient and gives the patient the opportunity to consent to visual observation. The Assembly is considering passing S.4106 at the request of Assemblyman Kevin Cahill. GNYHA has expressed its opposition to S.4106 because of the barriers it erects to quality medical education and because it could lead to fewer physicians understanding the needs and conditions of disabled New Yorkers. Furthermore, New York's Patient's Bill of Rights already provides that every hospital patient in New York State has the right to know the names, positions, and functions of any hospital staff involved in their care and may refuse the treatment, examination, or observation of any



GNYHA President Kenneth Raske looks on as photos of New York City's fallen EMS professionals are shown at the GNYHA Annual Reception.

Bischoff, NYU Hospitals Center, Immediate Past Chair; **Gladys George**, Lenox Hill Hospital, Past Chair; **Mark J. Mundy**, New York Methodist Hospital, Past Chairman; **Barry R. Freedman**, The Mount Sinai Hospital, Past Chairman; **John R. Gunn**, Memorial Hospital for Cancer and Allied Diseases, Past Chairman; **Spencer Foreman, M.D.**, Montefiore Medical Center, Past Chairman; **Frederick D. Alley**, The Brooklyn Hospital Center, Past Chairman; and **David P. Rosen**, MediSys Health Network, Inc., Past Chairman.

Mr. Alley, who is retiring later this year from The Brooklyn Hospital Center, was presented with a plaque in recognition of his 34 years of distinguished service to that institution and his many years of service on GNYHA's Board of Governors.

New Board Members: Installed as members

of the GNYHA Board of Governors in the Class of 2005 were **Leonard A. Aubrey**, NYU Downtown Hospital; **Frank A. Calamari**, Calvary Hospital; **Samuel Daniel, M.D.**, North General Hospital; **Sheldon L. Goldberg**, The Jewish Home and Hospital; and **Wendy Z. Goldstein**, Lutheran Medical Center. Installed as members of the GNYHA Board of Governors in the Class of 2003 were **Ronald T. Mullahey**, Health Quest Systems, Inc., and **Bruce**

Schroffel, Stony Brook University Hospital. **Memorial Tribute and Special Video:** Bobby Valentine, Manager of the New York Mets, assisted in a tribute to the eight emergency medical services (EMS) workers who died at the World Trade Center on September 11. Mr. Valentine presented "In Memoriam" plaques to the family members of **Keith Fairben**, **Carlos Lillo**, **Yamel Merino**, **Richard Pearlman**, **Ricardo Quinn**, **Mario Santoro**, **Mark Schwartz**, and **David Marc Sullins**. The tribute also included a performance by the New York Metro Mass Choir. The evening concluded with a viewing of "I Help New York: 3 Stories from America," a film produced by GNYHA about the efforts of non-New Yorkers to help New York's health care community after September 11. ■

Nursing Home "Chain" Legislation Stalls in Health Committee

On June 4, 2002, the Assembly Health Committee elected to "hold for consideration" a measure, A.4408, introduced by Assemblyman Harvey Weisenberg, that would have permitted the operation of publicly traded residential health care facilities (RHCs) in New York State. By taking this action, the Health Committee effectively forestalled any likelihood that the measure would see action in the full Assembly this year. Prior to the committee's June 4 meeting, GNYHA had expressed strong opposition to A.4408 in a letter sent to all members of the committee. In the letter, GNYHA strongly upheld New York's current

prohibition on the ownership of RHCs by publicly traded corporations, noting that the current prohibition is part of a long tradition in New York State of adhering to the belief that the provision of health care is a community service. GNYHA stressed that encouraging the entry of nursing homes operated solely as business investments is inconsistent with this tradition, since such facilities are accountable only to their stockholders, and lack an explicit commitment to their residents, to their residents' families, and to the community. GNYHA is pleased that the Assembly Health Committee refrained from referring A.4408 to the full Assembly, and will continue to oppose efforts to advance related legislation in the future. ■

CDC Committee Recommends Smallpox Vaccine for Some Health Care Workers

On June 20, 2002, the Advisory Committee on Immunization Practices (ACIP) for the U.S. Centers for Disease Control and Prevention (CDC) approved new recommendations that call for smallpox vaccine to be offered to certain health care workers as well as people who might be involved in investigating initial smallpox cases that would necessitate direct patient contact. The individuals for whom pre-release vaccination is recommended would need to be pre-designated by bioterrorism and public health authorities to conduct an investigation into an initial smallpox case or work in a facility that is pre-designated as a potential referral center to provide care for the initial cases. The ACIP had also reviewed whether to offer vaccine more broadly to the public before identifying a case of smallpox, and concluded that, given the low risk of an attack and the side effects associated with the vaccine, vaccination should not be offered to the public at this time. The ACIP recommendations are being transmitted to the CDC for its review. The ACIP also has indicated that it intends to review its recommendations periodically as well as more urgently if necessary. The CDC is reviewing its existing vaccine recommendations, which rely on following a "ring approach"—that is, vaccinating those who have or are most likely to come into contact with either the case patient or the patient's contacts.

GNYHA's Comments: On June 6, GNYHA presented comments to the ACIP at a public forum designed to solicit input on revising the CDC's vaccine policy. GNYHA strongly recommended that all health care workers who will be considered essential to the orderly delivery of health care in the event of a smallpox attack should be offered voluntary, pre-release immunization. This would include workers who might be the first to be exposed as well as those who are essential for patient care. GNYHA argued that this action is necessary because, while post-exposure vaccination may afford protection, the current thinking is that workers should not return to care for patients, particularly those who are immuno-compromised, for two weeks after

vaccination due to the risk of transmitting the live virus from the vaccine. In addition, some workers may not be willing to work if they or their families are not vaccinated. Thus, a more orderly, pre-release offering of vaccine to certain workers and perhaps their families can help ensure that protected workers will be available if needed. On the issue of vaccinating the public, GNYHA urged the CDC not to underestimate the logistical and psychological issues surrounding any post-release immunization initiative. GNYHA's position

urges a broader offering of the vaccine to workers than do the ACIP's recommendations. GNYHA will press for an expansion of the recommendations and will discuss the recommendations at its upcoming emergency preparedness coordinating council meeting. **GNYHA Briefings:** GNYHA has been providing members with training on identifying and responding to a potential smallpox attack. GNYHA's January 10 briefing can be viewed via streaming video on the members' section of the Web site, www.gnyha.org. ■

ACGME, Senator Corzine Propose Resident Working Hour Limitations

On June 12, 2002, following approval by its Board of Directors, the Accreditation Council for Graduate Medical Education (ACGME) approved new proposed requirements for limitations on resident working hours. The proposed requirements, which would take effect July 1, 2003, include:

- a limit of 80 hours per week, averaged over a four-week period;
- a limit of 24 consecutive hours, with up to six additional hours allowed for transition time;
- night call limited to no more than every third night;
- nonworking periods of at least 10 hours between assignments; and
- a nonworking period of 24 hours per week, averaged over four weeks.

The requirements also specify that individual programs may apply to the institution's GME Committee for an increase above the 80-hour limit of up to 10%, if the program can demonstrate a sound educational rationale for the request. The ACGME is accepting comments regarding the proposed requirements until August 1, 2002.

GNYHA made a presentation to the ACGME Board of Directors regarding the status of the NYS regulations and the current surveying activities, and will forward several comments to the ACGME. The comments will include a request that the ACGME consider incorporating a "surgical exemption,"

which is a component of the NYS regulations that allows surgical training to occur for certain extended periods to ensure continuity of care and appropriate medical education without compromising quality or patient safety. GNYHA has been working extensively with the State and its contracted surveyors to understand the nuances of this component of the regulations so that hospitals might appropriately utilize it.

GNYHA also hosted a briefing on June 20 with officials from the ACGME to discuss enhancements to the ACGME institutional requirements, with which all sponsoring institutions must comply to maintain accreditation. Cynthia Taradejna, Executive Director of the Institutional Review Committee, discussed the increasing responsibilities of the designated institutional official and the institution's GME committee, which must, among other activities, take an active role in ensuring compliance with the new resident working hour limitations.

Senator Corzine: On June 12, Senator Jon Corzine (D-NJ) introduced the Patient and Physician Safety and Protection Act of 2002 (PPSPA), which would mandate that hospitals limit resident working hours to levels similar to those proposed by the ACGME. The penalties for noncompliance under the PPSPA include the hospital's loss of participation in Medicare and monetary fines of \$100,000 for each residency program that is found to be out of compliance. ■

Medicare, Medicaid Legislation

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further reductions in subsequent years. The Congressional Budget Office (CBO) estimates that this provision will increase Medicare spending on hospitals by \$1.5 billion over the next five years. The bill would also reduce the indirect medical education (IME) adjustment cut scheduled to take effect on October 1, 2002. Specifically, the payment adjustment would be reduced from 6.5% for every 10% increment in a teaching hospital's intern and resident to bed ratio to 6.0% on October 1, 2002, 5.9% on October 1, 2003, and 5.5% on October 1, 2004. Under current law, the adjustment would be reduced to 5.5% on October 1, 2002. CBO estimates that the bill's IME provision will save teaching hospitals nationwide from \$700 million in cuts over the next two years; however, because the bill doesn't eliminate the IME cut altogether, teaching hospitals will still see large Medicare payment reductions under the bill. GNYHA has pledged to work with the Congress and the Administration to ensure that teaching hospitals do not suffer any new Medicare cuts this year. Other provisions of the bill include a continuation of the "freeze" in direct graduate medical education (DGME) payments for teaching hospitals with per resident payment

amounts above 140% of a regionally adjusted national average through 2012. Under current law, payments for these hospitals are frozen through 2002, with updates of CPI minus 2 percentage points in 2003, 2004, and 2005. CBO estimates that this will cost the teaching hospitals it affects approximately \$600 million over five years and \$2.6 billion over 10 years. GNYHA strongly opposes this provision and will be working to ensure that the Senate does not include it in its version of Medicare legislation. In addition, the House bill would allow for the redistribution of residency positions for which Medicare reimbursement can be claimed from hospitals that, for a three-year period, had fewer residents than allowed under the cap established by the Balanced Budget Act of 1997, to other hospitals, with priority given to rural and small urban hospitals.

Continuing Care: The House bill would continue an adjustment to the nursing component of the skilled nursing facility (SNF) prospective payment system rate, but the add-on would be reduced from 16.6% under current law to 8% under the bill. The 8% add-on would continue through October 1, 2005. The 4% intensity add-on would expire as scheduled. GNYHA strongly supports continuation of the current law 16.6% add-on and the 4% add-on. The bill would also pro-

vide for an increase in per diem payments associated with AIDS patients in SNFs. With regard to home health, the bill would eliminate the 15% reduction scheduled for October 1, 2002; reduce payment updates for 2003 by 2.0 percentage points, for 2004 by 1.0 percentage point, and for 2005 by 0.8 percentage point; and impose a home health copayment on most Medicare beneficiaries of 1.5% of the national average payment. ■

Work for GNYHA's HIPAA Consortium Nears Completion

The work commissioned by GNYHA's HIPAA Consortium is nearly complete, and the final products—policies, procedures, and forms related to compliance with the Health Insurance Portability and Accountability Act of (HIPAA)—will soon be distributed to Consortium members. GNYHA formed the Consortium in response to members' requests for assistance with the preemption analysis of NYS law under HIPAA and the need to develop policies and procedures that incorporate the results of that analysis. GNYHA engaged Mark Barnes, a partner with the law firm of Ropes & Gray, to complete this work. The preemption analysis was also conducted with review and input from representatives of the NYS Department of Health, the NYC Department of Health, and the NYS Office for Technology, the agency responsible for leading NYS's HIPAA compliance efforts.

Findings from this analysis were used to complete the 28 policies, procedures, and forms that make up the second deliverable for the HIPAA Consortium. Examples of these 28 documents include a Notice of Privacy Practices, a Research Authorization Form, and Policy and Procedure for the Minimum Necessary Standard. These 28 documents are being customized for use by both hospitals and skilled nursing facilities.

GNYHA continues to accept participants into the Consortium and encourages its members to take advantage of this opportunity to share the costs of developing HIPAA compliance solutions. If you have questions about the Consortium, please contact Susan Stuard at GNYHA. ■

Upcoming GNYHA Briefings

Training Session: Inpatient Rehabilitation Facility PPS

Date: Thursday, July 11, 2002

Time: 10:00 a.m. – 4:30 p.m.

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

This member training session will review the inpatient rehabilitation facility prospective payment system (IRF PPS) billing requirements and payment methodology. In addition, the session will cover the requirements for completing and submitting the inpatient rehabilitation facility patient assessment instrument (IRF PAI), which is used to determine payment under the IRF PPS. The session will not, however, cover the clinical aspects of the IRF PAI. Empire Medicare Services, the fiscal intermediary in New York State, will conduct the training session. For more information contact Elisabeth Wynn, and to register contact Barbara Marino, at GNYHA.

Security Issues

Date: Wednesday, July 17, 2002

Time: 2:00 p.m. – 5:00 p.m.

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

At this briefing, a representative from the U.S. Centers for Disease Control and Prevention National Institute for Occupational Safety and Health will discuss protecting buildings from airborne chemical, biological, and radiological attacks; representatives from the Counter Terrorism Division of the New York City Police Department will discuss undertaking a security risk assessment; and representatives from GNYHA member institutions will discuss security procedures they have implemented. For more information contact Doris R. Varlese, and to register contact Barbara Marino, at GNYHA. ■