



JUNE 26, 2006

Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

NYS Legislature Reaches Budget Agreement

On June 23, 2006, New York Governor George E. Pataki, Assembly Speaker Sheldon Silver, and Senate Majority Leader Joseph Bruno reached an agreement on the State fiscal year 2006–07 budget, which would effectively end an impasse that could have resulted in hundreds of millions of dollars in Medicaid cuts to hospitals, nursing homes, and Medicaid beneficiaries. As *Skyline News* went to press, it was expected that the budget would be passed by the close of the legislative session on June 23.

The budget agreement, which was negotiated with substantial input from GNYHA and its Healthcare Education Project partner, 1199 SEIU United Healthcare Workers East, restores nearly all of the Medicaid

funding the Governor proposed cutting in his budget in January and provides new investments for emergency care and nursing home quality improvement activities.

This agreement will remove the cloud of uncertainty that has hung over the health care community since the Governor vetoed the Legislature's funding restorations in April and then, after the Legislature overrode the vetoes, declared that he would ignore the overrides and implement the cuts from his original proposal. It also paves the way for GNYHA and its members to withdraw a lawsuit they brought in State Supreme Court that called upon the Court to stop the Governor from imposing his proposed budget cuts. It will also negate

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NYS Senate and Assembly Reach Consensus on Medicaid Fraud and Abuse Legislation

On June 20, the NYS Senate and Assembly reached a compromise on long-awaited Medicaid fraud legislation. Each body had been working through its own version of an anti-fraud bill for the last several months.

Legislative activity in this area comes as part of the ongoing public debate about how to reduce potential fraud, abuse, and waste in NYS's Medicaid program, with Governor George Pataki. Attorney General

Eliot Spitzer, and each of the State legislative bodies endeavoring to address the perceived problems in the system. Governor Pataki's primary response, set forth in a seven-point plan that was to have been part of his State budget, centered on the creation of a new State Medicaid Inspector General (MIG) who would be responsible for fraud and abuse prevention, investigations, and aspects of enforcement. Under

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GNYHA Board Meets

The GNYHA Board concluded its 2005–06 term on June 15, 2006, and took the following actions:

- Approved institutional membership for Sheehan Memorial Hospital, Buffalo, NY;
- Approved the audited 2005 financial statements for GNYHA and its subsidiaries;
- Heard the latest developments regarding the ongoing State budget debate, including legislative and other efforts to prevent implementation of the Governor's hospital and nursing home Medicaid cuts, as well as the filing and status of a Healthcare Education Project lawsuit by GNYHA and 1199 SEIU United Healthcare Workers East that challenges the Governor's position;
- Discussed with GNYHA staff and 1199 SEIU leadership, Dennis Rivera and Jennifer Cunningham, the activities regarding the NYS Budget and Medicaid dialogue with the Governor;
- Received the results of The Health Economics and Outcomes Research Institute's (THEORI's) analysis of the Centers for Medicare & Medicaid Services' (CMS's) proposed change to the inpatient prospective payment system (IPPS) diagnosis related–group (DRG) weighting methodology, and was briefed on THEORI's recommendation that CMS make no changes to the IPPS in 2007 and phase in cost-based DRG weights in FY 2008;
- Discussed the findings of a GNYHA-commissioned study on approaches for providing employee health benefits;
- Received an update on the Connectivity Consortium, a consensus-driven, standards-setting group started by GNYHA; and
- Heard about GNYHA's collaborative projects to reduce central line–associated bloodstream infections and to develop rapid response teams, as well as its initiatives to alleviate the nursing shortage. ■

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the need for bills that the Legislature passed (and that the Governor vetoed) to provide new funding for hospitals for quality improvement and for nursing homes for energy assistance.

The agreement will also render unnecessary another bill passed by the Legislature that requires the Governor to withdraw the amendments to the State's Medicaid plan, which was submitted to the Federal government for approval, that would have allowed the State to cut Medicaid rates for hospitals and nursing homes. Working with GNYHA, U.S. Senators Charles E. Schumer and Hillary Rodham Clinton sent a letter to the Bush Administration urging them to take no action on the State plan amendments submitted by the Governor until the State budget impasse was resolved.

GNYHA is extremely grateful to Speaker Silver, Senator Bruno, Senators Schumer and Clinton, and all of the region's elected representatives for helping to make this final budget agreement a reality.

Hospitals: Gone are the Governor's original proposed Medicaid cuts to hospitals, including elimination of the trend factor, the volume adjustment cut, the inpatient detox cut, the graduate medical education cut, and the cut for outpatient mental health services. The only reduction for hospitals is a 0.25 percentage point reduction in the 2006 Medicaid trend factor, for a reduction in payments to hospitals of \$16 million (down from a potential \$160 million cut from eliminating the trend factor altogether). In addition, the final agreement would increase the \$95 Medicaid reimbursement rate cap for emergency department visits to \$125 on January 1, 2007, \$140 on January 1, 2008, and \$150 on January 1, 2009. The \$40 triage fee for non-complicated emergency visits for Medicaid managed care enrollees would be eliminated.

Nursing Homes: The final agreement does not contain any of the Medicaid nursing home cuts the Governor proposed in January for the 2006-07 State fiscal year, including the elimination of the trend factor, the so-called Medicaid-only case mix cut, or the elimination of the add-ons for large nursing homes and hospital-based nursing homes.

The only reduction for nursing homes in the final agreement in this fiscal year would be a 0.25 percentage point reduction in the 2006 trend factor, for a reduction in payments to nursing homes of \$14 million (down from a potential cut of \$140 million from eliminating the trend factor altogether). In addition, nursing home reimbursement rates would be updated by changing the base year on which costs are calculated to 2002. This so-called rebasing would begin on January 1, 2007, and would be fully

phased in in 2009. Nursing homes that would be disadvantaged by the change in the base year would be "held harmless" and would receive a trend factor increase. The only other savings proposal that would affect nursing homes is the change in the adult day care reimbursement methodology to reimburse programs at cost rather than a percentage of the inpatient nursing home rate. This change would take effect not this fiscal year, but on April 1, 2007. The increased funding in the Legislature's budget for nursing home quality improvement activities would go forward. ■

Legislative Digest

With the New York State legislative session coming to a close, the New York State Legislature took action recently on the following health care-related items.

THE NYS LEGISLATURE RECENTLY PASSED THE FOLLOWING BILLS: **Flu Vaccinations for Persons Age 65 and Older.** S. 5087-A / A. 11236 requires hospitals to offer vaccination against influenza and pneumococcal disease to persons 65 years of age and older who are admitted. • **Radiologic Technology Training.** S. 5604-A / A. 4882-B updates existing law by creating licensure requirements for radiography, radiation therapy, and nuclear medicine technology, as well as providing intravenous contrast administration certification for radiology technologists. GNYHA strongly supports S. 5604-A / A. 4882-B because it believes that State standards will ensure a minimum level of education, knowledge, and skill for the operators of radiologic equipment, and New Yorkers will benefit from being cared for by properly educated and certified radiologic personnel. • **Hospital Payments.** S. 5728-C / A. 8840-C provides for the rates of payment to general hospitals for the treatment and care of injured employees under workers' compensation for certain spinal procedures. • **Circulating Nurse in OR.** S. 5975 / A. 7837-B requires that a qualified nurse be present in an operating room for the duration of the operative procedure. • **Use of Nursing Titles.** S. 6326-A / A. 5816-A prohibits a person from using the title of "nurse" or any other title or abbreviation that would represent to the public that the person is authorized to practice nursing, unless the person is licensed or otherwise authorized under the provisions of the education law. • **Patient Restraint.** S. 6706-A / A. 9986-A authorizes a physician assistant under the supervision of a physician or a nurse practitioner to authorize the use of patient restraints. GNYHA supports the intent of this legislation and agrees that patients in behavioral health settings should have timely access to treatments that are necessary for preventing injury. • **Medicare Part B Premiums.** S. 6942 / A. 10022 extends from December 31, 2006, until December 31, 2008, the expiration of provisions of the social services law authorizing the payment of Medicare Part B premiums to certain Medicaid recipients. • **Reporting of Abuse.** S. 7169-A / A. 10130 relates to reports concerning the abuse and mistreatment of mentally retarded and developmentally disabled persons. • **Physician Shortage.** S. 7324 / A. 8155-A gives statutory authority to the Charles D. Cook Office of Rural Health to fully conduct an analysis for incentive options for physicians in rural and underserved areas. • **Child Vaccinations.** S. 7421-B / A. 11042-B requires children born after January 1, 1994, to have booster vaccinations for diphtheria, tetanus, and pertussis upon entering the sixth grade. • **Unnatural Death of a Minor.** S. 8082 / A. 11666 provides for hospital protocols for certain unnatural deaths of persons under the age of 18 years. • **Palliative Education & Training Program.** S. 7458-A / A. 11162-B improves medical education and training in palliative care by funding medical school and residency training programs. GNYHA strongly supports the development of patient-centered residency programs that improve the training of new physicians and ultimately result in the provision of the highest quality of palliative care. • **Hospital Refinancing.** S. 7717-A / A. 10915-A authorizes certain not-for-profit hospitals to incur outstanding refinancing indebtedness. • **Geriatric Chemical Dependence Act.** S. 7930 / A. 11243 gives grants to providers to develop and implement innovative approaches to serving older New Yorkers who have chemical-dependence problems. ■

GNYHA Advocacy Leads to Favorable Genentech Distribution Decision

GNYHA Ventures, Inc. played a critical role recently in the decision by Genentech, Inc., a leading biotechnology company, to continue its traditional hospital pharmacy wholesale distribution. The decision reflects Genentech's reconsideration of its proposed plan to implement exclusive specialty distributing for three of its select biotech drugs (Avastin, Herceptin, and Rituxan) beginning June 15, 2006. Alarmed at the potential negative impact that specialty distribution would have on hospitals—including sharply higher costs and potential supply chain disruption—GNYHA Ventures took action, which resulted in a favorable outcome for all GNYHA members.

Background: On April 3, 2006, Genentech announced its intention to move away from traditional wholesale distribution to specialty distribution, which raised immediate concerns among directors of pharmacy at GNYHA member institutions. Such a change would mean significantly higher distribution costs for Genentech products. Specialty distributors work off a “cost-plus” pricing model, whereby customers pay at-cost prices plus a distributor fee, while pharmacy drug wholesalers—such as AmerisourceBergen, Cardinal Health, and McKesson—use the “cost-minus” prime-vendor program, in which customers pay less than at-cost prices and no distributor fee in exchange for exclusive business.

In addition to increased prices, a switch to specialty distribution would force hospitals to create an entirely new infrastructure for inventory tracking, ordering, receiving, invoice reconciliation, and payment processes. As a result, the supply chain could potentially be disrupted, posing a patient safety threat if dosing for critical cancer-drug treatments is delayed or missed.

GNYHA Ventures' Role: On April 19, 2006, GNYHA Ventures organized a meeting between Genentech executives and significant Genentech customers—including customers who purchase Genentech products through GNYHA Services/Premier and those who purchase through other group purchasing organizations—to discuss potential supply chain issues. GNYHA pharmacy staff and members explained the nuances of the hos-

pital marketplace and the potential difficulties that would be created by Genentech's switch to specialty distribution. As a direct result of this meeting, Genentech concluded that it had underestimated the needs of the hospital market segment and that the need for redress was clear. Consequently, Genentech conducted lengthy negotiations with wholesalers and distributors, which ultimately led to its decision to continue traditional

hospital pharmacy wholesale distribution.

GNYHA is extremely pleased with Genentech's redaction of the specialty distribution model, which has implications beyond the New York and New Jersey health care communities. Without this step, other manufacturers of current and future biotechnology products might have followed Genentech's precedent, creating further challenges for hospitals across the country. ■

GNYHA Submits Comment Letters on Medicare GME Payment Policies

GNYHA submitted comments recently to the Centers for Medicare & Medicaid Services (CMS) regarding Medicare graduate medical education (GME) policies. Within its inpatient prospective payment system (IPPS) proposed rule, CMS had issued a clarification regarding its policy for counting physician resident time spent in educational activities. CMS also published a separate interim final rule, with a request for comments, regarding teaching hospitals' ability to form affiliations in certain emergency situations.

GME Provisions in Medicare IPPS Proposed Rule: CMS's clarified policy on counting educational time would, in effect, force teaching hospitals to disallow certain activities from eligibility for Medicare GME reimbursement. In the clarification, CMS specifically cites resident time spent in journal clubs and seminars as time that would be disallowed under this policy. CMS's clarification cited the statutory language governing both direct GME and indirect medical education payments, and indicated that the agency was bound to follow the statute. In its comments, GNYHA responded that CMS had ample discretion to interpret the statute to allow teaching hospitals to count this resident time and that Congress was well aware that residency training included educational components when it wrote the legislation. GNYHA also noted that residency training includes many different types of activities

and it would be administratively impossible for residency programs and teaching hospitals to separate and count time in the manner that CMS's policy suggests.

GME Affiliation Provisions in Certain Emergency Situations: The development of the interim final rule regarding emergency situations was prompted by Hurricanes Katrina and Rita, and the recognition that current rules related to the Medicare resident cap hamper the ability of teaching hospitals to take over the training of displaced residents. Although the rule was developed in response to specific events that occurred in 2005, the policy as outlined would apply to those and any future events. GNYHA commended CMS for taking the time to develop this rule and for making the rule retroactive to August 29, 2005, when Hurricane Katrina occurred. GNYHA also commented that, to the extent possible, CMS should remove barriers that keep residency trainees from successfully completing their training programs during emergency situations. In its letter, GNYHA cited specific instances in which CMS should modify its policy to permit teaching hospitals to accommodate displaced residents.

GNYHA expects CMS to publish the IPPS final rule and the final rule concerning the GME affiliations in certain emergency situations on or around August 1, 2006. Should you have any questions in the meantime, please contact Tim Johnson at GNYHA. ■

NYS Senate and Assembly Reach Consensus on Medicaid Fraud and Abuse Legislation *continued from page 1*

the Governor's initial vision, the bulk of Medicaid fraud control functions that have been conducted by the NYS Department of Health (DOH) and various other State agencies were to be transferred to the Office of the Medicaid Inspector General (OMIG).

Medicaid Inspector General: Since the Governor laid out his seven-point plan, several attempts have been made to codify the existence of the OMIG, as both the Senate and the Assembly have put forth legislation in this area. The Senate structured the position of MIG so that the MIG would serve a five-year term, thus continuing into the administration of the next Governor. The Assembly's bills appeared to make an effort to balance the authority allocated to the MIG and the Attorney General's Medicaid Fraud Control Unit (MFCU). In the final compromise, the MIG is to serve without a designated term length and the OMIG would have the authority to pursue civil and administrative power, leaving the MFCU as the dominant body in terms of criminal enforcement and providing for specific referral processes from the OMIG to the MFCU and other law enforcement officials. Nonetheless, the OMIG will be granted a significant amount of authority and staffing, as initially envisioned by Governor Pataki.

Health Care Fraud: The Senate and Assembly bills reviewed during this session also typically included health care fraud provisions. On balance, the Assembly was supportive of broad false claims legislation, including a whistleblower or *qui tam* provision, but the Senate was opposed to empowering whistleblowers. The compromise legislation creates specific counts in the penal code for health care fraud but does not facilitate whistleblower lawsuits.

Additional Elements: The agreed-upon bill also establishes a comprehensive framework for anti-fraud investigative and enforcement activity, including, among other elements, requirements for mandated compliance programs for medical assistance providers; a provision empowering

the MIG and Commissioner of Health to create a self-disclosure protocol; an advisory opinion process; a requirement for the MIG and DOH to "develop, test and implement new methods to strengthen the capability of the Medicaid payment information system to detect and control fraud and improve expenditure accountability" in areas including prepayment claims review, coordination of benefits, comprehensive review of paid claims, and targeted claims and utilization review; and protection under the existing State Labor Law for employees who report health care fraud activity.

Future Activity and GNYHA's Efforts: As *Skyline News* went to press, the fraud legislation was expected to pass and be sent to the Governor for his signature shortly. GNYHA will continue to monitor these legislative developments. Over the last several months, GNYHA has met with the current MIG, senior staff from the Office of the Attorney General, and senior staff from DOH and the Governor's Office to highlight the depth of members' compliance programs and to seek information on the State's enforcement priorities. GNYHA will continue these efforts under the anticipated new governmental structure and will assist members with compliance activities pursuant to the pending State law requirements.

The compromise legislation is available at www.assembly.state.ny.us/leg/?bn=S08450. For more information, contact Deborah Brown regarding Medicaid fraud and David Rich regarding State legislative activity, both at GNYHA. ■

GNYHA's President Gives Commencement Address at Philips Beth Israel School of Nursing

On June 1, 2006, GNYHA President Kenneth E. Raske delivered the commencement address to the Philips Beth Israel School of Nursing Class of 2006. Noting that nurses are the bedrock of the health care system, the key to providing quality care, and the heart and soul of every hospital, Mr. Raske passed along to the 77 new graduates the following advice from nursing executives at GNYHA member hospitals, whom he characterized as the "people who really know what it means to be a nurse":

Be proud of your degree and the flexibility and versatility it offers—and take advantage of opportunities to work in a variety of medical specialties and administrative arenas.

Appreciate yourselves as scientists and independent thinkers who can make a difference in the lives of others.

Think of today as only the beginning—prepare to work hard and pursue higher education in your field.

Be inspired by other nurses who have gone on to greatness in many other fields—like Congresswoman Carolyn McCarthy. Explore public health, business, law, and scientific research. Nurses have succeeded in all of these disciplines by using their nursing degrees as invaluable assets.

Accept mentorship, but also serve as mentors whenever you can. Learn from the experiences of coworkers and embrace educational opportunities that present themselves in the future. Never stop learning.

Mr. Raske concluded by adding his own observation that, "When you love your job, you never go to work—you go to your passion."

Upcoming GNYHA Member Briefings

The MHA Group—Physician Recruitment Services

Date: Tuesday, June 27, 2006 • **Time:** 10:00 a.m.—11:00 a.m. • **Location:** Web Demonstration

This briefing will provide information regarding The MHA Group's physician recruitment solutions. The MHA Group is a nationally recognized physician recruitment and consulting firm employing more than 700 search associates who are in constant contact with physicians throughout the country. To date, they have helped thousands of institutions place physicians in all medical and surgical specialties in clinical and administrative positions. The MHA Group has conducted more than 30,000 physician search assignments, and currently conducts more than 2,500 searches per year. For more information or to register for the demonstration, contact Adam Daehnke at (212) 258-5304 or daehnke@gnyha.org. ■