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# Skyline news

REPORTING ON NEW YORK'S HEALTH CARE NEWS

## New York State Projects Deficit for Next Year

**N**YS is poised to experience a budget deficit of \$8.6 billion in its General Fund over the next two fiscal years, according to projections in the NYS Division of Budget's (DOB's) *2006-07 Financial Plan—First Quarterly Update*, which was released on July 31. Specifically, DOB projects an 8% increase in "All Funds" spending from \$104.3 billion in 2005-06 to \$113.6 billion in 2006-07, with "All Funds" including the General Fund, Special Revenue Funds, Capital Projects Funds, and Debt Service Funds.

Major drivers of this increase include Medicaid and Public Health, which have increased by \$1.8 billion and \$552 million, respectively.

DOB's projected \$8.6 billion deficit in future years (so called out-years) comprises \$3.2 billion in State fiscal year (SFY) 2007-08 and \$5.4 billion in SFY 2008-09 for the General Fund. The 2007-08 shortfall is \$500 million lower than projected in the *2006-07 Enacted Budget*, finalized on April 26, 2006. The reduced shortfall is attributed to subse-

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## Medicare Proposes Outpatient Payment Increase for 2007 and New Ambulatory Surgery Payment Methodology for 2008

**O**n Aug. 11, 2006, the Centers for Medicare & Medicaid Services (CMS) proposed a 3.4% market basket update for hospital outpatient services in 2007. However, in order for hospitals to receive the full update, they would have to participate in CMS's inpatient quality reporting initiative. Hospitals that do not participate would receive an update of market basket minus 2.0 percentage points for their inpatient and outpatient rates.

In addition, CMS proposed to restructure the ambulatory payment categories (APCs) for emergency and management services and to implement new hospital billing codes for those services. There are currently three pay-

ment levels for emergency and management services and, under the proposal, this number would expand to five beginning in 2007. The proposed new codes for emergency room and clinic visits would not be effective until 2008 in order to allow adequate time for required provider education and systems changes.

Also included in the rule was a proposed new payment methodology for ambulatory surgery centers (ASCs) that would be effective Jan. 1, 2008. The payment system would utilize the APCs in the outpatient prospective payment system (OPPS) but the payments would be scaled to match the resource use of

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## GNYHA Briefs U.S. House Homeland Security Committee on Funding Issues

**O**n Aug. 15, GNYHA joined the City of New York in briefing staff of the U.S. House Homeland Security Emergency Preparedness, Science, and Technology Subcommittee on concerns related to the bioterrorism program, which is up for reauthorization this year. Noting that the Senate Health, Education, Labor, and Pensions Committee had already passed a reauthorization bill before adjourning for the August recess, GNYHA met with House staffers in advance of a similar bill expected for introduction in the House this fall.

Specifically, the Senate's Pandemic and All-Hazards Preparedness Act (S. 3678), sponsored by Senator Richard Burr (R-N.C.), includes the reauthorization of the only program that provides a dedicated Federal source of funding to hospitals for emergency preparedness, as administered through the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS). The reauthorization of the bioterrorism program is essential not only for hospitals, but also for health departments that receive funding from this bill through the Centers for Disease Control and Prevention.

At the meeting, GNYHA urged House staffers to significantly increase the amount of funding available to hospitals for preparedness. Since 2002, the funding provided by this

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<b>General Fund Gaps in 2007–08 and 2008–09, NYS (in billions of dollars)</b>			
Year	2006–07 Enacted Budget "Financial Plan"	2006–07 Financial Plan— First Quarterly Update	Office of the NYS Comptroller Estimate, July 2006
<b>2007–08</b>	\$3.7	\$3.2	\$5.9
<b>2008–09</b>	\$4.3	\$5.4	\$8.0
<b>Total (2-year gap)</b>	\$8.0	\$8.6	\$13.9

Sources: NYS Division of Budget, *New York State 2006–07 Financial Plan—First Quarterly Update* (Albany, 2006), 4, 5; *NYS 2006–07 Enacted Budget Report* (Albany, 2006), 2; NYS Office of the State Comptroller, Office of Budget and Policy Analysis, "Fact Sheet—What Happened in the 2006–07 Supplemental Budget?" (July 2006).

quently enacted Medicaid cost containment, the elimination of a previously planned subsidy payment to the Health Care Reform Act (HCRA) because of an agreement to repeal the so-called HCRA funding guarantee, and the use of the entire stabilization reserve in 2007–08. The \$1.1 billion increase in 2008–09 is attributed to State spending on local property tax relief and the accelerated use of reserves.

Conversely, the Office of the NYS Comptroller, in its recently issued budget and policy analysis Fact Sheet, "What Happened in the

2006–07 Supplemental Budget?," highlights re-estimates of DOB's 2006–07 Enacted Budget based on the June 23 supplemental budget. The supplemental budget reflects an agreement between the Governor and the Legislature on programs that the Governor had vetoed previously, including the restoration of funding for significant programs that affect the health care community.

The Comptroller's office estimates that as a result of increased risks to the State's financial plan (for example, elimination of the subsidy payment to HCRA), the out-year budget

gap in the General Fund will exceed DOB's projections by more than \$5 billion—\$5.9 billion in 2007–08 and \$8 billion in 2008–09.

As noted above, the supplemental budget or "budget clean-up" bill suspended payments from the General Fund to HCRA in the out-years—approximately \$900 million in 2007–08 and \$2.2 billion in 2008–09. Currently in statute, there is a "guarantee" to HCRA that the General Fund would make up any shortfall up to the amount that HCRA would have received from the Tobacco Settlement. However, the supplemental budget suspended the "guarantee" for 2007–08 and 2008–09 and postponed the repayment of a \$200 million loan that HCRA made to the General Fund. HCRA is scheduled to expire on June 30, 2007. If State officials continue to project a shortfall for HCRA programs of \$900 million in 2007–08, there could be serious cuts in programs funded by HCRA absent action by the Governor and the State Legislature. GNYHA will continue to advocate on behalf of its members in the next legislative session on this issue as well as on State funding for health care programs in general. ■

## GNYHA and CCLC File Comments Opposing Increase in FHA Mortgage Insurance Premiums

**O**n July 28, 2006, GNYHA and its long term care affiliate, the Continuing Care Leadership Coalition (CCLC), submitted comments to the U.S. Department of Housing and Urban Development (HUD) opposing HUD's proposed 60% increase in premiums for hospitals and nursing homes seeking mortgage insurance through insured health care facility programs administered by HUD's Federal Housing Administration (FHA). GNYHA and CCLC stated that the proposed increase would unnecessarily and quite significantly add to the cost of FHA mortgage insurance, in turn undermining the purposes of the programs. The FHA's insured health care facility programs support community development and ensure access to health care by providing mortgage insurance for necessary capital projects. By design, the programs are intended to provide access to affordable capital for facilities that are not typically able to

obtain private bond insurance but that are able to meet the programs' underwriting tests. Many of GNYHA's members as well as providers across the country have been able to undertake needed building projects only through the purchase of FHA mortgage insurance, which, in turn, has enabled them to continue to care for their diverse, often underserved communities.

Although they are designed for providers that might not be able to obtain private insurance, the programs have successfully managed possible risks through their thorough underwriting process as well as ongoing monitoring by the FHA, the U.S. Department of Health and Human Services, and the FHA's various lending/issuing authorities, such as, in NYS, the Dormitory Authority of the State of New York. Thus, for example, no claim has been made under the hospital mortgage insurance program since 1999, and HUD has indicated that the program is oper-

ating on a financially self-sustaining basis. Given that the proposed increase is, from all appearances, primarily a general revenue-raising measure, GNYHA and CCLC strongly objected to it, as it would come at the expense of the very providers and patients that the programs are intended to benefit. In addition, increasing the premium would undermine the FHA's successful efforts to diversify and enhance its health care portfolio. One of the greatest benefits of the programs is the low cost associated with the insurance in order to provide access to affordable capital. The proposed increase will only diminish the attractiveness of the programs among the very facilities that the FHA might want to encourage to participate in the future.

Congress has also weighed in on this issue over the past month in an effort to keep the Administration from implementing such an increase. Specifically, Senators Chuck Hagel (R-Nebr.) and Evan Bayh (D-Ind.) and Representatives Gary Miller (R-Calif.) and Barney Frank (D-Mass.) have spearheaded "Dear Colleague" letters to HUD Secretary Alphonso Jackson and await the agency's response. ■

## Federal Court Strikes Down Maryland's "Wal-Mart" Law; Would Have Boosted Employee Health Care

Last month, a Federal judge in Baltimore overturned a landmark law that would have required Wal-Mart stores in Maryland to boost spending for employee health care. In his July 19 opinion, U.S. District Judge Frederick Motz ruled that the Maryland law violates the Federal Employee Retirement Income Security Act (ERISA), which preempts state laws related to employer-sponsored health plans. Maryland's Attorney General vowed to appeal the ruling to the 4th Circuit Court of Appeals in Richmond, Virginia, and lawmakers in Maryland who support the bill announced that they would rewrite the legislation to comply with ERISA if the appeal fails.

The Maryland Fair Share Health Care Fund Act requires companies with 10,000 or more employees in the State to spend at least 8% of worker payroll on health care or contribute to a fund that would offset the State's Medicaid expenditures. The legislation is often referred to as the "Wal-Mart bill" because Wal-Mart is the only large company in Maryland to which the requirement would apply. The law was passed in January 2006 after the Maryland Legislature overrode Governor Robert Ehrlich's veto.

The Retail Industry Leaders Association (RILA), a trade association representing companies in the retail industry, filed the lawsuit challenging the Maryland law. RILA also challenged legislation passed in Suffolk County, New York, requiring large grocery retailers to set aside \$3 per hour to fund health care costs for each employee. The U.S. District Court in Brooklyn, where the Suffolk County lawsuit was filed, has not yet rendered a decision on the case.

Judge Motz noted in his opinion that his ruling applies only to the Maryland law, and should not discourage other states—including Massachusetts, which enacted a universal coverage law this year—from serving as "laboratories for experiment" on health reform. ■

## Congress Eyes Medicare Cuts for Physician Fix

With physicians facing a 5.1% reimbursement cut in January, Congress has been exploring ways to put a "fix" into place. Essentially, it would cost nearly \$13 billion (over five years) just to keep payments in 2007 the same as they were in 2006. The House Energy & Commerce Health Subcommittee held two hearings at the end of July on physician payment before breaking for a month-long August recess. Congressman Michael Burgess (R-Tex.), a physician and member of the Energy & Commerce Committee, considered introducing a bill for the hearings that would contain a physician payment fix, but would fund it by freezing hospital inpatient and outpatient payments for fiscal year 2007 at a cost of \$4 billion in 2007 alone. Congressman

Burgess also considered freezing payments for skilled nursing facilities, rehab providers, and long term care facilities for three years. Following intense pressure from the hospital community prior to the hearing, the Congressman removed all the provider cuts in the bill he introduced (H.R. 5866). However, H.R. 5866 implements a Medicare physician payment "fix" and pays for it by cutting payments to Medicare Advantage (managed care) plans, including the portion of the Medicare Advantage premiums that are attributable to indirect graduate medical education (IME). Teaching hospitals currently receive payments directly from Medicare for IME and direct GME costs associated with Medicare Advantage enrollees. The House is expected to take up action on this bill later in the fall. ■

### LEGISLATIVE DIGEST

This week's Legislative Digest reports on a number of New York State bills that GNYHA has been monitoring closely.

**The following bills have become law in NYS:** **Power for Jobs.** S.8440/A.12013 extends provisions to make complete or partial electricity reimbursements and contract extensions available under the Power for Jobs program. • **Hospital Payments.** S.5728C/A.8840C allows hospitals to bill under the workers' compensation system for the costs of critically important implantable devices used in certain spinal surgeries, including spinal fusions. GNYHA strongly supports this bill. • **Westchester Hospital Reimbursements.** S.5656E/A.8846C designates Westchester County Health Care Corporation's general hospital as a regional medical center and provides for increased revenue by adjusting the Medicaid inpatient reimbursement rates. • **Blood Withdrawal.** S.7718A/A.10891A authorizes a physician assistant or nurse practitioner to supervise and direct blood withdrawal at the request of a police officer to determine alcohol or drug content. • **Hospital Protocol for Unnatural Deaths.** S.8082/A.11666 requires the Commissioner of Health to establish protocols for hospital employees when a person under age 18 dies during transportation to, or while at, the hospital, under circumstances other than those related to the natural course of illness. • **Emergency Medical Services for Children Act.** S.8238/A.10690A establishes the State Emergency Medical Services for Children Act, which provides for pediatric emergency medical, trauma, and disaster care to be available to all children in NYS. • **Organ Donation Program.** S.8312/A.9902B establishes an anatomical gift information program to promote public awareness of organ donation and adds organ and tissue donation to the items that the NYS Department of Health must include in its Health Care and Wellness Education and Outreach program. • **Health Care Claims.** S.8417/A.11996 relates to the processing of health care claims and overpayments to physicians.

**Gov. Pataki vetoed the following bills:** **Circulating OR Nurse.** S.5975A/A.7837B would have required that a registered qualified nurse be present in an operating room for the duration of the procedure. • **Patient Restraint.** S.6706A/A.9986A would have permitted a physician assistant under the supervision of a physician or nurse practitioner to authorize the use of patient restraints. • **Healthy New York/Labor-Management Benefit Fund.** S.8448/A.12014 would have established the Healthy New York/Labor-Management Benefit Fund demonstration program to explore the benefits of making Healthy New York stop-loss funds available to labor-management funds. • **Applicant Employer Information.** S.6682/A.10637 would have required certain public health care recipients to provide information about their employers. GNYHA strongly opposed S.6682/A.10637. • **Nurse Pension Bill.** S.7239A/A.10273A would have amended the administrative code of the City of New York and the retirement and social security law to confer "physically taxing" status on registered nurses and midwives employed by NYC or the NYC Health and Hospitals Corporation and provided for their early retirement. ■

# DOH and JCAHO Renew Collaborative Survey Agreement

The NYS Department of Health (DOH) and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) have renewed their collaborative survey agreement through March 2010. The agreement permits hospitals, diagnostic and treatment centers, and other

providers in NYS to voluntarily allow JCAHO's triennial accreditation survey process to satisfy DOH's routine on-site Article 28 survey requirements. The intent of the agreement is to streamline the survey process, avoid duplicative routine hospital surveys, and allow DOH to focus its surveillance efforts on a more responsive complaint investigation system. Over the years, the majority of hospitals in NYS have participated in the collaborative survey process.

The new agreement is substantially the same as the previous one with regard to pre-survey information sharing, JCAHO feedback to DOH, follow-up survey activities, and other administrative issues. However, it also defines, among other items, how the scheduling of JCAHO unannounced surveys will be communicated to DOH and details how information that DOH submits to JCAHO will be used during the survey process.

**Pre-Survey Information Sharing:** The 2006–10 agreement will continue to require DOH to share information about “identified systemic concerns” with JCAHO prior to a facility's triennial accreditation survey when a systemic problem has been identified and corrective action has not been completed, or when a stipulation and order to resolve a recent enforcement action has been signed.

**Feedback to DOH:** Following the accreditation survey, if an organization chooses to participate in the collaborative survey

process, JCAHO will submit the final accreditation reports to DOH at the same time the reports are given to the organization. Pursuant to its review of the reports, DOH will determine whether any follow-up survey activity is needed. Additionally, whenever JCAHO makes an initial determination of conditional accreditation, provisional accreditation, preliminary denial of accreditation, or accreditation denial based on the survey findings, it must notify DOH immediately.

**Public Disclosure:** In accordance with existing law and current practice, all JCAHO reports received by DOH will be subject to public disclosure.

**Follow-Up Surveys:** JCAHO will notify DOH when it determines that follow-up monitoring through an on-site focused survey is necessary. If DOH determines a need to conduct follow-up, on-site monitoring, it will collaborate with JCAHO “to the extent possible.” However, both JCAHO and DOH retain the right to conduct follow-up surveys independently, as they deem necessary.

DOH has requested that organizations choosing to participate in the 2006–10 collaborative survey agreement sign and return the authorization form included in the agreement to DOH by Aug. 31, 2006. For more information, contact Ruth Leslie at the DOH Division of Primary and Acute Care Services, (518) 402-1003, or Lorraine Ryan at GNYHA. ■

## GNYHA Briefs U.S. House Homeland Security Committee

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program has amounted roughly to only \$40,000–\$80,000 per year per institution. The Senate bill would not only continue to underfund hospitals, but would require hospitals to use the funding to prepare for all public health emergencies—including those related to hurricanes and pandemic influenza, as well as bioterrorist attacks—with the existing funding stream. GNYHA commented that, while an “all-hazards” approach to preparedness is appropriate, it is essential to significantly increase the funding that hospitals now receive solely for bioterrorism preparedness, in recognition of their increased responsibilities and obligations.

GNYHA also strongly urged House staffers to allocate bioterrorism funding on the basis of risk. Specifically, a House bill should require that hospitals in high-risk areas for bioterrorist attacks receive a proportional allocation of Federal resources. Among other concerns, GNYHA also urged liability protections for all credentialed volunteers deployed in response to a public health emergency, including Federal protections in terms of tort liability and workers compensation, as well as per diem and travel expenses. ■

## Medicare Proposes Outpatient Payment Increase for 2007

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ASCs. CMS estimates that the ASC payments would be set at 62% of the OPPS rate. Finally, in a proposal of concern to GNYHA, CMS would expand the list of procedures that an ASC could provide, adding many that are currently restricted to hospital settings. ■

**Louis A. Shapiro** has been appointed President and Chief Executive Officer of the Hospital for Special Surgery (HSS), effective this fall. Mr. Shapiro will succeed **John R. Reynolds**, who is stepping down after 20 years at HSS. Mr. Shapiro comes to HSS from Geisinger Health System in Danville, Pennsylvania, where he was Executive Vice President and Clinical Enterprise Chief Operating Officer. • Kaleida Health has named **Michael Nagowski** President of Buffalo General Hospital. Mr. Nagowski has been President of Kaleida Health's Millard Fillmore Gates Circle Hospital since May 2004. Prior to joining Kaleida Health, Mr. Nagowski was Chief Operating Officer of Erie County Medical Center, as well as Vice President of Hamot Medical Center in Erie, Pennsylvania. • **Scott Batulis** has been named Chief Executive Officer of Orange Regional Medical Center. Mr. Batulis comes to Orange Regional Medical Center from HealthEast Care System (St. Paul, Minnesota), where he had been since 1987 and most recently held the positions of Vice President of HealthEast Care System and Chief Executive Officer of St. Joseph's Hospital. • **Fred S. Sganga** has been named Interim Chief Executive Officer of Stony Brook University Medical Center. Mr. Sganga is also the Executive Director of the Long Island State Veterans Home at Stony Brook University and has held senior positions in health care administration for nearly 25 years. ■