



July 7, 2008

Skyline news

Reporting on New York's Health Care News

Update on Medical Malpractice Relief

Following significant negotiations involving many stakeholders, the New York State Legislature adjourned on June 24 without reaching agreement on a plan to provide New York's doctors and hospitals with relief from the high costs of medical malpractice coverage. The stalemate resulted in great part because, in exchange for any reforms, the New York State Trial Lawyers Association and the New York State Academy of Trial Lawyers demanded an increase in the statutory caps on the contingency fees that attorneys can be paid in medical malpractice actions, effectively requesting a doubling of the caps or "fee bands." The final outcome of the failed negotiation is that New York State doctors now face double-digit premium increases—in some cases, increases nearing 30%; hospitals are similarly facing coverage cost increases averaging 10% or more; many of the State's physician carriers as well as its Medical Malpractice Insurance Program (MMIP) face significant deficits; and any judicial process reforms under consideration have been dropped. The situation is so dire that State Insurance Superintendent Eric Dinallo announced on June 30 that he would postpone a decision on premium increases for physicians for the policy year beginning on July 1 pending further negotiations on a legislative package. Superintendent Dinallo indicated that physician premium increases, which are regulated by his Department, would be retroactive to July 1, once a decision is made on the magnitude.

Reform Proposals: Over the course of the last year and as a member of the New York State

Medical Malpractice Liability Task Force, GNYHA, on behalf of its members, had advocated for a number of proposals that would have reduced the costs of medical malpractice coverage while also ensuring fair compensation for patients injured as a result of adverse events. GNYHA had also advocated for a number of judicial reforms that would have discouraged non-meritorious claims and al-

lowed for the early resolution of meritorious ones. Similarly, the Medical Society of the State of New York (MSSNY) had advocated for reforms that would have reduced the cost of coverage for its members, focusing heavily on lowering the primary level of coverage required to be purchased in order for physicians to participate in the State's excess medi-

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Medicaid Moratoria Signed into Law; Medicare Legislation Stalls

On June 30, the President signed into law the Iraq war supplemental bill (PL 110-252) that included a key provision protecting public and teaching hospitals across the country from billions in losses. Specifically, the \$165 billion appropriations measure included moratoria until April 2009 on six of the seven damaging Medicaid regulations promulgated by the Centers for Medicare & Medicaid Services (CMS), including rules affecting graduate medical education and intergovernmental transfers. The measure had previously passed the House of Representatives on June 19 and was passed by the Senate on June 26.

However, one Medicaid regulation—the outpatient rule—remains in play and leaves New York State's public providers vulnerable to hundreds of millions of dollars in an-

nual losses. GNYHA continues to work with State and national partners to advocate for a moratorium on this remaining regulation, which was dropped from the spending bill in the final days of negotiations with the White House.

Medicare: Prior to breaking for the July 4th Congressional recess, the Senate again sought to pass Medicare legislation, but the measure stalled due to a failure to secure enough votes to allow the Senate to consider the bill. The Medicare legislation (H.R. 6331) would have protected physicians from a 10.6% Medicare payment cut that was scheduled to take effect on July 1, 2008. Introduced on June 20 by Ways & Means Committee Chairman Charles Rangel (D-NY) and Energy & Commerce Chairman John Dingell (D-MI), the measure

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NYS Legislature Adjourns, Leaves Much Unresolved

After weeks of painstaking negotiations on many health care-related policy proposals, the New York State Legislature adjourned on June 24 leaving many issues—including medical malpractice premium relief (*see story on page 1*)—unresolved. A few proposals passed the NYS Senate, including two bills designed to make it easier for hospitals and doctors to get claims paid by managed care plans. The first bill, A. 11737/S. 4481-A, had been the subject of intense negotiations between the Departments of Health and Insurance, GNYHA, HANYS, the Medical Society of the State of New York, the Health Plan Association, the Blue Cross/Blue Shield Plans, and consumer groups. It would, among other things, give providers the independent right to appeal to State reviewers adverse medical necessity determinations by health plans that came as a result of concurrent reviews. It would also allow for “provisional credentialing” of physicians after 90 days while a decision by health plans on credentialing is pending. The second bill, A. 11680-A/S. 8354-B, would reduce the number of days a plan has to pay a bill to a provider that submits a bill electronically. It also would allow the Insurance Department to regulate premium increases of plans that violate State medical loss ratio rules two years in a row. Unfortunately, the Assembly adjourned without acting on the bills. GNYHA will encourage the Assembly, if it returns later this year, to pass these bills, which enjoy strong support from Assembly members.

Other unfinished business: The NYS Legislature also left without taking any final action on several other health care-related bills, including measures to streamline HIV testing consent requirements and bills to re-authorize the ability of industrial development agencies, or IDAs, to finance projects for not-for-profit entities. The HIV measure got caught up in a debate between two competing bills, one by Assemblyman Richard Gottfried (A. 11461), which is supported by the State Department of Health and AIDS advocacy groups, and another by Assemblywoman Nettie Mayersohn (A. 4813-C/S. 7529-A), which is opposed by

the advocacy community. The IDA bills died due to a controversy over a requirement, supported by construction workers unions, that prevailing wages be used for any projects financed by an IDA.

Bills that passed: A few bills of interest to the health care community did pass the NYS Legislature; the following are headed to Governor Paterson for signature.

- A. 5505-B/S. 4019-A, which would make it an improper practice for a hospital to refuse to act on privileging or staff membership applications from nurse midwives;
- A. 5475-A/S. 4601-A, which would require parents visiting babies in neonatal intensive care units to be educated on where they can receive influenza vaccinations; and
- A. 11499/S. 8047-A, which would require boards of governors of not-for-profit entities regulated by the Office of Mental Health to have training in fiduciary responsibilities of board members and emergency preparedness issues. ■

Upcoming GNYHA Member Briefings

Clinical Research Briefing

Date: Monday, July 14, 2008

Time: 2:00 p.m.–4:00 p.m.

Location: GNYHA Boardroom
555 West 57th Street, 15 Floor

On Monday, July 14, 2008, GNYHA will hold a briefing on clinical research issues that include compliant clinical research billing and effective Medicare coverage analyses. The briefing will be led by Lisa Murtha, Managing Director, Clinical Research Services and Healthcare Compliance at Huron Consulting Group, and Linda Malek, Chair of the Healthcare practice group at Moses & Singer. Both presenters work on a variety of issues that arise in the clinical research context and bring valuable insight. For more information, contact Deborah Brown or Rebecca Urbach. To register for the briefing, email Laurie Sangirardi at sangirardi@gnyha.org. ■

GNYHA Hosts Compliance Conference

On June 24, GNYHA hosted an all-day conference, “*Enhancing Compliance Programs: Fostering Organizational Excellence*,” which examined a range of topics critical to the ongoing State and national movement toward an expanded model and scope of organizational compliance programs. Significantly, the conference also kicked off GNYHA’s new collaborative effort to implement this new model of compliance expected to be outlined in the forthcoming New York State Office of the Medicaid Inspector General (NYS OMIG) Compliance Guidance.

GNYHA developed the conference in response to member requests, and nearly 120 compliance officers, attorneys, finance officers, quality managers, and other related professionals participated in the program, which included presentations on risk area triage; work plan development; responses to non-compliance and other organizational challenges; integration of quality and compliance; metrics and board reporting; expansion of existing compliance programs; and establishment of goals for organizational excellence.

In addition, conference participants had the opportunity to respond to GNYHA’s Compliance and Organizational Excellence Survey, which will allow GNYHA staff to update local benchmarks on the composition and objectives of member compliance programs. Finally, GNYHA members were informed of two developing subject-matter workgroups, one that will explore conflicts of interests and one that will endeavor to generate an effective risk assessment tool.

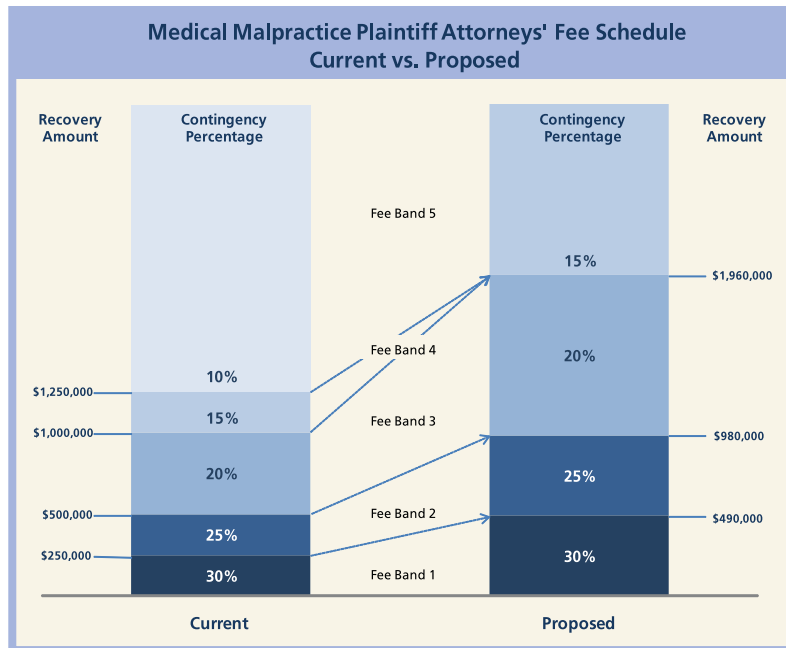
GNYHA members who were unable to attend the conference may access the conference materials and the Compliance Survey on the Compliance section of the GNYHA Web site. If you have questions about the substance of the Conference or GNYHA’s next steps in this area, please contact Deborah Brown at brown@gnyha.org. ■

cal malpractice fund as well as reducing the MMIP deficit, which is carried pro rata on the books of the few NYS-regulated carriers writing physician coverage in NYS.

Attorney Fee Proposal: The sudden change in New York State’s Executive Branch with only weeks before the budget deadline and only three months to go in the legislative session gave the new Paterson Administration very little time to negotiate many of the complex

der the proposed fees, they would receive 30% of the first \$490,000—or \$147,000—and so forth (see chart). Med mal insurance experts calculated that the aforementioned changes to the contingency fee schedule as proposed by the plaintiff attorneys would result in a 15-20% increase in coverage costs for hospitals statewide, stemming from three phenomena:

1) the need for increased recoveries in order to both pay the plaintiff attorneys the increased fees and allow the plaintiffs to “take home” the same amounts as they do under current caps;



med mal reforms under consideration this year. Governor Paterson, however, made clear that financial relief for doctors and their insurers as well as some degree of premium support for hospitals was a goal he strongly supported. The plaintiff attorney groups took the position, however, that they would not agree to the physician relief unless the plaintiff attorneys gained increases in their contingency fee schedule. Specifically, the plaintiff attorneys requested that the fee schedule be adjusted to account for inflation increases retroactive to 1986, which would have resulted in a doubling of all of the fee bands for calculating attorney fees. In addition, the attorneys proposed to eliminate the top band such that the schedule would permit the attorneys to earn 15% of all recoveries over a certain amount rather than the current cap of 10% of recoveries over the schedule’s top band. For example, under the current fee schedule, attorneys receive 30% of the first \$250,000—or \$75,000—whereas un-

der the proposed fees, they would receive 30% of the first \$490,000—or \$147,000—and so forth (see chart). Med mal insurance experts calculated that the aforementioned changes to the contingency fee schedule as proposed by the plaintiff attorneys would result in a 15-20% increase in coverage costs for hospitals statewide, stemming from three phenomena:

2) an anticipated overall increase in the size of recoveries due to the built-in incentives for plaintiff attorneys to aim for ever larger recoveries, at the very time that the severity of claims is already increasing; and 3) an anticipated increase in the frequency of claims because of the increased fees available, at a time when the frequency of claims is flattening or decreasing, in great part due to successful patient safety and other initiatives.

No Deal: When weighing the projected premium impact of the contingency fee proposal against the proposed relief package, GNYHA found that the plaintiff attorneys’ proposal would cost hospitals and physicians more over time than expected premium increases without the relief package. Therefore, GNYHA was forced to oppose the fee adjustment proposed by the plaintiff attorneys and, because the attorneys vowed to oppose any package that did not increase their fees, there was no agreement before the Legislature adjourned. Given the ramifications of this issue on health care access, GNYHA will continue to work diligently with both the Executive and the Legislature to try to obtain passage of meaningful reforms in the coming months. ■

CCLC Comments on CMS SNF PPS Proposal

On June 30, the Continuing Care Leadership Coalition (CCLC), GNYHA’s long term care affiliate, sent a letter to the Centers for Medicare & Medicaid Services (CMS) officially commenting on CMS’s proposed rule for the skilled nursing facility (SNF) prospective payment system (PPS) for fiscal year 2009. In its submission, CCLC expressed serious concerns about two provisions in particular: a proposed recalibration in the case mix indices and the lack of a concrete proposal to address the issue of fair and adequate reimbursement for ventilator services.

Case Mix: CCLC’s letter strongly opposes a CMS plan to recalibrate the case mix weights for the 53 Resource Utilization Group (RUG) categories, which will reduce payments to SNFs by \$770 million nationally (an overall reduction of 3.3%). An analysis by CCLC found that providers in New York State would sustain a disproportionate impact, seeing Medicare payments cut by 3.8%. CCLC’s comments also stress that facilities in New York State—48% of which already incur operating losses—are not in a position to absorb further potential losses.

Ventilator Services: CCLC also expressed deep concern that CMS did not address payment rates for ventilator services in the proposed rule. CCLC stressed that the lack of a fair payment system is forcing providers to discontinue providing crucial ventilator services, jeopardizing patient access to ventilator care. The comment letter also cites a survey of CCLC member facilities, which found that payment shortfalls result in losses of approximately \$295 per patient per day among facilities that provide ventilator care. The comments also highlight the fact that the Medicare Payment Advisory Commission (MedPAC) has called for payments to be better targeted “for stays with unusually high costs – including those patients who require ventilator care.” CCLC will continue to advocate for the resolution of these issues in the final SNF PPS rule, which is expected in September 2008. ■

Era Ends as NYS Senator Joseph Bruno Announces Retirement

Just as the regular 2008 New York State legislative session drew to a close, Senate Majority Leader Joseph L. Bruno (R-Rensselaer), who had been the Leader since the early days of the Pataki Administration, stunned his colleagues by announcing that he would not seek re-election in November. Senator Bruno was first elected to the Senate in 1976 and has been a consistent stalwart in fighting for New York's health care providers and patients, using his considerable influence to protect the health care community from repeated attempts at damaging funding cuts. In 2006, the GNYHA membership recognized Senator Bruno by giving him the "Award of Merit," an honor presented to an individual who has demonstrated

strong support for critical issues affecting the delivery of health care services in New York State. GNYHA congratulates Senator Bruno for his years of service and is grateful for his longstanding commitment to protecting and advancing the health care of all New Yorkers. ■



Senator Bruno speaking at the 2006 GNYHA Reception and Awards Ceremony.

Medicaid, Medicare *continued*

passed the House by an overwhelming majority (355-59) on June 24, despite a veto threat from the White House. While the Senate originally planned on taking up its own Medicare legislation, leadership decided to consider the House measure in an effort to expedite sending a bill to the President. But after the vote fell short, Senate Majority Leader Reid (D-NV) announced on June 27 that the Senate would again consider the Medicare bill shortly after the chamber returns from recess. The Senate is expected to bring the identical measure (H.R. 6331) to the floor once again for a vote. Significantly, the bill does not protect teaching hospitals from the elimination of the capital indirect medical education (IME) payment adjustment proposed by CMS in the FY 2009 inpatient prospective payment system (IPPS) rule, nor does the bill include any clarification of how teaching hospitals may account for so-called didactic time when determining the number of full-time residents for Medicare reimbursement purposes. GNYHA will continue to advocate for legislative resolutions to both of these issues. In the interim, CMS has instructed its contractors to hold the processing of physician claims for 10 business days, presumably to allow Congress enough time to pass legislation on the physician payment adjustment. ■

COGME Establishes New Work Groups

The New York State Council on Graduate Medical Education (COGME) met on June 16 to review the "Doctors Across New York" (DANY) program, which was included as part of the 2008 State budget agreement, and to establish the charges and timelines for work groups to advise the NYS Department of Health (DOH) on specific GME program implementation issues. COGME has set up four work groups to provide recommendations to DOH on specific issues associated with provisions of the DANY program.

The Transparency and Accountability Work Group will advise DOH on the format of a new annual institutional GME budget document that NYS teaching hospitals must submit beginning in February 2009. The Ambulatory Care Training Work Group will advise DOH on the objectives and criteria to be included in a request for applications (RFA) that will be used to provide funding for enhanced ambulatory residency training in community-based settings. The Ambulatory Care Quality and Performance Standards Work Group will advise DOH on draft Medicaid primary care standards that were released in early June.

The GME Innovations Pool Work Group will advise DOH on program criteria and objectives to be incorporated into an RFA that will be used to provide funding through the new GME innovations pool. GNYHA will be participating in work group discussions and plans to provide separate recommendations on all of the relevant provisions. ■

AROUND

Responding to the June 23 retirement announcement from Senate Majority Leader Joseph Bruno (R-Rensselaer) (see related story above), Senate Republicans chose **Senator Dean Skelos (R-Nassau)** to serve as Majority Leader for the rest of this year. Traditionally, after elections, the newly elected Senators pick their leaders for the next legislative session, which, in this case, will begin in January 2009. For a biography of Senator Skelos, please visit his Web site at www.senatordean-skelos.org. • **Top Aide Leaving Paterson Administration** • On June 24, Governor David A. Paterson announced that **Paul Francis**, currently one of the most powerful State officials, would leave his post of Director of State Operations. Mr. Francis was a close aide to former Governor Eliot Spitzer, and agreed to stay on during the transition period following Governor Spitzer's resignation in March. The Governor has not yet announced a replacement. ■