



August 4, 2008

# Skyline news

Reporting on New York's Health Care News

## With Deficit Growing, Governor Paterson Calls for Special Legislative Session

### Calls for Unspecified Cuts to "Our Health Care Facilities"

**O**n July 29, New York Governor David Paterson announced in a televised speech that he is calling the State Legislature back to Albany on August 19 for a "special economic session" to address the worsening State budget picture. During his speech, Paterson announced that the current year's

budget is now running a deficit of \$630 million and the projected deficit for SFY 2009-10 had increased by 28% in just two months from \$5 billion in May to \$6.4 billion. Further, the Governor said that barring legislative action, the three year budget deficit projection would grow from \$21.5 billion to \$26.2 billion. (See

chart, page 3.)

The following morning, the Governor offered more details in a televised press briefing, which coincided with the release of the Division of Budget's (DOB) 2008-09 Financial Plan First Quarterly Update. The Governor noted that the State's growing deficit is large-

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## Congress Weighs In on Capital IME Cuts

**L**ast week, both houses of Congress sent letters to the Centers for Medicare & Medicaid Services (CMS) advocating against a policy that would slash teaching hospitals' Medicare capital payments by phasing out the indirect medical education (IME) adjustment. The House letter, spearheaded by Rep. Jim Marshall (D-GA) and longtime teaching hospital advocate Rep. Peter King (R-NY), was signed by 210 House lawmakers, including more than 40 Republicans. The Senate letter, championed by New York Senators Charles Schumer and

Hillary Clinton, with Senator Arlen Specter of Pennsylvania serving as the Republican lead, had 51 signatures, including 11 Republicans.

GNYHA worked with the Association of American Medical Colleges and the American Hospital Association to draft the aforementioned letters and to gain the groundswell of support reflected by the number of signatories. As previously noted, Ways & Means Chairman Charles Rangel (D-NY), working with GNYHA, sent in his own letter on capital IME payments last month as part

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## CMS Finalizes Teaching Hospital Cut, Expands Quality Reporting Requirements

**O**n July 31, the Centers for Medicare & Medicaid Services (CMS) released the Medicare inpatient prospective payment system (PPS) final rule for Federal FY 2009. As expected, CMS chose to move forward with its plan to cut teaching hospitals' Medicare capital payments by phasing out the indirect medical education (IME) adjustment, despite recent bipartisan letters from both houses of Congress protesting the policy (see related story at left). CMS also will go forward with a new policy under which higher payments to hospitals from the so-called rural floor will be financed solely

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## DOH Releases HEAL NY Phase 9 RGA

The New York State Department of Health (DOH) recently released a request for grant applications (RGA) under Phase 9 of the Healthcare Efficiency and Accountability Law for New Yorkers (HEAL NY) for organizations to conduct projects that support local health planning. Up to \$6 million will be awarded through this RGA, with \$2 million targeted for New York City and \$4 million targeted for the rest of the State. Entities eligible to apply for funding include not-for-profit corporations, local governments, and pub-

lic benefit corporations. Applications are due on September 17, 2008.

Two categories of grants will be awarded. Up to \$2 million will be awarded for small projects, of which New York City planning projects will be eligible for up to \$700,000 and planning projects in the rest of the State will be eligible for up to \$1.3 million. The total award for any individual project in this category will not exceed \$200,000. Up to \$4 million will be awarded for large projects, of which New York City planning projects will be eligible for up to \$1.3 mil-

lion and planning projects in the rest of the State will be eligible for up to \$2.7 million. The total award for any individual project in this category will be more than \$200,000 but will not exceed \$1 million.

Grantees are expected to assess aspects of the local health care environment relevant to the issue or issues to be addressed through the planning process. The community health assessment is expected to be supported by an analysis of objective data and should result in a set of priorities and recommendations concerning the configuration of services and allocation of resources. The RGA is available at <http://www.health.state.ny.us/funding/rfa/0806061239>. ■

## Health Committee Holds State Medicaid Relief Hearing

The House Energy & Commerce Health Subcommittee held a hearing on July 22 entitled, "State Fiscal Relief: Protecting Health Coverage in an Economic Downturn." The hearing highlighted legislation (H.R. 5268), which was introduced by Subcommittee Chairman Frank Pallone (D-NJ) along with full Committee Chairman John Dingell (D-MI) and New York Republican Representatives Peter King and Tom Reynolds. The measure would increase the Federal medical assistance percentage (FMAP)—or a state's Medicaid matching rate—by 2.95 percentage points for five quarters. Chairman Dingell has predicted that the measure will pass as part of a second \$50 billion economic stimulus package "before the fall."

With New York State facing a \$6.4 billion budget deficit next year (see story, page 1), increasing the FMAP is one of Governor Paterson's top legislative priorities. To this end, the Governor on July 18 sent a letter to the leadership of both the House of Representatives and the Senate underscoring the importance of providing this critical relief to states across the country. In his letter, Paterson wrote, "A temporary boost in Medicaid (FMAP) to prevent further cuts to health care and other essential services would provide immediate fiscal relief to New York and other states." The Governor trav-

eled to Washington on July 31 to press for an FMAP increase, among other legislative priorities. A similar economic stimulus measure spearheaded by Rep. Peter King (R-NY) was signed into law in 2003 increasing state FMAP rates by 2.95% for 15 months.

In addition to relieving the financial pressure on states, H.R. 5268 would provide a temporary increase of 5.9% for territories. H.R. 5268 has 130 cosponsors to date; a companion bill has been introduced in the Senate

(S. 2620) upon which action had been similarly expected following the August recess. However, when the Senate Appropriations Committee released details of its economic stimulus package last Wednesday, it did not include the FMAP provision. GNYHA, along with The Healthcare Education Project, a partnership between GNYHA and 1199SEIU/United Healthcare Workers East, will continue to urge Congress to provide this critical relief to states. ■

## HRSA to Issue New Rule on Medically Underserved Areas

On July 23, the U.S. Health Resources and Services Administration (HRSA) announced that it will issue a new proposed rule on modifying the methodology for designations of health professional shortage areas and medically underserved populations. HRSA had issued a proposed rule in February 2008 that modified the methodology to be used for these two Federal programs. Among the changes that HRSA had proposed was the creation of a "tiering system" for designation where- by HRSA would specify levels of shortage

within a community. Many comments, including those submitted by GNYHA, noted that it was not clear from the proposed new methodology what the impact of the change would be since many other Federal programs use the current designation system and HRSA did not specify how these other agencies might be expected to adopt the proposed tiering system. According to HRSA, it received many comments on its proposed rule and will need to make a number of substantive changes. As a result, the agency decided to issue another proposed rule in lieu of issuing a final rule that adopts any new methodology. ■

# State Begins Drafting Clinical Lab Regulations

In light of recent amendments to New York State's Clinical Laboratory Technology Practice Act (Act), the State Education Department, Office of the Professions (SED) has begun the process of promulgating related regulations and recently created a Question and Answer (Q&A) page on its Web site. GNYHA had advocated for the amendments and is participating in the rulemaking process.

**The Act, Amended:** Enacted in 2005, the Act defines the practice of clinical laboratory technology and requires the licensure or certification of certain laboratory personnel. On July 7, Governor Paterson signed into law amendments to the Act, which address the State's lab personnel shortage by adding a new profession of certified histological technician, establishing new licensure types (limited licenses and restricted licenses) within the clinical laboratory technology professions, and providing changes to the "grandparenting" provisions to address some unintended consequences following the implementation of the Act.

**Regulatory Process:** The amendments take effect on August 7, 2008. They cannot, however, be fully implemented until regulations are written and approved by the Board of Regents, which is expected to occur in September 2008. SED has indicated that following Board of Regents approval, the regulations will be sent to the New York Department of State and published in the State Register pursuant to a Notice of Emergency Adoption and Proposed Rulemaking for public comment.

**Question and Answer Page:** To explain the new types of licensure and certification process as amended, SED has added a Q&A section to its Web site. The Q&As clarify that applicants with letters from SED authorizing them to work until September 1, 2008, or who await application approval by SED, will automatically receive a new letter allowing them to work until July 1, 2009. The Act, as now amended, and the Q&As can be accessed on the SED's Web site at: <http://www.op.nysed.gov>. Contact Rebecca Urbach at GNYHA with questions. ■

## Capital IME *continued*

of the FY 2009 proposed inpatient prospective payment system (IPPS) regulation comment period. Hence, every member of the New York delegation has officially weighed in with the Administration on this important issue.

Over the past few months, GNYHA has met with key Congressional leaders, Committee staff, and Democratic leadership staff on Capitol Hill urging a legislative resolution to the capital IME cut and has encouraged heavily impacted institutions across the country to weigh in directly with their legislators. In addition, the GNYHA/1199 SEIU

Healthcare Education Project placed a full-page ad in the *New York Times* on August 4 and *Washington Post* on August 5 (see graphic, page 1). The ad will also run in upcoming issues of *Time*, *Newsweek*, *Roll Call*, *The Hill*, and *National Journal*.

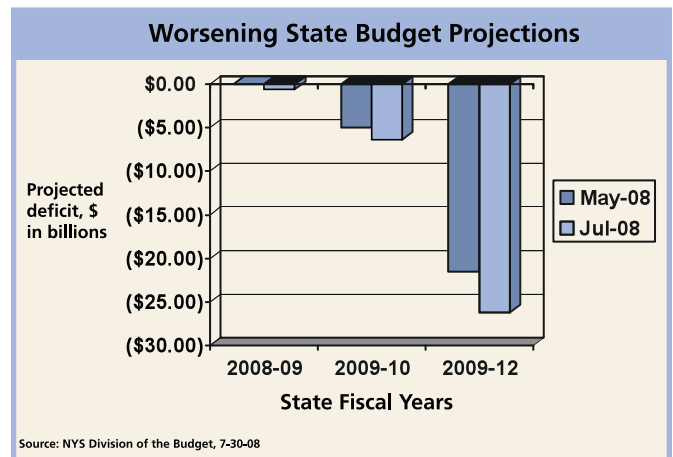
Despite clear Congressional intent expressed in these letters, CMS did not remove this harmful policy from the final FY 2009 IPPS regulation, which went on display on July 31. (see IPPS story, page 1) GNYHA will continue to work with national and State partners to press for statutory relief in the form of a moratorium to be added as an amendment to an appropriate legislative vehicle moving through Congress this fall. ■

## Special Legislative Session *continued*

ly attributed to a reduction in revenue due to the slowing economy and distress within the financial services industry. In addition, DOB now projects much lower revenue than previously expected from the conversion of not-for-profit health plans to publicly traded corporations (e.g., HIP/GHI), causing a projected deficit in the Health Care Reform Act or "HCRA" accounts starting in the next State fiscal year.

The Governor said that he will take immediate administrative action to cut spending in an attempt to close the current year's \$630 million budget gap, starting with a 7% cut in State agency spending (over and above a 3.35% cut already achieved earlier this year) and a hard hiring freeze, under which all new hires would have to be approved by DOB. According to the Governor, these administrative actions, which do not need the Legislature's approval, would keep this year's budget in balance. Further, the Governor announced that he is developing a legislative proposal to cut another \$600 million—an attempt to get a "head start" on closing next year's budget deficit. Although the Governor does not have a detailed legislative proposal at this time, he said

that he would like to work with budget stakeholders to come up with a plan to share with the Legislature prior to the Special Session on August 19. In a speech on July 31 at the National Press Club, the Governor said, "I don't have to tell State officials the areas that we're obviously going to have to cut. They're going to be the areas where we spend a lot of money—our education system...our health care facilities." GNYHA is coordinating with the Governor, legislative leaders, union leadership, hospital and nursing home associations, and the Congressional delegation to help find possible solutions to deal with next year's budget deficit, which could include Federal legislation (H.R. 5268) currently under consideration that would increase the Federal Medicaid matching rate, or "FMAP," by 2.95% (for more on the FMAP legislation, see story, page 2). ■



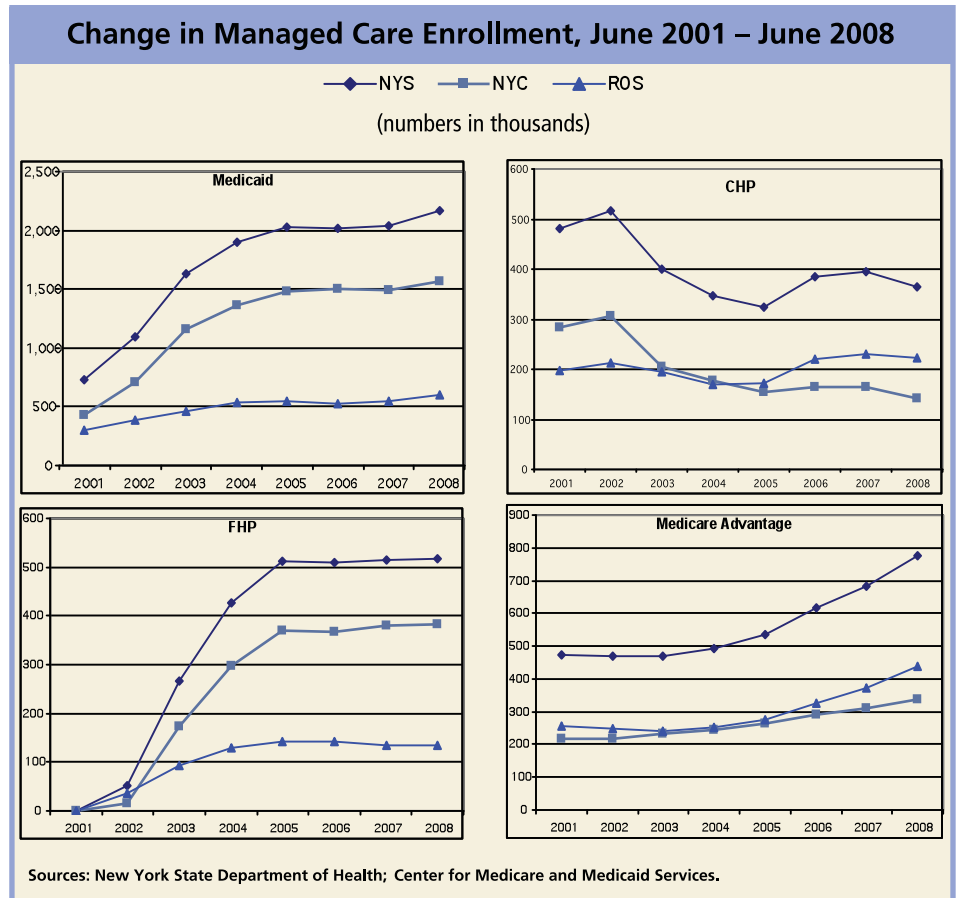
# Medicaid Managed Care Enrollment Triples Since 2001

From 2001 through 2008, New York's Medicaid managed care enrollment tripled, increasing from just over 729,000 to approximately 2.2 million enrollees. Most of the growth occurred between 2001–2004, before leveling off, and then beginning to grow again over the last year. The early growth spurt can largely be attributed to the implementation of mandatory enrollment in New York City. The most recent growth spurt is due largely to mandatory enrollment of the SSI population which began in 2006 and the implementation of mandatory enrollment in a number of upstate counties. Enrollment in NYC as of July 2008 was 1.6 million, and 603,000 in the rest of New York State.

Since 2001, Child Health Plus (CHP) enrollment is down 24% across the State, down 50% in NYC, but up 12% in the rest of the State. Recent figures show a rebound within the last three months of 2008, for a total enrollment of more than 365,000 enrollees in NYS: 143,000 in NYC and 222,000 in the rest of the State.

Family Health Plus began enrollment in late 2001 and very quickly grew to more than 512,000 members by 2005. Enrollment has been relatively flat since then with some monthly fluctuation. July 2008 FHP enrollment was 518,000, with 384,000 in NYC and 134,000 in the rest of the State.

Since passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Medicare managed care



(now known as Medicare Advantage) enrollment has grown significantly at both national and local levels. Enrollment has grown to more than 775,000 in New York State as of July 2008, increasing by almost 100,000 (14%) in the last year alone. Since 2001, Medicare

Advantage enrollment grew by 64% in the State, with most of that growth occurring since 2004. Medicare advantage enrollment grew by 56% in NYC to more than 337,000 members, and by 70% in the rest of the State to more than 437,000 enrollees. ■

## CMS Finalizes Teaching Hospital Cut *continued*

through wage index adjustments to hospitals in that state. This policy will be phased in over three years. The final rule also adds 13 of the 43 measures that had been proposed for inclusion in the Reporting Hospital Quality Data for Annual Hospital Payment Update program, while dropping one existing measure. The additional measures relate to surgical care improvement project (SCIP), nursing, readmissions, and Agency for Healthcare Research and Quality Inpatient Quality Indicators and

Patient Safety Indicators. CMS will also require participation in a cardiac surgery database. Measures other than the new SCIP measure will not require original data submission by the hospitals. In total, CMS will require reporting on 42 measures during 2009 for hospitals to receive the full market basket update in 2010, up from the current 30. In the area of hospital-acquired conditions (HACs) for which hospitals will no longer receive a higher payment rate, CMS expanded the definition of surgical

site infections to include certain orthopedic procedures and bariatric surgery. CMS also finalized these additional HACs: Deep vein thrombosis/pulmonary embolism following certain hip and knee replacement surgeries; and five separate manifestations of poor glycemic control. The inpatient rule is available at <http://www.cms.hhs.gov/AcuteInpatientPPS/IPPS/list.asp>. GNYHA is in the process of reviewing the rule and will provide additional information in coming days. ■