



February 9, 2009

# Skyline news

Reporting on New York's Health Care News

## NYS Legislature Approves Deficit Reduction Plan

**O**n February 3, Governor David A. Paterson and the New York State Legislature reached agreement on a deficit reduction plan (DRP) to balance the current year State budget, which Governor Paterson projected was running a deficit of \$1.6 billion, and also to reduce the State fiscal year (SFY) 2009-10 deficit by \$800 mil-

lion. The State Senate and Assembly passed the DRP shortly after the agreement was announced. Due to the DRP, the deficit for SFY 2009-10 was reduced from approximately \$13.8 billion to roughly \$13 billion, still a huge deficit by historical standards. SFY 2009-10 begins on April 1, 2009. Governor Paterson hailed the agreement, but described it as just a first step. "While I applaud the Legislature for working with me to take the prudent and responsible actions necessary to close this year's deficit, I know that we all recognize an even greater task awaits us in the weeks ahead," he said. "Addressing next year's \$13 billion deficit will require us to make more tough choices. But today's agreement demonstrates that we

are united in our commitment to meet the challenges ahead." The deadline for passing a budget for SFY 2009-10 is March 31, though Governor Paterson is urging lawmakers to come to an agreement earlier.

**DRP Specifics:** The DRP cut spending and raised taxes in a variety of areas of the State budget, including health care, though GNYHA is deeply grateful to Assembly Speaker Sheldon Silver and Senate Majority Leader Malcolm Smith for honoring their commitment to keep the health care provider actions to a minimum. The State Division of the Budget (DOB) estimates that the health care portions of the DRP will provide the

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## GNYHA Testifies on SFY 09-10 Budget

**O**n February 2, GNYHA President Kenneth E. Raske testified on the SFY 2009-10 Executive Health Care Budget at the Joint Hearing of the New York State Assembly Committee on Ways and Means and Senate Committee on Finance. In his testimony, Mr. Raske asserted that while closing the State's unprecedented \$15 billion budget deficit will require great sacrifice, the Legislature should not allow any sector to give less than its "fair share." He also noted that no opportunity should be left unexplored and suggested that the State look to new, broad based revenue raisers, as well as managed care

*continued on page 2*

## HEP Launches "Protect Healthcare" Campaign

**A**t a press conference in Albany on February 2, the Healthcare Education Project, a joint initiative of GNYHA and 1199 SEIU United Healthcare Workers East, launched a comprehensive campaign to educate New Yorkers about the hugely destructive effect Governor Paterson's proposed health care cuts—including \$2 billion in cuts to hospitals, nursing homes, and home health—would have on patients and communities across New York State. The "Protect

Healthcare" campaign kicked off with a 30-second television ad that is airing statewide, and includes radio ads, direct mail to more than a million households, tens of thousands of patch-



## UPCOMING GNYHA MEMBER BRIEFINGS

### HIPAA Privacy and Security Workgroup Meeting

**Date:** Friday, February 20, 2009

**Time:** 2:00 p.m.– 4:00 p.m.

**Location:** GNYHA Board Room

On February 20, 2009, GNYHA will convene a joint meeting of its HIPAA Privacy and Security Workgroups. The meeting will feature a presentation by Fernando Morales, Assistant Regional Counsel, U.S. Department of Health and Human Services. Mr. Morales' presentation will include: Office for Civil Rights objectives and enforcement trends with respect to HIPAA and an overview of privacy provisions in the Patient Safety and Quality Improvement Act. We will also provide members with an update on health information technology provisions included in the Federal economic stimulus plan, including provisions related to privacy and security of electronic health records. For more information, please contact Rebecca Urbach ([rurbach@gnyha.org](mailto:rurbach@gnyha.org) or 212-258-5389) or Zeynep Sumer ([zsumer@gnyha.org](mailto:zsumer@gnyha.org) or 212-258-5315). To RSVP, please contact Laurie Sangirardi ([sangirardi@gnyha.org](mailto:sangirardi@gnyha.org)). ■

### Health Information Tool for Empowerment (HITE) Training Program

**Date:** Thursday, February 26, 2009

**Time:** 10:00 a.m.–12:00 noon

**Location:** GNYHA Conference Center

GNYHA will conduct a training session for members on how to effectively utilize the Health Information Tool for Empowerment (HITE), a comprehensive database of free and low-cost health and social services. Sponsored by the GNYHA Foundation, HITE focuses on providing information on resources for uninsured, underinsured, and low-income individuals. The training will be customized to assist health care professionals—such as social workers, discharge planners, and community health care associates—in identifying health and social services for their clients. Attendees will be provided with a detailed review of the site, advanced search instructions, case studies, relevant practice searches, and informational materials. To register for this program, please contact Francesca Padilla by telephone at (212) 506-5528 or by e-mail ([fpadilla@gnyha.org](mailto:fpadilla@gnyha.org)). ■

## GNYHA Testifies on SFY 09-10 Budget *continued*

and medical malpractice insurance reforms as components to a comprehensive budget.

**5-5-5** Mr. Raske promoted GNYHA's "5-5-5" plan, which assumes at least \$5 billion in relief through an increase in the Federal Medicaid matching rate; \$5 billion in new domestic sources of revenue; and \$5 billion in State actions, including proportionate cuts across all sectors and use of rainy day funds and other reserves. He encouraged the State to wait for the outcome of the Federal stimulus package before moving ahead with provider cuts.

**Rebasing** Mr. Raske also warned of the dangers of implementing the State's Medicaid rebasing proposal while simultaneously making other health care cuts. Noting that the rebasing proposal was laudable in theory, Mr. Raske said that the plan has methodological inaccuracies and would redistribute huge amounts of money—taking money out of the same hospitals that will be disproportionately impacted by the Governor's proposed straight Medicaid cuts and taxes. In testimony, Mr. Raske wrote, "*It appears that State government is operating on two separate, disconnected tracks... And no one is considering the real impacts of the big picture deficit reduction plan on health care providers, their workers, and the patients they serve.*"

**GME** Mr. Raske also touched on the Executive's plan to eliminate the HCRA pool

for graduate medical education (GME), noting that physician training is a key New York State industry. The Governor's proposal would redistribute the money from teaching hospitals to fund charity care. Notably, the Governor's proposal would absolve private payers from paying their fair share of GME costs, which GNYHA maintains is a critical public policy goal.

**Long Term Care** Continuing Care Leadership Coalition (CCLC) President Scott Amrhein also testified at the Joint Hearing, underscoring the moral imperative of preserving access to quality long term care services in New York State. Mr. Amrhein stressed that the advancements made in long term care quality would be at serious risk as the financial condition of New York's nursing homes and home health agencies worsens. The testimony also leveled strong criticism at the Governor's proposed nursing home reimbursement methodology "reform" proposal, noting that the proposal would "create unnecessary chaos in the long term care reimbursement system, and unnecessary financial stress that will undermine organizations, and threaten patient care."

While the Legislature last week agreed on a deficit reduction plan (DRP) to close the current year budget gap (see story page 1), GNYHA and CCLC will continue to work with the Executive and Legislature to find a budget solution that protects health care providers, patients, and residents. ■

## "Protect Healthcare" Campaign *continued*

through calls to legislators, statewide door-to-door canvassing, and a Web site, [www.protecthealthcare.com](http://www.protecthealthcare.com). The press conference and



campaign launch—which the *New York Times* covered in an exclu-

sive story on February 2—was covered the next day by the *Daily News*, *New York Post*, *Newsday*, *Buffalo News*, *New York Observer*, Gannett newspapers, and New York public radio. The press conference featured GNYHA President Kenneth E. Raske and 1199 SEIU Political Director Kevin Finnegan. Two additional ads launched on February 9. To view any of the HEP television spots, visit the "Protect Healthcare" Web site or [www.gnyha.org](http://www.gnyha.org). ■

# Cigna to Terminate Operations in NYS

The New York State Department of Health has given approval for Cigna Healthcare of New York to terminate its article 44 HMO operating license as of January 1, 2009. Despite the approval, a Certificate of Authority has not yet been granted, but a process for dissolution of operations in New York State has been put in place. Cigna will no longer seek new HMO members, will not renew existing HMO member policies, and will facilitate the transfer of HMO members by December 31, 2009. Since the insurer

only has one year to complete this process and is required by law to notify current members at least six months before termination of services, Cigna has begun sending notification letters. As accounts come up for renewal, employers will have the option of switching to a non-HMO Cigna product or enrolling with another carrier.

Cigna will operate as a certified HMO throughout 2009—meaning that for members with policies and providers with contracts, the plan will conduct “business as usual” regarding

claim processing, payments, authorizations, member calls and problems, etc. Unless renegotiated, current contracts with providers will remain in effect at current terms until those contracts expire. Out-of-network services will be managed and reimbursed according to current policies, procedures, and rates. For two years beginning January 1, 2010, Cigna will continue to process claims, make payments and handle appeals for services rendered to HMO members prior to the December 31, 2009, termination date. ■

## Deficit Reduction *continued*

State with \$359 million in savings and new revenue in this fiscal year and \$386 million in 2009–10. For all health care providers, the DRP completes implementation of the elimination of the retroactive reconciliation of the 2008 Medicaid trend factor, which was part of the deficit reduction agreement in the Special Session in August, for a savings of \$69.6 million in SFY 2009–10 (see chart 1). In addition, the DRP delays Medicaid nursing home rebasing, which was to take effect in January, until April 1, 2009. It also cuts grants to public hospitals and nursing homes for workforce recruitment and retention.

**Payer Taxes:** For insurers, the DRP increases the covered lives tax by \$120 million in SFY 2008–09 and annually thereafter; shifts funding for the HMO Direct Pay program, which subsidizes premiums for individuals who purchase coverage directly from HMOs, to assessments on insurers; and also shifts funding for the Healthy NY program, which helps small businesses and individuals afford health insurance, to assessments on insurers. Interestingly, while more than 80% of the health care cuts in the SFY 2008–09 DRP comes from provider taxes, they are far below levels originally proposed by Governor Paterson in his 2009–10 Executive budget (see chart 2). Though the insurance industry charges that the taxes will increase premiums and force employers and consumers to drop coverage, the Paterson Administration contends that New York’s

health plans, which have enjoyed \$7 billion in profits over the last five years and maintain re-

serve levels far in excess of regulatory requirements, can easily absorb the tax increases. ■

**Chart 1: 2008–09 Deficit Reduction Plan**  
(\$ in Millions)

	2008-09	2009-10
<b>Total</b>	\$1,592	\$803
<b>Health Care Actions:</b>	\$359	\$386
Delay Nursing Home Rebasing	\$22	\$0
Eliminate 2008 Retroactive Medicaid Trend Adjustment	\$0	\$70
Increase Covered Lives Assessment	\$120	\$120
Reduce Public Hospital Recruitment/Retention Grants	\$9	\$12
Reduce Non-Public Hospital Grants	\$11	\$7
Change HMO Direct Pay Financing	\$40	\$40
Reduce Adirondack Cancer Center Funding	\$5	\$0
Reduce Public Nursing Home Recruitment/Retention Grants	\$4	\$0
Change Health NY Financing	\$137	\$137
Recoup Early Intervention Overpayment	\$11	\$0
<b>Other Actions</b>	<b>\$1,233</b>	<b>\$417</b>

Source: New York State Division of the Budget.

**Chart 2**

Payer Taxes	Deficit Reduction Plan 2009–10 Impact	Proposed 2009–10 Executive Budget
Covered Lives Assessment	\$ 120 Million	\$ 120 Million
HCRA Surcharge	0	\$ 176 Million
322 Insurance Assessment	\$ 177 Million	\$ 376 Million
Other	0	\$ 63 Million
<b>Total</b>	<b>\$ 297 Million</b>	<b>\$ 855 Million</b>

# SHRPC Approves Projects, Streamlined CON Regs at Meeting

At its February 5 meeting, the State Hospital Review and Planning Council (SHRPC) approved (in some cases with conditions or contingencies) the following GNYHA member projects: **Long Island Jewish Medical Center–Schneider Children’s Hospital**—modernization and expansion by constructing an addition to house a dedicated pediatric emergency room, 25 additional pediatric beds, and 25 additional pediatric intensive care unit (PICU) beds; **Long Island Jewish Medical Center (Lake Success)**—certification and construction of an outpatient therapeutic radiology extension clinic that includes purchasing four LINACs and a PET/CT machine; **New York Presbyterian Hospital/NY Weill Cornell Medical Center**—certification of 36 additional medical/surgical beds.

In addition, a motion to approve an

application to establish SurgiCare of Manhattan—a proposed freestanding, non-hospital-sponsored ambulatory surgery center that would focus on orthopedic procedures—did not receive sufficient affirmative votes and therefore failed. GNYHA and a number of member hospitals had formally opposed the application at the January 22, 2009, SHRPC Project Review Committee meeting. The application will now go to the February 24, 2009, meeting of the Establishment Committee of the Public Health Council without a recommendation.

## Regulations to Streamline CON Approved

SHRPC approved two proposed regulations, each aimed at streamlining New York State’s certificate of need (CON) program. The first regulation pertains to initial purchases of MRIs and would reduce the level of review required from full review to administrative review. The second regulation pertains to relocations of extension clinics that do not increase services or clinical capacity, are within the same “service area,” and do not exceed \$3M (total project costs), and would reduce the level of review required from administrative review to prior review limited to architectural and engineering matters. The regulations will become final when published in the *New York State Register*. These two regulations will join a third regulation, effective

January 28, that raises the cost threshold for administrative reviews of certain nonclinical projects from \$3M to \$10M. GNYHA filed comments in support of each set of regulations, but in each case also requested more extensive reforms of the State’s CON program. GNYHA continues to participate actively in the State’s ongoing CON reform initiatives, which were reported extensively in the January 12, 2009, issue of GNYHA’s *Health Care News In-Depth*, which can be accessed at <http://www.gnyha.org/350/Default.aspx>. ■

## GNYHA SERVICES, INC. UPCOMING WEBINAR

### The Bard Group

**Date:** Tuesday, February 10, 2009

**Time:** 10:00 a.m.–11:00 a.m.

This health care consulting firm made up of clinicians and health care administrators will discuss how it helps health care organizations manage comprehensive quality and operational challenges through consultation services in three core areas: aligning physician and other clinical staff and institutional incentives (integration strategy), service line development, and performance excellence. In each of these areas, Bard Group consultants identify a health care organization’s specific needs, problems, or objectives, and then helps the institution set goals, develop strategies to reach them, and track progress. The Bard Group’s experts include clinicians, managers, and subject matter professionals with specialty-specific clinical and operational expertise. If you have questions or need further information about this webinar, please contact Barbara A. Green at GNYHA Ventures, Inc. ■

## Save the Date

Please reserve the following dates for the GNYHA Annual Meeting and the GNYHA Annual Reception and Awards Ceremony

### 2009 Annual Meeting

Tuesday, April 14, 2009  
9:00 a.m. to 11:30 a.m.  
The Roosevelt Hotel

### 2009 Annual Reception and Awards Ceremony

Tuesday, June 9, 2009  
5:30 p.m. to 8:00 p.m.  
The Times Center

## GNYHA Board Endorses Klein Proposal

At its February 5 meeting, the GNYHA Board of Governors endorsed a proposal by New York State Senate Deputy Majority Leader Jeffrey Klein to allow life insurance policy holders to use “accelerated death benefits” from their policies to pay for the costs of long term care services. The Klein proposal would benefit policy holders by

giving them greater choice and flexibility in the long term care services they may choose to utilize, and by allowing policy holders who use a specific dollar amount of accelerated benefits to qualify for Medicaid, while shielding their assets from Medicaid spend-down rules. The benefit to New York State would be in the form of Medicaid savings, which have been estimated to be as great as \$1.1 billion over five years. ■

## Congress Works Toward Feb 13 Stimulus Deadline

Since the “American Reinvestment and Recovery Act” (H.R. 1) passed the U.S. House of Representatives on January 28 by a vote of 244-199 (with all Republicans and 11 Democrats voting against the measure), action turned to the Senate where debate intensified throughout last week. Appropriations Chairman Daniel Inouye (D-HI) and Finance Chairman Max Baucus (D-MT) brought an amended measure (S. 98) to the floor last Monday, with the rest of the week dedicated to the consideration of an onslaught of amendments, ranging from minor tweaks to major overhauls of the legislation.

Largely at issue is how major provisions of the bill are structured—e.g., the size and scope of infrastructure funding and the relief provided to States through Medicaid and education support—and the inclusion of certain provisions not viewed by some lawmakers as “stimulative” to the economy. Garnering the support of a few Senate Republicans is critical to secure passage given that Democrats are technically two votes shy of the 60-vote, “filibuster-proof” margin. Therefore, Senate leaders have been entertaining amendments offered by moderate Republicans in an attempt to lock in enough support to move the measure through the Senate. Lawmakers had hoped to reconcile the House and Senate measures this week with the plan of sending a final bill to President Obama before the scheduled Congressional recess starts on February 13.

As *Skyline News* went to press, agreement on the Senate’s \$925 billion measure remained politically volatile. In fact, President Obama called on Senate Democrats to trim some spending to help win Republican support. Given the considerable differences between the House-passed bill and where the Senate measure will

likely end up, Congressional leaders will likely need the recess to reconcile the variations between the packages. Below are details of various health provisions.

**FMAP** GNYHA—with Governor Paterson’s Washington Office, Mayor Bloomberg’s Office, and our other state and national partners—has long advocated for sizable Medicaid relief to States to reduce pressure on state budgets. Both the House and Senate legislation include a complicated formula for relief to states in the form of a temporary increase in the Federal Medicaid matching rate, known as FMAP. Specifically, the bills provide differing across-the-board increases for each state, with three additional “tiers” of FMAP support for qualifying states based on employment losses. According to estimates by the State Division of the Budget (DOB), the resulting relief to New York State is \$10 billion (Senate), and \$9.8 billion (House) over nine quarters. The Center on Budget and Policy Priorities projects that New Jersey would receive \$1.9 billion (Senate) and \$2.1 billion (House).

While GNYHA had advocated for a robust “maintenance of effort” (MOE) provision to ensure that Medicaid funding would specifically protect eligibility, benefits, and provider rates from cuts, the MOE provision in both bills only protects “eligibility standards, methodologies, or procedures.” GNYHA urged that the temporary FMAP increase should also apply to disproportionate share hospital (DSH) payments, and while it does not, we are hopeful that a House provision that provides a 2.5% increase to each State’s DSH allotment for FYs 2009 and 2010 will be included in any final bill.

**Regs Moratoria** GNYHA is extremely pleased that the moratorium on a harmful Bush Administration policy, the phase-out of critical Medicare capital indirect medical education (IME) payments to teaching hos-

pitals, has been included in both bills. Senator Schumer (D-NY) and Ways & Means Chairman Rangel (D-NY) championed this issue in their respective chambers, and GNYHA credits their leadership and commitment to teaching institutions as the reason for the moratorium’s inclusion. The House bill also includes a critical provision that would extend until July 1, 2009, the moratoria on six harmful Medicaid regulations currently protected by legislation passed earlier this year, and implements a moratorium on a seventh regulation, the Medicaid outpatient rule, until June 30, 2009. GNYHA strongly supports the inclusion of the moratoria in any final bill. Senator Schumer did offer a “Sense of the Senate” amendment last week, which serves to officially express the desire of the Senate to rescind all seven of these harmful Medicaid regulations.

### Health Insurance & Capital Provisions

Both the House and Senate bills include a number of important provisions that seek to maintain coverage for people who have lost their jobs. Specifically, both bills provide COBRA premium assistance for individuals and the House measure provides states with new options to expand Medicaid programs to unemployed workers. With regards to access to capital, GNYHA has advocated that hospital construction funding should be made available through grants for “shovel ready” projects and that the existing hospital mortgage insurance program (known as the “242 program”) should be expanded. While these provisions have not been included in either recovery package to date, we continue to press for their inclusion. Notably, both bills provide banks with a financial incentive to purchase tax-exempt bonds as a means to “unfreeze” that market.

For details on the health information technology (HIT) funding being proposed as part of the stimulus package, see story on reverse. ■

# Federal Stimulus: Health Information Technology Provisions

As part of the American Recovery and Reinvestment Act of 2009, Congress is considering legislation to promote the widespread adoption of health information technology (HIT). The Health Information Technology for Economic and Clinical Health (HITECH) Act, which is incorporated into the stimulus packages under consideration, provides a total of \$20 billion in the House version and \$23 billion in the Senate version for funding HIT initiatives over the next several years. HITECH specifically includes three sets of provisions to promote HIT adoption:

**Federal Leadership for HIT** The legislation codifies the Office of the National Coordinator for Health Information Technology (ONCHIT) within the U.S. Department of Health and Human Services (HHS). ONCHIT would be responsible for creating a nationwide health information network and would oversee the development of HIT standards and policy, as well as the testing of HIT products to ensure secure electronic storage and exchange of information.

**Funding for Infrastructure and Adoption** The bill provides funding (\$2 million in the House package, \$5 million in the Senate package) for various HIT-related ac-

tivities including planning and implementation grants to states and state-designated entities for health information exchange, training, education, and dissemination of best practices. In addition, funding is available for states to develop low-interest loan programs to help providers with adoption of HIT.

Most notably, the legislation includes significant financial incentives through Medicare and Medicaid payment add-ons. Under this provision, eligible hospitals would receive payments over a four-year period beginning in FY 2011 for the “meaningful use” of electronic health record (EHR) technology, the broad definition of which is a certified patient EHR that is interoperable and has quality reporting and electronic prescribing functionalities. GNYHA will weigh in on the specific criteria that will be required to become eligible for incentive payments to ensure that requirements are reasonable and attainable both financially and in the time given to comply. Incentive payments through Medicare and Medicaid would include a \$2 million base amount per hospital, plus additional payments based on total discharges, up to a maximum number of discharges. All payments would be ad-

justed by each hospital’s Medicare or Medicaid share, the value of which takes into account the level of charity care provided (see chart). Hospitals that do not become “meaningful users” of EHR technology by FY 2016 would begin to see a reduction in their market basket update.

**Privacy and Security** The legislation also includes a series of privacy and security provisions that would amend and expand the current HIPAA privacy and security requirements. GNYHA is concerned about the bill’s limitations on activities that fall within the definition of “health care operations,” particularly the impact on fundraising activities. Under the bill language, health care providers would be required to obtain written authorization from patients in order use basic demographic information for philanthropic purposes. Given that existing law and regulations already provide extensive protections of patient privacy, GNYHA is actively working to maintain a broad definition of “health care operations” with respect to this legislation. ■

## RAC Protests Withdrawn, Says GAO

According to the Government Accountability Office Web site, the protests levied on the Medicare Recovery Audit Contractor (RAC) program by PRG Schultz and Viant, Inc., have been withdrawn. Because of these protests, the Centers for Medicare & Medicaid Services (CMS) had placed implementation of the RAC program on hold last November. RAC reviews were expected to begin in the 4th quarter of 2008 in New York and Rhode Island and in August 2009 or later in New Jersey and Connecticut. CMS has not issued any information concerning the status of the program now that the protests have been withdrawn. GNYHA will report additional information as it becomes available. ■

Incentive Payments for HIT				
House			Senate	
\$2M base amount plus			\$2M base amount plus	
Medicare	Discharges 1,150–23,000	\$200/discharge	Discharges 1,150–9,200	\$200/discharge
			Discharges 9,201–13,800	\$100/discharge
			Discharges 13,801–23,000	\$60/discharge
All payments would be adjusted by the hospital’s “Medicare share,” which takes into account the level of charity care (i.e., higher charity care = higher the Medicare share)				
Medicaid	Hospitals with 10% Medicaid volume are eligible			
	Hospitals receive same incentives as under Medicare, but for Medicaid days			