



February 23, 2009

Skyline news

Reporting on New York's Health Care News

Obama Signs \$787 Billion Recovery Package

President Barack Obama signed the \$787 billion “American Recovery and Reinvestment Act (ARRA) of 2009” into law on February 17, providing significant relief to stressed state budgets around the country including key investments in health care as detailed below.

FMAP: The measure includes \$87 billion in Medicaid relief for states through a temporary increase in the Medicaid matching rate (known as FMAP). Over the 27-month period, the benefit to New York State is \$11 billion. Because the State must give back roughly a third of the savings to counties,

the State is expected to net \$4.8 billion in the upcoming State fiscal year, which is almost three and a half times what is needed to cover the \$1.4 billion in hospital, nursing home, and home care cuts proposed by Governor David Paterson (see chart, page 4). New Jersey is expected to save \$2.2 billion. While GNYHA had hoped that the temporary FMAP increase would also apply to disproportionate share hospital (DSH) payments, the final bill does provide a 2.5% increase to each State’s DSH allotment for FYs 2009 and 2010 (an expected benefit of \$117 million to New York

State).

Capital IME: The ARRA also includes a one-year moratorium on a harmful Bush Administration policy—the phase-out of critical capital indirect medical education (IME) payments to teaching hospitals. This provision not only protects providers from Medicare capital IME cuts through the end

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Caritas Files for Bankruptcy

On February 6, the Caritas Health System in Queens filed for Chapter 11 bankruptcy and has submitted a closure plan with the New York State Department of Health (DOH) for its two hospitals, Mary Immaculate Hospital and St. John’s Queens Hospital. The hospitals have stopped receiving ambulances at their emergency departments, and their projected closure date is February 28, 2009. During the next few weeks, DOH will closely monitor emergency department volumes and bed availability in Queens through its Health Emergency Response Data System (HERDS). In addition, DOH recently announced grant awards totaling \$14.5 million for hospitals in the community surrounding Caritas to develop expanded emergency room services and inpatient capacity.

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GNYHA, 1199 Launch New TV Ads

The GNYHA/1199 SEIU Healthcare Education Project (HEP) began airing a television ad statewide last week urging Governor Paterson to use a portion of the nearly \$11 billion in Medicaid funding New York State will receive under the Federal economic stimulus package to avoid massive health care cuts to hospitals, nursing homes, and home care. The new “Times of Need” ad is part of the HEP’s ongoing campaign to educate New Yorkers about the hugely destructive effect Governor Paterson’s proposed \$3.5

billion in health care cuts would have on patients and communities across New York State. Another new ad, called “Facts,” also began airing statewide last week. The stimulus bill provides New York State with \$11 billion in Medicaid funding via an increase in the Federal Medicaid matching rate (known as FMAP) over the next 27 months, including \$6.9 billion for State fiscal years 2008–09 and 2009–10, or \$4.8 billion after counties receive their share (see above). To view the ads, visit www.protecthealthcare.com. ■



One of the two new HEP ads.

Medicare RAC Program Begins in NYS

As reported in the last issue of *Skyline News*, the Centers for Medicare & Medicaid Services (CMS) announced that the protests to the Medicare Recovery Audit Contractor (RAC) program have been withdrawn, allowing CMS to move forward with RAC implementation. The RAC is a contingency fee-based audit program that seeks to find Medicare provider over- and underpayments. The RAC was authorized by section 306 of the Medicare Modernization Act of 2003 and made permanent under section 302 of the Tax Relief and Health Care Act of 2006.

CMS has divided the country into four sections and each is assigned a RAC contractor:
Region A – Diversified Collection Services
Region B – CGI Technologies and Solutions

Region C – Connolly Consulting Associates
Region D – HealthDataInsights

The two firms that filed protests with the Government Accountability Office (GAO) concerning the RAC contact bidding process have agreed to accept subcontractor roles with the primary RAC contractors and therefore withdrew their protests.

As New York State was one of the three states involved in the RAC demonstration program from 2005–2008, GNYHA has been assisting members with the RAC program, including creating the RAC TRACKER™ that enables hospitals to manage RAC requests. In addition, GNYHA held conference calls with CMS and the RAC throughout the demonstration and will continue to do so in the permanent program. In addition,

GNYHA will host a RAC kickoff meeting for New York hospitals in March. CMS, the region's RAC contractor, and the Medicare Administrative Contractor (MAC) National Government Services (NGS) will participate in this meeting, the details of which will be sent to GNYHA members in March. For more information on the RAC, contact Stewart Presser at GNYHA. ■

Community Choice Dissolution Update

Community Choice Health Plan (CCHP), a private health service plan (PHSP) serving Westchester County and the Bronx, closed its doors on December 31, 2007, due to insolvency. Since that time, CCHP has engaged in efforts to dissolve in accordance with Article 11 of New York State not-for-profit law. While the dissolution proceedings take place, claims for services provided to CCHP enrollees prior to the plan's closure remain unpaid. No payment can be made on these claims until a complete assessment of all outstanding liabilities is made.

To complete this assessment, CCHP has been directed by the New York State Supreme Court to issue a public notice advising non-participating providers that they have until August 15, 2009, to submit previously unsubmitted claims for services. Any such claims should be submitted to CCHP at 30 South Broadway, Lower Level, Yonkers, NY 10701 no later than August 15, 2009. This solicitation only applies to claims from non-participating providers not previously submitted. The deadline for claims from participating providers has passed. Once all outstanding liabilities are assessed, the Court will approve a distribution ratio that will apply to all creditors. This is not expected to occur before Fall 2009. ■

CCLN Attends National Critical Care Conference

Members of the Critical Care Leadership Network (CCLN), a joint GNYHA and United Hospital Fund (UHF) project, recently highlighted the group's work at the 38th Annual Critical Care Congress of the Society for Critical Care Medicine (SCCM) in Nashville, TN. By bringing together clinicians from GNYHA member hospitals to focus on clinical, operational, and policy issues that affect intensive care units (ICUs), the CCLN strives to improve care and outcomes for patients. The SCCM recognized the work of the CCLN by accepting two submitted abstracts into the Congress poster session.

John McNelis, M.D., from Winthrop University Hospital, represented the CCLN by presenting the posters. Both abstracts highlighted data and analyses from the GNYHA/

UHF 24-Hour Survey of ICUs. The first abstract provided a general summary of findings and methodology and focused on ICU capacity and utilization of resources. The survey's general findings have prompted the development of initiatives to improve patient throughput and maximize efficiencies in the

ICU. The second abstract discussed the use of advance directives for ICU patients and the strategies employed by the CCLN to improve end-of-life communications between clinicians and their patients, and to

promote the integration of advance directives and palliative care services into the ICU setting.

The CCLN will host educational programs for critical care staff this spring. Details on the topics and dates for these programs are forthcoming. Members should contact Terri Straub or Zeynep Sumer at GNYHA for additional information. ■



John McNelis, M.D., Winthrop University Hospital, and Judy Dillworth, R.N., NYU Langone Medical Center, showcase one of the CCLN posters.

Medicaid ER Rates Approved

The New York State Division of Budget (DOB) has approved the long-awaited Medicaid emergency room (ER) rate increases retroactive to January 1, 2007. These rates were enacted in the SFY 2006-07 budget, but implementation was delayed pending CMS approval. However, DOB has entered the final step in the Medicaid rate approval process to clear

the way for implementation of the rates. DOB has also signed off on July 2008 inpatient rates.

The New York State Department of Health (DOH) expects the rates to be available to hospitals via the Health Provider Network (HPN) this week and to be loaded into the eMedNY claims processing system within 4–6 weeks. The new rates will also

be made available to Medicaid managed care plans through the HPN. The ER rate increases will apply to ER services provided to Medicaid managed care enrollees under contracts that specified payment would be made at the Medicaid rates and to all ER services provided by hospitals in non-contractual situations. The retroactive rate increases will not apply to services provided under contracts that did not provide for reimbursement at the Medicaid rate. At GNYHA's request, DOH has agreed to notify plans of approval of the retroactive ER rate increases and their applicability to services provided to managed care enrollees. Plan premiums were adjusted in 2007 to accommodate the projected increase in emergency room costs due to these increases in the Medicaid fee-for-service emergency room rates. ■

GNYHA Attends Caucus Weekend

From February 13-16, GNYHA participated in the 38th Annual Black and Puerto Rican Legislators Caucus weekend in Albany. The New York State Black and Puerto Rican Caucus conference is sponsored by the Caucus' foundation arm, chaired by Assembly Member Adriano Espaillat (D-72nd). Funds raised by the foundation provide scholarships to minority students. The legislative arm of the Caucus, the NYS Black, Puerto Rican, Hispanic, and Asian Legislative Caucus is chaired by Assembly Member Darryl Towns (D-54th).

At the event, GNYHA educated State legislators and the general public on the devastating effects of the health care provider budget cuts and reimbursement reform proposals being advanced by the Paterson Administration.

GNYHA also promoted its initiatives designed to promote diversity in health care leadership, including the Summer Enrichment Program, the Health Care Leadership Institute, and the GNYHA Center for Trustee Initiatives.

On Saturday, GNYHA staffed a booth on the Empire State Plaza Concourse that explained the impact of the proposed budget cuts to hospitals and nursing homes in Caucus participants' communities. Many attendees who stopped by the booth expressed extreme concern about the millions of dollars that the hospitals in their communities would lose and the ensuing impacts of those cuts—including possible lay-offs, elimination of services, and facility closures. GNYHA collected postcards from those individuals that will be forward to the Governor and the State Legislature. ■

Caritas Bankruptcy *continued*

Displaced Workers and Residents: DOH also announced that it has extended a contract with 1199 SEIU to assist displaced health care workers. The extension of the contract will permit 1199 SEIU to provide job counseling, worker retraining, and placement services to Caritas employees. GNYHA has also been assisting teaching hospitals in the region with assuming responsibility for training physician residents displaced by the hospitals' closure. Medicare regulations permit so-called "receiving hospitals" to be granted a temporary increase in their otherwise applicable graduate medical education (GME) reimbursement cap if certain conditions are met. In addition to discussing the situation with officials from the Accreditation Council for GME, GNYHA has reviewed the Medicare rules with Caritas officials as well as officials from hospitals potentially interested in assisting residents with completing their training programs. Caritas has approximately 150 residents seeking placement at other teaching hospitals. ■

HEAL Phase 9 Awards Announced

On February 10, Governor David Paterson announced \$7.1 million in grant awards to 18 organizations for Phase 9 of the Healthcare Efficiency and Accountability Law for New Yorkers (HEAL NY) program. This phase of HEAL NY was designed to fund projects that support health planning efforts to improve the efficiency and effectiveness of their local delivery systems. As with all HEAL NY projects,

these funded projects complement the goals and findings of the Commission on Health Care Facilities in the 21st Century. The Governor's press release listing the funded organizations can be found at http://www.ny.gov/governor/press/press_0210091.html. The press release also includes the list of organizations funded with \$6.7 million in awards under the NYS Rural Health Network Development Program. ■

Recovery Package

continued

of FY 2009, it also requires that monies already taken from teaching hospitals since the policy went into effect on October 1, 2008, be returned. In total, this amounts to a savings of about \$190 million to teaching hospitals around the nation this year, including \$30 million to teaching hospitals in New York.

Medicaid Regulations: The recovery package also includes a provision that would extend until June 30 the moratoria on three final Medicaid regulations currently protected by legislation passed earlier this year (provider tax, targeted case management, and school transportation services) and on a fourth regulation, the final Medicaid outpatient rule that has not been protected under a moratorium to date. These four regulations are already in final form, so these moratoria provide a temporary stopgap to allow time for the Obama Administration to determine how best to proceed. The ARRA includes a “Sense of the Congress” that the remaining three Medicaid proposed rules affecting graduate medical education, intergovernmental transfers, and rehabilitative services should not be finalized.

Access to Capital: While hospital construction funding and resources for expanding the existing hospital mortgage insurance program (known as the Dept. of Housing and Urban Development’s “242 program”) were not included, the ARRA provides banks with a financial incentive to purchase tax-exempt bonds to promote greater marketability and affordability of these types of bonds.

Health Insurance & Workforce: The package provides \$25 billion in COBRA premium assistance to workers who have lost their jobs between September 1, 2008, and December 31, 2009—a 65% Federal subsidy available to individuals/families for up to nine months. The ARRA also provides \$500 million in workforce funding through support for the National Health Service Corps and through nursing and physician training programs.

Health Information Technology: As part of the ARRA, Congress included provisions

aimed at promoting the widespread adoption of health information technology (HIT). The Health Information Technology for Economic and Clinical Health (HITECH) Act, which was incorporated into the ARRA, provides a total of \$19 billion in Federal investments for HIT

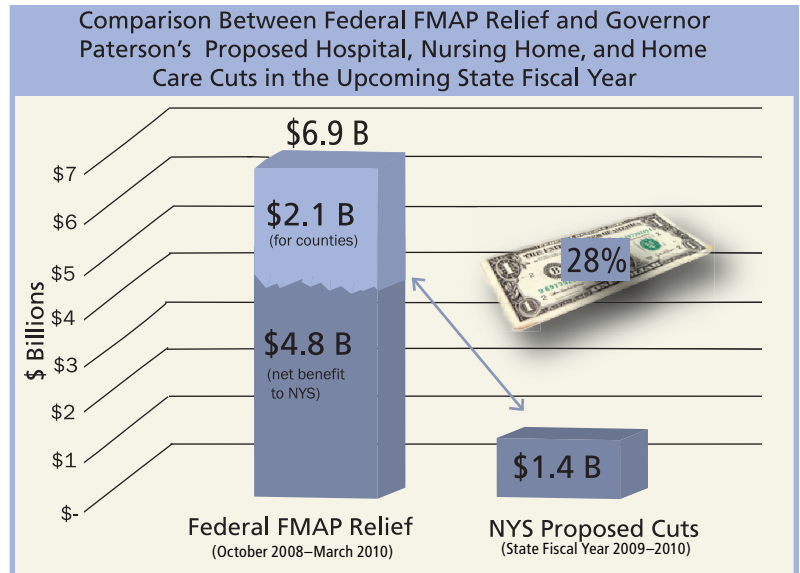
initiative payments for providers, as well as HIT grants to facilitate interoperability.

Most notably, the legislation includes \$17 billion in financial incentives for HIT adoption through

Medicare and Medicaid payment additions. 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. Incentive payments through Medicare and Medicaid would include a \$2 million base amount per hospital, plus \$200 per discharge (subject to a threshold and cap) in the first year, phasing down over the next three years. All payments would be adjusted by each hospital’s Medicare or Medicaid share, the value of which takes into account the level of charity care provided. Hospitals that do not become “meaningful users” of EHR technology by FY 2015 would see a reduction in their market basket update, with the elimination of the market basket update starting in FY 2017.

Privacy and Security: The ARRA also includes a series of privacy provisions in the HITECH Act that clarify and expand current HIPAA privacy and security requirements and will have an impact on HIPAA

privacy enforcement. Among other provisions, the law specifically now applies HIPAA security standards and privacy rules, and the related civil and criminal penalties to business associates. The law requires investigations and imposition of penalties in certain instances for HIPAA



violations, and allows for increased enforcement and oversight activities, including enforcement by state attorneys general. “Covered entities” (including hospitals) are required to notify patients in the event of breaches of “unsecured protected health information.” Unintentional disclosures of such medical information that occur in good faith, within the scope of employment and without further acquisition, access, or use or disclosure of the information are not considered breaches and do not require patient notification. Patients will have a right to an electronic copy of their protected health information if it is maintained in an EHR, and the law further permits patients to receive an accounting of disclosures for their treatment, payment, and health care operations during the previous three years, if the disclosures were through an EHR. The law also includes language stating that all written fundraising communications that make use of a patient’s protected health information must provide an opportunity for patients to opt out of further fundraising communications; representing no change from existing requirements. ■