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# Skyline news

Reporting on New York's Health Care News

## Orszag Calls for Cuts to Safety Net Hospitals

On July 8, Peter Orszag, Director of the President's Office of Management and Budget, sent a letter to key committee chairman in the House of Representatives in which he called for cuts to crucial payments for safety net hospitals. The letter came at an important time, as House Ways and Means Committee Chairman Charles Rangel (D-NY), Energy and Commerce Committee Chairman Henry Waxman (D-CA), and Education and Labor Committee Chairman George Miller (D-CA) were putting the finishing touches on revisions to the health reform discussion draft

they released on June 19. The committee chairmen were hoping to formally introduce a bill late last week so their committees could begin to consider the legislation this week. "As you introduce and mark-up your legislation," Director Orszag said, "we recommend you consider additional savings from Medicare and Medicaid disproportionate share hospital payments and further delivery system reforms, including changes to the process through which Medicare policies are set." The end of the sentence referring to the Medicare policy-setting process is an apparent reference to proposals to give a non-elected body, such as the

Medicare Payment Assessment Commission (MedPAC), the power to make Medicare payment policy, with little input or oversight from the people's representatives in Congress.

The House discussion draft contained

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## Dems Strike Leadership Deal in Albany

On July 9, the five-week standoff in Albany ended as Senator Pedro Espada Jr. (D-Bronx), who defected to caucus with the Republicans, returned to his party, giving the Democrats the majority votes needed to regain control of the New York State Senate. At a news conference, the Senate Democrats announced a new leadership deal that would name Espada as majority leader and Senator John Sampson (D-Brooklyn) as caucus leader; Senator Malcolm Smith (D-Queens)—who had been the Senate Majority Leader until Espada's defection—will remain Senate president for an unspecified "transition" period.

The State Senate has been in turmoil since June 8, when Espada defected. His

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## Hospital Associations Reach Agreement on Reform Savings

On July 8, three national hospital associations joined with Vice President Joseph Biden at the White House to announce that they had reached agreement with Senate Finance Committee Chairman Max Baucus (D-MT) on proposals to reduce Federal hospital spending by \$155 billion over 10 years. The savings will help finance expanded health care coverage for the uninsured, one of President Barack Obama's health care reform goals. The three associations—the American Hospital Association, the Catholic Health Association,

and the Federation of American Hospitals—said in a statement, "Now for the first time, coverage for all is within our nation's reach as the agreement based upon the Finance Committee proposal will cover 95 percent of all Americans. As we take this historic step, we recognize that everyone must do their part if we are to succeed. . . The reductions of \$155 billion over 10 years in the framework are substantial, are linked in part to increased coverage and cannot go any deeper without damaging hospitals' ability to care for their

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# CMS Releases SSI Data, May Impact NY DSH

The Centers for Medicare & Medicaid Services (CMS) recently released the fiscal year (FY) 2007 Medicare Supplemental Security Income (SSI) data, one of its metrics to calculate qualifying hospitals' Medicare disproportionate share (DSH) payments. The Medicare SSI percentage is the ratio of acute care days provided to Medicare beneficiaries entitled to both Medicare Part A and SSI to total Medicare days. CMS derives the SSI information each year through a data matching process where the Agency matches the Medicare inpatient claims data against the SSI eligibility file maintained by the Social Security Administration. This matching process is done "behind the scenes" and the SSI eligibility information is not publicly available to the hospitals through the Medicare eligibility systems.

FY 2007 is the first year that CMS included both Medicare fee-for-service (FFS) and health maintenance organization (HMO) days in the SSI percentage. CMS had previously only included FFS data. While the data

made available by CMS does not allow us to isolate the impact of including HMO days in the SSI percentage, GNYHA calculated that the fiscal impact of implementing the published FY 2007 SSI percentages would result in a Medicare FFS loss of \$236 million for New York hospitals over the three-year period FY 2007–FY 2009. Since hospitals generally are paid a percentage of the Medicare FFS rate by Medicare HMOs, there may also be an additional impact or "flow-through" of this change for most Medicare HMO cases.

GNYHA is extremely concerned about the validity of the data and the financial impact of this change on our member hospitals. GNYHA is scheduled to meet with the CMS Administrator this week to discuss our concerns and has already requested the following: 1) CMS should re-publish the data and separately provide the data on FFS and HMO days so that hospitals can isolate the impact of including HMO days in the SSI percentage, and 2) CMS should immediately retract the FY 2007 Medicare SSI file and review it for accuracy. GNYHA will continue to monitor this situation and keep members apprised of any related activity. ■

# GNYHA-CCLC to Launch Pressure Ulcer Collaborative

GNYHA and its long term care affiliate the Continuing Care Leadership Coalition (CCLC) are preparing to launch a pressure ulcer improvement collaborative. Throughout the past year, GNYHA and CCLC hosted a series of "train the trainer" workshops focused on a systematic, team-based approach to treating and preventing pressure ulcers across health care settings. The GNYHA-CCLC Pressure Ulcer Collaborative will build upon this training to facilitate a more standardized and sustainable "best practices" approach to the prevention, assessment, management, and documentation of pres-

sure ulcers.

The Collaborative will complement ongoing pressure ulcer prevention activity across the State. GNYHA and CCLC are committed to working with the State to improve pressure ulcer care, and the Pressure Ulcer Collaborative is a major step to drive this improvement across the region and the State.

GNYHA-CCLC will hold an informational meeting in the fall, and members interested in taking part in the Pressure Ulcer Collaborative should contact Lorraine Ryan ([ryan@gnyha.org](mailto:ryan@gnyha.org)) or Kelly Donohue ([donohue@gnyha.org](mailto:donohue@gnyha.org)) at GNYHA or Roxanne Tena-Nelson at CCLC ([tena-nelson@cclcn.org](mailto:tena-nelson@cclcn.org)). ■

# Medicare Releases Outpatient PPS Proposed Rule

On July 1, the Centers for Medicare & Medicaid Services (CMS) released the Medicare outpatient prospective payment system (OPPS) proposed rule for calendar year 2010. The proposed rule would increase hospital outpatient payment rates by an average 1.9%.

CMS does not propose to expand the number of quality measures that hospitals are required to report for the outpatient setting, but the rule does include a proposed data validation process for 2011 under which CMS would select up to 20 cases from each hospital and validate the reporting of quality data. The results of the validation process would not affect payment in 2011, but would be used to provide feedback to the hospitals. Beginning in 2012, CMS would review approximately 50 charts from 800 hospitals and would create an accuracy rate, rather than score the accuracy of each individual data element.

The proposed rule would also revise several policies related to the physician supervision of outpatient services and would permit certain non-physician practitioners to directly supervise hospital outpatient therapeutic services (other than cardiac rehabilitation, intensive cardiac rehabilitation, and pulmonary rehabilitation) that they are permitted to perform within their state's scope of practice and hospital-granted privileges. CMS also proposes to loosen current requirements that the supervising physician must be physically present in the department when services are furnished in on-campus settings. CMS also proposes to establish a new Medicare benefit and OPPS payments for pulmonary and intensive cardiac rehabilitation services for beneficiaries with chronic obstructive pulmonary disease, cardiovascular disease and related conditions. Comments on the proposed rule are due to CMS on August 31, 2009, and the OPPS final rule is expected to be issued by November 1, 2009. ■

# GNYHA Meets with National Coordinator on HIT Issues

On July 8, GNYHA staff participated in a series of key meetings in Washington on health information technology (HIT) as part of the Premier HIT Steering Committee. The HIT Steering Committee traveled to DC to advocate on behalf of hospitals on Federal regulatory activities with respect to the HIT provisions in the American Recovery and Reinvestment Act of 2009 (ARRA).

While in DC, GNYHA met with David

Blumenthal, M.D., the newly appointed National Coordinator for Health Information Technology, to provide input and express member concerns regarding the recently released draft definition of “meaningful use” of electronic health record (EHR) technology. As head of the Office of the National Coordinator for HIT (ONC), Dr. Blumenthal is leading the nation’s effort to implement an interoperable, nationwide information infrastructure. He chairs both the HIT Policy

and HIT Standards Committees formed under the ARRA. Between the two committees, Dr. Blumenthal is responsible for developing the eligibility criteria for ARRA incentive funds and the standards that EHR systems would need to comply with to be certified as systems that are functionally capable of meeting “meaningful use” criteria.

In the meeting GNYHA and the Premier HIT Steering Committee highlighted hospitals’ concerns about the interpretation of the terms “hospital” and “hospital-based physicians” in the implementation of the ARRA. Dr. Blumenthal acknowledged the concerns and has asked for recommendations to assist the Centers for Medicare & Medicaid Services (CMS) during the rule-making process. GNYHA will provide these recommendations both to CMS directly and to the ONC.

In addition, the group discussed issues about HIT implementation and the specific objectives and measures outlined in the ONC’s draft definition of “meaningful use” of EHRs. Dr. Blumenthal acknowledged the need to develop criteria that would stretch the health care industry to improve processes and advance adoption of HIT without breaking the system. He also emphasized the need to ensure that a significant number of hospitals qualify for incentive funds in order to demonstrate the success of the incentive program, and therefore supported GNYHA and Premier’s efforts to both recommend significant yet attainable goals to ONC and provide direct assistance to hospitals with their implementation challenges.

## Congress and ARRA Implementation

Also on July 8, the HIT Steering Committee once again met with Wendell Primus, Senior Policy Advisor to House Speaker Nancy Pelosi, to emphasize certain concerns in the rule-making process with respect to the ARRA legislation and its interpretation. GNYHA will continue to provide input to the ONC, CMS, and other agencies involved in developing regulations to implement the ARRA legislation. In the meantime, GNYHA has HIT implementation activities underway. Contact Zeynep Sumer at GNYHA for more information. ■

## Reform *continued*

communities.”

While details on the non-hospital savings portions of the Senate Finance Committee proposal were not released last week, the as-

sociations reported that their agreement on hospital savings includes Medicare “market basket” update reductions for hospitals averaging one percentage point

per year—with smaller reductions in early years and smaller reductions if insurance coverage goals are not met—for a 10-year savings of \$103 billion; phased reductions in Medicare and Medicaid disproportionate share hospital (DSH) payments beginning in 2015, with DSH payments reduced by 40% by 2019 (smaller reductions would apply if coverage goals are not met), for a savings of approximately \$50 billion over 10 years (President Obama earlier proposed reductions of 75%); and reductions in payment for hospital readmissions, focusing on avoidable readmissions related to the initial admission, for a savings of approximately \$2 billion (President Obama originally proposed readmissions savings of \$16 billion). According to the associations, other provisions of the agreement include a budget-neutral value-based purchasing proposal; an increase in teaching hospital residency slots eligible for Medicare reimbursement

(the agreement contains no cuts in Medicare indirect medical education payments); pilot projects to test bundling of Medicare payments; restrictions on physician self-referral to hospitals in which they have an ownership interest; and increased charity care report-

ing.

## GNYHA Reaction

In a statement, GNYHA commended the associations for making the powerful statement that America’s hospitals

will do their part to help bend the health care cost curve. GNYHA also stated its desire to continue to work with the associations, the President, and Congress to protect our safety net institutions, truly reduce costs so hospitals can absorb the cuts contained in the agreement, and promote improvements in quality and patient safety. “Safety net hospitals, particularly in cities in states like New York and New Jersey, will continue to be severely challenged no matter how successful reform is,” GNYHA stated. GNYHA then reiterated its support for the DSH provision in the House discussion draft released on June 19. “The House... under the leadership of Ways and Means Chairman Charles Rangel and Energy and Commerce Health Subcommittee Chairman Frank Pallone, recognized these realities by protecting Medicaid and Medicare [DSH] payments in the House health reform bill... We continue to strongly support the House approach.” ■

### HEALTH REFORM BRIEFING

GNYHA has scheduled a full membership briefing on health reform for July 16 at 2:00 p.m. in Manhattan. The briefing is open to GNYHA members only. To attend, please RSVP to Evelyn Guthwin at [eguthwin@gnyha.org](mailto:eguthwin@gnyha.org).

# GNYHA Submits Comments on FY 2010 IPPS Proposed Rule

On June 30, GNYHA submitted comments to the Centers for Medicare & Medicaid Services (CMS) on the proposed rule for fiscal year (FY) 2010 Medicare inpatient prospective payment system (PPS) rates. The letter addressed the following issues:

## **Documentation and coding improvement**

GNYHA supported the American Hospital Association's recommendations to reduce the proposed cuts to Federal rates to pay for anticipated case mix increases due to documentation and coding improvement in the wake of the revised Comorbidity and Complications list.

## **IME**

GNYHA again opposed a plan to eliminate the indirect medical education (IME) adjustment in the capital PPS and opposed the Medicare Payment Advisory Commission's (MedPAC's) recommendation to cut the IME adjustment to finance quality incentive payments.

## **Labor-related share**

GNYHA strongly opposed the proposal to reduce the labor portion of the operating

rate, and instead urged CMS to increase the labor share, as supported by the Agency's new market basket research.

## **Area wage index**

GNYHA reiterated its opposition to MedPAC's recommendation to use Bureau of Labor Statistics (BLS) data for the area wage index because the BLS data do not include fringe benefit and contract labor costs.

## **Quality-related proposals**

GNYHA recommended that CMS postpone public reporting of the Agency for Health Research and Quality (AHRQ) patient safety and inpatient quality indicators until the Medicare patient data include present-on-admission indicators and all secondary diagnoses for risk adjustment. GNYHA also recommended that CMS replace its current readmission model with one that considers both comorbidities and complications. GNYHA also expressed opposition to the Senate Finance Committee's proposal to base quality incentive payments on relative rather than absolute performance levels, among other features. ■

## Orszag *continued*

no Medicare or Medicaid disproportionate share hospital (DSH) payment cuts, but instead called for an analysis of the continued need for DSH payments over time. GNYHA strongly supports the House draft because it does not propose cuts to DSH or teaching hospital payments, such as Medicare indirect medical education (IME) payments. GNYHA is dismayed at the Obama Administration's call for cutting safety net institutions. Health reform will leave uninsured the nation's 11 million undocumented immigrants who will still rely upon safety net hospitals for their health care. These institutions will also continue to care for citizens and legal immigrants who may still be uninsured under health reform, especially in states like New York and New Jersey that have already expanded their Medicaid programs and so may benefit little from the Medicaid expansions under consideration. GNYHA also views proposals for Congress to cede its power over Medicare payment policy to an unelected body such as MedPAC as an abdication of responsibility and undemocratic. As the national health reform negotiations progress, GNYHA will continue to vigorously oppose any proposals that will undermine safety net hospitals. ■

## Albany *continued*

decision swung the Democrat's razor-thin margin of control from 32-30 to 31-31, but ultimately had no real effect as the parties refused to return to regular session, opting instead to hold separate, simultaneous legislative sessions. As the feud worsened, all voting activity in the chamber stopped, leaving a number of important legislative issues undecided, including whether Mayor Bloomberg would retain control over New York City schools. Additionally, the Senate's failure to pass a planned sales tax increase cost New York City \$60 million in tax revenue over the five-week stalemate.

In an attempt to get the Senate back on track, Governor David Paterson announced the appointment of Richard

Ravitch, former Chair of the MTA, to serve as Lieutenant Governor. While Mr. Ravitch reportedly signed his oath of office on July 8th, the legality of the appointment remains unclear. State Attorney General Andrew Cuomo has stated that the State constitution does not allow Paterson to appoint a replacement lieutenant governor, and the Senate Republicans filed suit challenging the constitutionality of Mr. Ravitch's appointment, which was heading to court as *Skyline News* went to press. The appointment of Ravitch would have also served as the tie-breaker vote in the deadlocked Senate and secured a line of succession should Governor Paterson leave the State or become incapacitated.

Since the leadership deal was announced, the Senate returned to chambers to begin

voting on the bills that hung in limbo for the past month. Before adjourning around 2:00 a.m. on July 10, the Senate passed over 100 bills, including extending the freeze on an increase in physician medical malpractice premiums until June 30, 2010; extending the safe patient handling demonstration program for another two years; eliminating the expiration and repeal of Timothy's Law; and extending the Power for Jobs and Energy Cost Savings Benefit Programs through May 15, 2010. While the Senate must still consider many more bills before adjourning from this "special session," Governor Paterson has said that he expects to call the Legislature back later in the summer to address the growing hole in the State budget, which is projected to be between \$500-\$800 million. ■