



August 10, 2009

# Skyline news

Reporting on New York's Health Care News

## Congress Adjourns for Recess with Health Reform Activity Stalled in Senate

Congress departed for its traditional monthlong August recess without passing any health reform bills. Before adjourning, all three committees of jurisdiction in the House completed action on major health reform legislation while the Senate is only about half-finished. For months leading up to the recess, President Barack Obama had urged House and Senate leadership to pass respective bills before the August break, but political wrangling over the size, contents, and funding of a sweeping reform package prevented floor votes from taking place in either chamber. Democratic lawmakers plan to use the lengthy district work period to hold health care town halls and constituent listening sessions.

### Senate Looks to September

In the Senate, issues related to insurance reform and workforce development were addressed in the reform package approved by the Senate Health, Education, Labor, and Pensions (HELP) Committee in early July. However, the Senate Finance Committee, which has jurisdiction over Medicare, Medicaid and tax policy, has yet to release a proposal. Senate Finance bill negotiations have included a bipartisan group of only six senators from the Committee: Senate Finance Chairman Max Baucus (D-MT), Senator Kent Conrad (D-ND), Senator Jeff Bingaman (D-NM), Senate Finance

Ranking Member Charles Grassley (R-IA), Senator Olympia Snowe (R-ME), and Senator Michael Enzi (R-WY).

On July 29, these six Senators announced that the Congressional Budget Office

(CBO) had scored the group's draft proposal at less than \$900 billion and estimated that it would cover 94% of Americans. Although key negotiators announced con-

*continued on page 3*

## CMS Releases FY 2010 Acute and Rehab Final Rules

On July 31, the Centers for Medicare & Medicaid Services (CMS) released Federal fiscal year (FY) 2010 final rules for the Medicare acute inpatient prospective payment system (IPPS) and the inpatient rehabilitation facility PPS (IRF PPS), which take effect on October 1, 2009. The IPPS rule contained three positive changes from the proposed rule that GNYHA estimates will improve the impact of moving from the FY 2009 rates to the FY 2010 rates from a loss of \$600 million to an increase of \$1.9 billion, a net change of \$2.5 billion (see table, page 4). New York hospitals are expected to gain more than \$250 million from the changes and New Jersey hospitals are expected to gain more than \$100 million. The three positive changes are:

- A decision *not* to implement a proposed cut to the FY 2010 Federal rates of 1.9% to offset anticipated case-mix increases resulting from improvements in documentation and coding. When CMS implemented new "Medicare Severity" diagnosis-related groups (MS-DRGs) in FY 2008, it changed the list of secondary diagnosis codes that would increase payments based on patient severity of illness. As hospitals adjust to the new list, CMS expects to observe payment increases not associated with real increases in acuity. Rather than offset this increase in FY 2010 based on an actuarial forecast of the case-mix increase, CMS decided to base its assess-

*continued on page 2*

# NYSERDA to Fund Energy Efficiency Projects

The New York State Energy Research and Development Authority (NYSERDA) has released a Request For Proposals (RFP) regarding available funding for the installation of energy conservation measures including energy efficiency, renewable energy, and clean fleet projects. This program is part of NYSERDA's administration of the State Energy Program (SEP) funded by the American Recovery and Reinvestment Act (ARRA). Grants of up to \$1 million will be available for eligible projects. Details including definitions of eligible projects and available incentives are available at: <http://www.nyserdera.org/funding/1613rfp.asp>. Proposals are due by August 24, 2009.

A companion program, which provides up to \$30,000 for energy conservation studies, may be used to support projects funded by the program above or unrelated projects. Applications will be accepted through March 15, 2010, on a first-come,

first-served basis or until funds are fully committed, whichever occurs first. More detailed information regarding types of eligible conservation studies and the application submission process can be accessed at: <http://www.nyserdera.org/funding/0004pon.asp>.

## GNYHA Energy Workgroup

Earlier this year, GNYHA convened an energy efficiency workgroup composed of chief financial officers and facility engineers to discuss GNYHA's services and products in the area of energy savings and efficiencies, identify additional strategies that GNYHA might develop, and share best practices for reducing energy use and costs. If you would like a member of your staff to participate in this workgroup, or should you have any questions about energy efficiency and cost saving opportunities at GNYHA, please contact Alison Burke ([aburke@gnyha.org](mailto:aburke@gnyha.org)) or Rebecca Urbach ([rurbach@gnyha.org](mailto:rurbach@gnyha.org)) at GNYHA. ■

## UPCOMING GNYHA MEMBER BRIEFING

### HIPAA Privacy and Security Workgroup Meeting

Date: Thursday, August 20, 2009

Time: 2:00 p.m.–4:00 p.m.

Location: GNYHA Board Room

GNYHA will convene a joint meeting of its HIPAA Privacy and Security Workgroups. The primary focus of discussion will be the transfer of oversight and enforcement of the HIPAA Security regulations from the Centers for Medicare & Medicaid Services to the Office for Civil Rights; HITECH provisions that go into effect 180 days (on August 16, 2009) from enactment of the American Recovery and Reinvestment Act; the Federal Trade Commission enforcement delay of its identity theft "red flags" rule (new enforcement date of November 1, 2009); and GNYHA member queries, concerns, and current issues. To register, please contact Linda Tam ([ltam@gnyha.org](mailto:ltam@gnyha.org)). ■

## Acute and Rehab Final Rules *continued*

ment of case-mix growth on an empirical analysis of complete FY 2008 and FY 2009 claims, which will delay any action. This change was strongly urged by the entire hospital community with vigorous leadership by the American Hospital Association.

- A decision *not* to eliminate the indirect medical education (IME) adjustment to the capital portion of the Federal rate. CMS reversed its proposed policy after revising its analysis of capital margins in response to the strong urging of teaching hospitals and Congressional leaders, most notably Ways & Means Chairman Charles Rangel (D-NY). Chairman Rangel spearheaded the successful drive to stop elimination of half the IME adjustment in FY 2009, while New York Senator Chuck Schumer led a similar effort in the Senate.
- A decision to diminish a proposed

*continued on page 4*

## SHRPC UPDATE

At its August 6, meeting, the State Hospital Review and Planning Council (SHRPC) approved (in some cases with conditions or contingencies), the following GNYHA member projects: **Bellevue Hospital Center**: modernization and replacement of its emergency power system by replacing four emergency generators and adding one emergency generator; **St. John's Episcopal Hospital South Shore**: addition of 18 new inpatient psychiatric beds to its licensed capacity; and **Amsterdam Nursing Home Corporation**: consolidation of two previously approved limited architectural review projects.

### Health Care Personnel Influenza Vaccination Regulation

At the meeting, SHRPC approved a motion for emergency adoption of a regulation that would require health care facilities to immunize persons employed by or affiliated with the facility against influenza. The proposed regulation would apply to all personnel who have either direct contact with patients or whose activities are such that, if they were infected with influenza, they could potentially expose patients to influenza, and includes an exception for medical contraindications. The regulation will be published in the *State Register* for emergency adoption, and will be effective upon such filing. GNYHA will provide its members with further details regarding this regulation.

### New SHRPC Members

The August 6 meeting was the first full SHRPC meeting for two new members: **Arthur A. Levin, M.P.H.**, Director, Center for Medical Consumers, and **Anderson Torres, Ph.D.**, Westchester Regional Director/Director, Hispanic Latino Program, VNS of New York. ■

# Health Reform Activity Stalled *continued*

sensus on much of the package, several issues remain unresolved—namely, how to structure a Medicaid expansion, the levels at which the subsidies should be set to help people purchase insurance, and what other proposals should be included to wring additional savings from the Medicare program. Because of these lingering issues, Chairman Baucus has set a deadline of September 15 to finish the work, but has reaffirmed his expectation that a reform bill will be ready for the President's signature by the end of the year.

It has been reported that the bipartisan "group of 6" has begun to reach consensus on some of the revenue raisers to help fund an insurance expansion. Various proposals include implementing means testing for the Medicare prescription drug benefit, charging copayments for clinical lab services, imposing penalties on individuals who do not obtain health insurance coverage, and requiring employers to continue to provide health insurance to their employees or face penalties if their workers switch to coverage offered through an insurance exchange. New taxes would generate about \$250 billion in revenue, financed primarily from taxing insurance policies that are above set threshold amounts.

Additionally, popular tax-free accounts, called flexible savings accounts, would be capped at \$2,000. Key Senate negotiators are also considering penalties to health insurance companies that do not pay claims electronically, as well as a proposal to force providers to "increase efficiency," and to further support comparative effectiveness research. Also under serious consideration is a "trigger" that would force the creation of panel (called a "Medicare Preservation Commission") to recommend additional savings if a pre-determined savings target has not been reached. This panel's recommendations would likely be structured in such a way that they could only be overturned by a vote of disapproval by Congress.

## House, Blue Dogs Reach Deal

In the House, all three committees of jurisdiction have essentially completed work before breaking for the August recess. Both the House Ways & Means Committee and the House Education & Labor Committee completed daylong markups of their portions of H.R. 3200, which was introduced on July 14. However, progress in the House Energy & Commerce Committee has lagged due to strong opposition from the Blue Dog Coalition, a group of fiscally

conservative Democrats. The Blue Dogs threatened to vote against the reform package unless certain issues were addressed in committee, including relief for small businesses under the plan, the need for greater cost cutting, and opposition to the use of Medicare-based rates under a public plan. The Blue Dogs hold seven seats on the Energy & Commerce Committee—which is why they have been able to delay the Committee's markup. GNYHA has learned that the deal reached with the Blue Dogs includes the following components:

- Public plan will negotiate rates with hospitals and doctors, allow providers to opt out, and compete on a level playing field;
- State-based co-ops will be established in order to increase choice and competition;
- Enhanced delivery system reforms, including a new Innovation Center for Medicare and Medicaid, will be added to improve quality and increase efficiency;
- Small business exemption will be doubled to \$500,000 with a phase-in of the penalty to \$750,000;
- Adjustments to the affordability credits and expansion of Medicaid will lower the cost of the bill by over \$100 billion; and
- Commitment to work with CBO to produce a bill that costs less than \$1 trillion and effectively bends the cost curve.

## What's Next

The three House committees will now need to merge their bills into one unified bill before it can be taken to the floor for a final vote. GNYHA understands that House Speaker Nancy Pelosi (D-CA) will have the ability to add new provisions that have not been adopted by any of the committees to date. GNYHA remains concerned about the inclusion of additional onerous proposals, such as those affecting the geographic variation in Medicare spending, and empowering an independent Medicare Advisory Council (IMAC) to make Medicare payment policy decisions in lieu of Congress (similar to the Medicare Preservation Commission described above). ■

## GNYHA Members Highlight Breastfeeding Awareness

**G**NYHA last week published a number of member events in recognition of World Breastfeeding Week, August 1-7, which is celebrated in over 120 countries. In coordination with the global effort, GNYHA recognized breastfeeding promotion events held at area hospitals, including events at **Bellevue Hospital Center, Crouse Hospital, New York Methodist Hospital, NewYork-Presbyterian Hospital, Queens Hospital, St. John's Episcopal Hospital, St. Vincent's Medical Center, and Stony Brook University Medical Center.** The event details are posted on a new section of the GNYHA Web site, called Member Health Observance Events. Additionally, GNYHA has posted resources to help providers promote newborn breastfeeding—including information from DOH, DOHMH, UNICEF, and WHO—on our Web site at [www.gnyha.org](http://www.gnyha.org) in the Public Health Initiatives section of the member-protected Community Health Resource Center.

**Health Observances:** World Breastfeeding Week was the first in a series that GNYHA will showcase on [www.gnyha.org](http://www.gnyha.org). By recognizing national health observances, GNYHA hopes to help its members promote various hospital events for their patients, families, and local communities. Upcoming health observances for September include: Prostate Health Month; Gynecologic Cancer Awareness Month; National Sickle Cell Awareness Month; and Adult Immunization Awareness Week (September 27–October 3). If your facility is planning events related to any of these observances and you would like to be included in the GNYHA Web list, send event details to [gnyhawebrequest@gnyha.org](mailto:gnyhawebrequest@gnyha.org). ■



## Acute and Rehab Final Rules *continued*

cut in the labor portion of the Federal rate for hospitals located in high-cost areas. The FY 2009 labor share—the portion adjusted by the area wage index—was 69.7%. For FY 2010, CMS originally proposed a reduction to 67.1% but the final rule moderated that reduction to 68.8%. The labor share for hospitals in low-cost areas will remain unchanged at 62%.

Another positive development was that CMS reported that FY 2009 outlier payments are expected to approximate 5.4% of total IPPS payments, which is within the target range of 5.1% to 6%. For virtually the entire past decade, CMS has paid out less in outlier payments than the amount it set aside for that purpose. While CMS will increase the outlier threshold from \$20,045 in FY 2009 to \$23,140 in FY 2010, the final rule threshold is nonetheless 4.5% less than the proposed rule threshold.

### GME Policy Clarification

In the final rule, CMS also clarified the considerations made in determining whether a teaching hospital would qualify for an adjustment to its Medicare resident cap in

recognition of beginning a “new” residency program. Hospitals located in urban areas that were training residents in 1996 have not been permitted to receive such adjustments since the passage of the Balanced Budget Act, but new teaching hospitals in urban areas and teaching hospitals in rural areas have been permitted to receive these adjustments since that time. CMS notes that there has been some “misunderstanding” regarding the circumstances under which a residency program would be considered “new.” Without specifying definitive criteria, CMS states in the final rule that the “newness” of the program director, the teaching staff, and the residents factor into whether CMS would consider the program itself to be new rather than one that had merely been transferred from another sponsoring institution or training site. CMS also states, “[t]he fact that a program originated from a hospital that closed, where no hospital retained the FTE caps, suggests that it would be appropriate to consider the program to be new.” CMS also notes that in such a case, “the national aggregate resident FTE resident cap would remain approximately the same.”

As part of Federal health reform efforts, GNYHA has advocated that Congress address the case of closed teaching hospitals and preserve residency programs and positions from those hospitals within the same communities. There is currently no mechanism under Medicare’s rules to transfer Medicare-funded resident slots from these closed hospitals to another teaching hospital within that same community.

### Inpatient Rehab Final Rule

The final rule provides a 2.5% market basket increase to inpatient rehabilitation facility (IRF) rates and updates the other payment parameters used in the PPS, including the case-mix group weights, wage index adjustment, outlier threshold, low-income patient percentage, teaching adjustment, and rural adjustment. In addition, CMS will now calculate IRF compliance with the “60% rule” using both Medicare fee-for-service and Medicare Advantage (managed care) discharges. So that Medicare Advantage discharges can be included in the calculation, CMS will require hospitals to submit IRF patient assessment data on Medicare Advantage patients. Finally, CMS finalized new requirements for pre-admission screening, post-admission evaluation, and individualized treatment plans. ■

PAYMENTS AND FISCAL IMPACT OF THE FY 2010 PROPOSED AND FINAL RULES FOR THE INPATIENT PPS					
(\$ in Millions)					
	U.S.	New York	New Jersey	Connecticut	Rhode Island
<b>Payment Summary</b>					
FY 2009 Projected	\$115,062	\$9,166	\$4,184	\$1,740	\$400
FY 2010 Based on Proposed Rule	\$114,461	\$9,061	\$4,149	\$1,721	\$396
FY 2010 Based on Final Rule	\$116,992	\$9,313	\$4,253	\$1,769	\$407
<b>Percent Change in Payments from FY 2009</b>					
FY 2010 Proposed Rule	-0.5%	-1.2%	-0.8%	-1.1%	-1.0%
FY 2010 Final Rule	1.7%	1.6%	1.7%	1.6%	1.7%
<b>Summary of Changes</b>					
Impact of FY 2010 Proposed Rule	(\$600)	(\$105)	(\$35)	(\$20)	(\$4)
<b>Impact of FY 2010 Final Rule Policy Reversals</b>					
Rescind Proposed Cut to Offset Case-Mix Increases from Documentation and Coding Improvement	\$2,051	\$165	\$78	\$32	\$7
Rescind Proposed Elimination of Capital IME Payments	\$364	\$58	\$14	\$11	\$3
Diminish Proposed Cut in Labor Share for High-Cost Areas	\$116	\$29	\$12	\$5	\$1
<b>Total</b>	<b>\$2,531</b>	<b>\$252</b>	<b>\$104</b>	<b>\$48</b>	<b>\$11</b>
<b>Impact of FY 2010 Final Rule</b>	<b>\$1,931</b>	<b>\$147</b>	<b>\$70</b>	<b>\$28</b>	<b>\$7</b>

Source: GNYHA analysis based on: 1) the FY 2009 final rule, FY 2010 proposed rule, and FY 2010 final rule labor, non-labor, and capital components of the IPPS Federal rate; and 2) other payment parameters from CMS’s FY 2010 final rule *Impact File*, which were held constant in each model to distill the effects of the three policy changes made in the FY 2010 final rule.