



December 14, 2009

Skyline news

Reporting on New York's Health Care News

Legislature Lessens DRP Blow To Providers

On December 4, Governor Paterson signed into law the SFY 2009–10 Deficit Reduction Plan to save \$2.7 billion through a combination of State expenditure reductions and revenue increases. GNYHA is pleased that the final proposal is less damaging to health care providers than what the Governor originally proposed, and largely reflects provisions advanced by the State Senate. The new agreement will: 1) delay HEAL-NY payments through April 1, 2010, or until the passage of the SFY 2010–11 Executive Budget, whichever is later, a move that will save \$45 million for the State; and 2) eliminate the 2010 Medicaid trend factor

for all providers for the first quarter of 2010 (January–March), which amounts to \$11.5 million in State savings. The final proposal also includes a 12.5% across-the-board cut to certain local assistance programs, many of which will affect GNYHA members, such as:

- Medicaid managed care quality improvement incentives (approximately \$14 million on plans that receive the incentives)
- Medicaid disease management demonstration projects (approximately \$7.3 million)
- Pay-for-performance demonstration

projects (\$3.6 million)

- Worker retraining grants (\$3.2 million)
- Graduate medical education Innovations Pool and Doctors Across New York (\$2.4 million)
- Anti-tobacco programs (\$2.2 million)

continued on page 2

GNYHA Presents Case for Medical Reform to State Senate

On December 1, GNYHA, with the Healthcare Association of New York State, a number of physician groups, and insurance companies, testified before the New York State Senate Committees on Insurance, Health, and Codes on medical malpractice reform and patient safety. The hearing was called for the stated purpose of identifying the reasons for the high cost of medical malpractice insurance, addressing the problems medical liability insurers face, and exploring solutions that would improve

the medical malpractice system and promote patient safety.

Susan Waltman, Executive Vice President Legal, Regulatory, and Professional Affairs and General Counsel at GNYHA, told senators that the medical malpractice system fails to meet its intended goals of deterring unsafe practices and compensating individuals injured by negligence: it operates contrary to experts' recommendations on promoting patient safety by assigning blame

continued on page 4

Senate Considers Amendments to Health Reform Bill

The U.S. Senate continues to debate the health care reform legislation unveiled by Senate Majority Leader Harry Reid (D-NV) on November 18. Senators from both parties have filed hundreds of amendments to date, but fewer than 20 have been brought to the floor for a vote. Only a half dozen or so of those had been agreed to by the time *Skyline News* went to press. It is expected that amendments will continue to be brought to the floor until Majority Leader Reid files his "Managers Amendment." That will include changes individual Senators requested that Sen. Reid has agreed to in return for securing votes for passage. As previously reported by GNYHA, the

continued on page 3

New Collaborative Focuses On Pressure Ulcers

In an effort to improve outcomes, reduce hospital readmissions, and better coordinate care across provider settings, GNYHA and the Continuing Care Leadership Coalition (CCLC) have launched the Pressure Ulcer Improvement Collaborative. The Collaborative seeks to address the challenges raised by the transfer of patients between settings, often referred to as “care transitions.” In particular, the Collaborative will focus on developing a more standardized, sustainable, community-driven, and team-based approach to the prevention, assessment, management, and documentation of pressure ulcers, which are among the challenges raised by such care transitions.

To do this, the Collaborative will use a standardized communication tool, which

includes a set of consensus-based essential data elements to be transmitted with a patient or resident during the transfer process between acute and long term care settings. The Collaborative will provide ongoing resources—informational sessions, conference calls, site visits, and data analysis—to help health care providers gain a deeper understanding of the barriers to improving pressure ulcer rates across settings and within the region.

On November 17, GNYHA and CCLC held an all-day educational program to launch the Collaborative. Nearly 80 representatives from 20 hospitals and 12 long term care organizations attended the comprehensive session. Representatives from the Centers for Medicare & Medicaid Services (CMS) as well as the New York State Department of

Health (DOH) attended the educational session and demonstrated their support for the Collaborative. GNYHA and CCLC are committed to working with DOH to improve pressure ulcer care, and the Collaborative is a major step to drive improvement across the State and region. CMS is also focused on this issue and has changed its payment policy so hospitals no longer receive additional payment for cases when certain conditions—including stage III and IV pressure ulcers—are not documented as present on admission.

GNYHA and CCLC members interested in taking part in the Pressure Ulcer Improvement Collaborative should contact Zeynep Sumer (zsumer@gnyha.org) or Kelly Donohue (donohue@gnyha.org) at GNYHA or Roxanne Tena-Nelson at CCLC (tena-nelson@cclcn.org). ■

DRP *continued*

- School-based health centers (\$1.4 million)
- Public hospital workforce recruitment and retention grants (\$1.0 million)
- Traumatic brain injury funding (\$0.5 million)
- HIV prevention and education (\$0.5 million)
- Quality of care reviews for Medicaid (\$0.4 million)
- Poison control (\$0.3 million)

Not included in the 12.5% across-the-board cut is an increase in Medicaid fraud recovery targets to save \$150 million and a reduction in subsidies that small businesses receive for the costs associated with mental health parity coverage (Timothy’s Law), which will save the State \$10 million.

Because the State Legislature did not fully balance the \$3.2 billion deficit for the current fiscal year, the Governor has stated that he has given the State Division of Budget the authority to unilaterally withhold “aid to localities” to achieve the remaining \$500 million in savings. Last

Wednesday, at a Governor’s speech on the economy in New York City, Robert Megna Director for the Division of Budget, announced that he would issue the plan to achieve the additional savings within the next several days. As of the *Skyline News*

deadline, the plan had not been publicly released. GNYHA looks forward to working with the Governor and State Legislature to devise a plan to equitably mitigate the projected \$6.8 billion deficit for SFY 2010–11, which begins April 1. ■

SHRPC UPDATE

At its December 10 meeting, the State Hospital Review and Planning Council (SHRPC) approved (in some cases with conditions or contingencies), the following GNYHA member projects: **NewYork-Presbyterian Hospital** was approved to perform liver transplant surgeries at its NYP/Weill Cornell Medical Center campus through extension of the existing program at its NYP/Columbia University Medical Center campus. **Westchester Medical Center** received approval to certify nine additional inpatient pediatric beds to be integrated into the existing Maria Fareri Children’s Hospital. **North Shore University Hospital** and **Long Island Jewish Medical Center** received approval to replace its electronic medical record systems as part of a system-wide initiative. **Orange Regional Medical Center** received approval to construct a 10-bed Level 2 Neonatal Intermediate Care Unit to address increased volume of high-risk neonatal cases from within its service area. **University Hospital of Brooklyn** received approval to correct State Department of Health (DOH) citations and bring the kidney transplant unit into compliance with respect to current standards.

At the meeting, it was announced that SHRPC member Joyce A. Salimeno had resigned. In addition, this was the last SHRPC meeting for Neil Benjamin, Director, Division of Health Facility Planning at DOH. DOH also announced that beginning with the next cycle, in January/February of 2010, the entire SHRPC agenda book will be available on the DOH Web site. ■

DOH Publishes New Cardiac Services Regulations

The New York State Department of Health (DOH) recently published extensive revisions and additions to the regulations pertaining to Emergency and Cardiac Services, as well as the Planning and Need Methodology regulations related to these services. Changes and advancements in the provision of cardiac care have occurred since these regulations were last adopted, rendering them outdated and incomplete. Procedures such as Percutaneous Coronary Interventions (PCI) and cardiac electrophysiology (EP), for example, were still being developed when previous regulations were adopted. While guidelines pertaining to these

procedures were implemented, regulatory criteria for these highly specialized procedures did not exist. The changes to the regulations focus on improving cardiac services, and are available here: <http://www.dos.state.ny.us/info/register/2009/nov4/pdf/rules.pdf>.

GNYHA has continued to keep members informed as the cardiac regulations have changed over the past year. A forthcoming member letter bulletin will offer a comprehensive summary highlighting the key provisions of the newly revised regulations and be available on GNYHA's Web site. For more information, please contact Lorraine Ryan (ryan@gynha.org). ■

Health Reform *continued*

motion to even begin debating the health reform overhaul package received the minimum votes needed. Ensuring 60 votes for final passage has been—and continues to be—an extremely difficult process for Senate leadership.

The Senate continues to grapple with the public insurance option issue, though Sen. Reid made news last week when he announced that broad consensus had finally been reached on how to structure the offering. Ten liberal and moderate Democratic senators crafted the plan, which was designed to break the impasse within the caucus and represent a workable compromise measure. Limited details were available at press time, but GNYHA has learned that part of the agreement would require the Office of Personnel Management to negotiate with plans nationwide to offer affordable private options (similar to the Federal Employees Health Benefits Plan). And, a Medicare buy-in option would be made available to individuals aged 55–65.

GNYHA continues to work on a number of

issues, including a reduction in the amount of disproportionate share hospital cuts (DSH); significant new funding for residency positions; protections against harmful geographic variation proposals; the elimination of the Independent Medicare Advisory Board; a delay of the medical device tax until 2013 (and a gross receipts tax structure); extension of the FMAP relief provided through the stimulus (and a maintenance of effort to keep the money in Medicaid); enhanced FMAP for Medicaid expansion populations; and critical changes to the readmissions policy.

Once Reid's "Managers Amendment" is filed and accepted, the Senate will move to hold a final vote on the bill. Reid and the White House have been targeting passage by the Christmas recess. If the bill passes and there is a conference committee to reconcile differences between the bills the House and Senate passed, it is expected to be small and act extremely quickly. Otherwise, it is anticipated at this point that the House would simply be forced to pass the Senate's bill, despite considerable differences in the coverage provisions and DSH cuts. ■

COGME Reviews Physician Licensure Proposal

On December 7, Roger M. Oskvig, M.D., New York State Board of Medicine Chair, presented proposed changes to New York's requirements for physician licensure to the New York State Council on Graduate Medical Education (COGME). The principal change in the Board of Medicine's proposal is that as of January 1, 2013, all physicians receiving a license in New York would be required to have successfully completed three years of sequential post-graduate training. Under current rules, an international medical graduate must demonstrate that he has completed three years of post-graduate training, but a U.S. medical school graduate must only demonstrate that he has completed at least one year of residency training.

According to Dr. Oskvig, the State Board is considering this change as a means to ensure that inadequately prepared physicians would not be eligible to practice medicine in New York as autonomous practitioners. In order to address concerns raised regarding the ability of post-graduate trainees to issue prescriptions, the State Board of Medicine is also considering the creating a "special resident" license. COGME members generally supported the proposal. The Board of Medicine will continue to gather input from relevant stakeholders and consider modifications to the proposal while remaining on track to meet its January 1, 2013, timeline.

At the meeting, COGME members also heard presentations on what is expected to be included within Federal COGME's upcoming 20th report, as well as reports from workgroup members regarding the status of various New York initiatives. ■

This is the final issue of Skyline News for 2009. Skyline News will resume publication on January 11, 2010. GNYHA wishes all Skyline readers a happy holiday season.

through lengthy, acrimonious proceedings. It compensates plaintiffs unevenly, inaccurately, and often after long delays. The system is also enormously costly: nationally, the Congressional Budget Office estimates that providers will incur \$35 billion in direct costs of malpractice coverage in 2009. In New York State, GNYHA estimates that hospitals alone will incur almost \$1.6 billion annually in direct medical malpractice costs, representing more than 3% of their total

operating costs. Studies often point to the unreasonably high “administrative” costs of the nation’s malpractice system as part of the reason for the system being so costly. Several studies have estimated that the total cost of litigating claims equals 54% of the compensation paid to plaintiffs.

For hospitals, the most significant cost of coverage is for obstetrical care, due in great part to the large settlements and awards related to neurologically impaired newborns. The insurance costs can range from 35–50% of a hospital’s total coverage, depending on

the year and the hospital. Yet, Ms. Waltman testified, there is increasing evidence that many adverse outcomes in this area are not due to provider negligence.

In addition, the system also causes providers to order unnecessary tests and care due to fears of malpractice claims, which McKinsey & Company estimates costs the nation as much as \$150 billion to \$190 billion annually.

Solutions Ms. Waltman noted that, without question, the most effective way to reduce the direct costs of coverage is to reduce adverse outcomes, which providers strive to do each and every day. However, many adverse outcomes cannot be avoided, even with the provision of careful, high-quality care, and it is therefore critical that the State seriously examine ways to improve the medical malpractice system and reduce its costs. To this end, GNYHA recommends the State:

- Develop a special compensation fund to cover the cost of care for neurologically impaired newborns;
- Create health courts or “parts” to help improve the system’s efficiency;
- Develop meaningful clinical practice guidelines for the protection of patients and providers;
- Develop programs that support disclosures, apologies, and early offers of compensation, where warranted; and
- Create caps on non-economic damages, given their favorable impact on lowering the costs of coverage and the fact that nearly 30 states have such caps.

Finally, Ms. Waltman discussed proposals that GNYHA opposes on the basis that they would clearly and unnecessarily increase the cost of the medical malpractice system. Those proposals included eliminating the plaintiff attorney contingent fee schedule, extending the statute of limitations, and prohibiting defendants from interviewing later treating physicians. That interview right was upheld by the State Court of Appeals in the case *Arons v. Jutkowitz*. GNYHA expressed hope that the hearings would be a catalyst for doing what needs to be done to improve and reduce the costs of the medical malpractice system. GNYHA will continue its advocacy for malpractice system reform on both the State and Federal levels. ■

GNYHA Helps Members Navigate HIT Issues

Last week, GNYHA hosted two briefings to educate members on key health information technology (HIT) legal and regulatory issues. The briefings are part of GNYHA’s larger HIT agenda, which is designed to assist members in efforts to implement electronic health record (EHR) technology and, in turn, to meet Federal criteria for receiving HIT incentive funding. As part of this agenda, GNYHA is offering extensive education, implementation tools, and discussion forums that address member needs and concerns. Programming will focus on policy and regulatory issues; technical and operational issues around implementation; and the use of HIT for enhanced care coordination.

The first December 9 briefing addressed issues related to hospital subsidies of EHRs for community physicians, including compliance with Federal and New York State fraud and abuse laws, and requirements related to tax-exempt status. GNYHA member hospitals, including Continuum Health Partners Inc., North Shore-Long Island Jewish Health System, and Catholic Health Services of Long Island, presented first hand experiences with EHR subsidies and assisting physicians with HIT adoption. Issues that were raised and addressed included meeting the yet-to-be-released

Federal standards and certification requirements for physician EHRs, while ensuring compliance with Federal and State laws.

The second session addressed the New York State certificate of need (CON) process as it relates to the adoption and implementation of hospital HIT systems. New York State Department of Health (DOH) representatives offered a comprehensive review of the process, including the technical, operational, and clinical areas that must be addressed for CON applications with an HIT component. DOH officials specifically discussed member concerns around CON interoperability and project financing requirements. Further, DOH ensured that project reviews would be completed in a timely fashion so as to avoid delays in accessing Federal HIT incentive funds. A panel of GNYHA member hospitals, including representatives from Episcopal Health Services and NYU Langone Medical Center, provided recent experiences and guidance with respect to their CON applications and their HIT implementation work plans.

Agendas and materials for both sessions are available on the GNYHA Web site. For more information about upcoming activities and events, please contact Zeynep Sumer (zsumer@gnyha.org) or Alissa D’Amelio (adamelio@gnyha.org). ■