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# Skyline news

Reporting on New York's Health Care News

## NY Governor Targets Ethics, Fiscal Reform

Last Wednesday, the official opening day of New York's 2010 legislative session, Governor David Paterson gave his second State of the State speech, focusing mostly on fiscal and ethics reform. The Governor did not speak specifically to any health care issues. The speech usually provides insight into what will be included in the Governor's Executive Budget Proposal, which this year is expected to be released on January 19. On the fiscal front, he announced two major proposals. The first is a *Four Year Financial Plan* to be spearheaded

by Lieutenant Governor Richard Ravitch to bring the State's financial plan into a structural balance, thereby mitigating cuts to essential services provided by hospitals, schools, and mass transit; the second is a cap on the growth in government spending. Governor Paterson also announced sweeping ethics reform, which would establish a State government ethics commission to examine the conduct of the State's executive and legislative branches and provide advice to ensure uniform enforcement of ethical standards. The commission would have the authority to

enforce campaign finance laws, increase oversight, and enhance reporting for both lobbyists and State officers, among other

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## HHS Releases Proposed Guidance on Meaningful Use

Recently, the Centers for Medicare & Medicaid Services (CMS) released a proposed rule mapping key parts of the Federal government's implementation of health information technology (HIT) provisions included in the American Recovery and Reinvestment Act of 2009 (ARRA). The proposed regulation sets forth the long-awaited guidance for providers on how CMS will determine eligibility for Federal HIT incentive funds.

GNYHA is deeply concerned that this proposed regulation exceeds what providers and the electronic health record (EHR)

technology market can reasonably achieve in the time frame outlined. GNYHA is further disappointed that CMS' interpretation of provider eligibility—specifically with respect to multi-campus hospitals with a common provider number and physicians practicing in hospital-owned clinics—excludes certain hospitals and physicians from receiving incentive funds.

### Meaningful Use Defined

The CMS rule proposes a three-stage approach to meaningful use, but focuses on

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## Congress Begins Reconciling Reform Bills

Although House members will not officially return to Washington until tomorrow (and the Senate doesn't return until next week), the work of reconciling the House- and Senate-passed versions of health reform legislation is well underway. With the Senate having passed their bill December 24, House and Senate leaders have been focused on developing a consensus package that can receive approval from both chambers—a tall order given that each chamber narrowly passed its one-house bill.

Congressional leaders have been meeting with one another and with White House officials to iron out the major differences between the bills. Those differences include offering a public health insurance option; using Federal funds to subsidize abortions; and offsetting the

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# HEP Forum Discusses Medicaid, Disparities

On December 14, the Healthcare Education Project, a partnership between GNYHA and 1199 SEIU, convened health care providers, politicians, and community leaders to discuss issues related to preserving critical funding to address health disparities in racial/ethnic minority populations. The event centered on New York State's precarious financial situation, noting that further State reductions to Medicaid reimbursement would jeopardize access to health care, particularly in New York's communities of color and immigrant neighborhoods.

In addition to remarks from GNYHA President Kenneth Raske and 1199 SEIU President George Gresham, the symposium opened with comments from David Sandman, Senior Vice President of the New York State Health Foundation, who stated that health insurance remains the ticket to enter the health care system, making coverage expansion key to any health reform plan.

Dr. Brian Smedley of the Joint Center for Political and Economic Studies added that health care is a moral issue and an economic one. He said that poorer communities and communities of color are less likely to have primary care providers but more likely to be affected by hospital and clinic closures—making cuts to Medicaid a direct affront to minority communities.

Providers were represented on two panels, one focused on long term care and the other on hospitals. During the long term care panel, Roxanne Tena-Nelson, Executive Vice President of the Continuing Care Leadership Coalition, gave the audience a Medicaid primer and explained that many of New York State's long term care reforms actually penalize nursing homes that make investments in their workforce and quality and patient safety. In the next panel, Lloyd Bishop, GNYHA's Vice President of Government Affairs and Community Health Initiatives, and David

Rosen, President and CEO of MediSys Health Network, discussed how State funding reductions for hospitals negatively impact safety net providers and the vulnerable populations they serve. Mr. Bishop explained that hospitals provide communities with more than just care; he said that New York's hospitals directly or indirectly support more than 650,000 jobs and generate more than \$100 billion for State and local economies. Last year's closure of Mary Immaculate Hospital in Queens, for

example, left 1,400 unemployed—which ultimately cost the entire neighborhood in lost dining, shopping, and local spending on other goods and services.

In addition to the panelists, several elected officials were invited to the symposium. Assembly Members Michele Titus (D-Queens), Michael Benjamin (D-Bronx), Keith Wright (D-Manhattan), Karim Camara (D-Brooklyn), Adam Clayton Powell, IV (D-Manhattan), and Hakeem Jeffries (D-Brooklyn) attended, while staffers from Vanessa Gibson's (D-Bronx) office were present. From the State Senate, Velmanette Montgomery (D-Brooklyn) attended, along with staffers from Shirley Huntley (D-Queens) and Thomas Duane's (D-Manhattan) offices. ■



David Rosen, President & CEO, MediSys Health Network, Inc.

## GNYHA, Stakeholders Push Statewide Perinatal Protocol

As part of its Perinatal Safety Collaborative, GNYHA and the United Hospital Fund (UHF) have been working for the past two years with other stakeholders in New York State to develop a quality agenda and effective safety program for perinatal care that could be adopted statewide. These stakeholders include the New York State Department of Health's Office of Health Systems Management and Division of Family Health, the American College of Obstetricians and Gynecologists District II/New York, and the Healthcare Association of New York State.

Participants in the December 15 GNYHA/UHF Perinatal Advisory Panel meeting reached broad-based consensus for this unified approach to promote and to achieve optimal outcomes for mothers and babies throughout the State and beyond. The group agreed to create a consensus document that will be provided to the New York State Commissioner of Health requesting further support for our combined efforts. GNYHA is delighted with the cooperation and collaboration demonstrated by this

group and will continue to aggressively pursue the goal of improving the quality of care provided to our patients through adoption of a set of standardized clinical and safety practices.

Also represented at this meeting for the first time was the March of Dimes New York Chapter. State Director Nelson Andino presented on the national organization's Big Five Initiative. Similarly aligned in our efforts to improve perinatal outcomes, the March of Dimes initiative is focused on reducing elective inductions, cesarean sections and late pre-term birth through consumer education and the standardization of clinical practices.

Currently 44 hospitals are participating in the GNYHA/UHF Perinatal Safety Collaborative and are making significant progress in creating a culture of safety, standardizing clinical practices, and working and communicating as an effective team. To read how the Perinatal Safety Collaborative plays a key role in GNYHA's medical malpractice reform efforts, see this week's *Health Care News In-Depth*. ■

## Meaningful Use *continued*

the Stage 1 criteria. Specific requirements for Stages 2 and 3 will be released in subsequent years as the technology becomes available to meet these more stringent criteria.

In Stage 1, eligible hospitals must attest to meeting 23 objectives and corresponding functionality measures for each of the objectives, in order to be deemed “meaningful users” of EHR technology. These objectives include using computerized provider order entry on 10% of all orders; maintaining an active medication list; verifying insurance eligibility; and submitting claims electronically, among others. Providers will be expected to attest to meeting the functionality requirements in order to receive payments.

In addition, CMS proposes a list of 35 clinical quality measures for reporting as part of meeting “meaningful use.” Many of the measures are currently not routinely collected by hospitals, such as emergency department throughput times and hospital adherence to quality improvement bundles. A complete listing of the quality and functionality measures that CMS proposes can be found on the GNYHA Web site. Although CMS is currently unable to receive data from hospitals on these measures, it expects to be able to in 2012. In the meantime, hospitals must attest to the capture of these elements through a certified EHR and must submit summary information to CMS on the measures.

Since incentive payments are made under both Medicare and Medicaid, CMS also outlines a proposal for alignment between the two programs. The proposal for the Medicare meaningful use definition is set as the minimum criteria for states to adopt. State Medicaid programs may, with CMS approval, include additional criteria for providers. However, providers the Medicare program deems to be “meaningful users” will have the same designation under Medicaid.

CMS proposes similar requirements and timeframes for eligible physicians with some differences in the objectives and quality measures.

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## Review of Regulatory Burdens

As part of its continued advocacy to reduce regulatory burdens imposed on its members, GNYHA recently submitted to the New York State Department of Health (DOH) and Governor’s Office of Regulatory Reform a written review of regulatory issues that unnecessarily impede hospital operations. This submission was developed in response to Governor David Paterson’s August 25 Executive Order No. 25: *Establishing a Regulatory Review and Reform Program*, which calls for a review and reform process to address “unnecessary or excessive [regulatory] burdens” and a subsequent request for specific input from DOH.

GNYHA’s submission, based on input collected from the GNYHA membership at a November 30th meeting, identified several key priorities including:

- Continuing certificate of need (CON) reform

- Streamlining reporting requirements
- Improving efficiency in credentialing
- Establishing an objective Medicaid appeals process

In addition, GNYHA raised concerns about the inefficiencies and unnecessary costs of non-regulatory issues like the medical malpractice system, burdensome and duplicative provider audits, and regulatory interpretation.

GNYHA has long worked on these issues, and we are pleased to have the opportunity to catalogue and formalize our concerns through Executive Order No. 25. Our written submission is only the latest step in an ongoing, productive dialogue with DOH senior staff on a variety of regulatory issues. Moreover, GNYHA’s ongoing advocacy has already borne significant improvements to the CON process and Medicaid audit process in New York. ■

## Reform Bills *continued*

cost of coverage expansion through a tax on high-value insurance plans or surtax on high-income individuals. The White House continues to urge Congress to send the President a bill he can sign into law by the State of the Union—the date of which is still pending, likely due to the fact that reform negotiations remain in flux.

GNYHA continues to underscore its priorities and suggested legislative solutions with key decision makers on the Senate Finance Committee and House Ways & Means Committee. Specifically, GNYHA’s top priorities are reducing the level of cuts to safety net hospitals (i.e., disproportionate share hospital payments); supporting Medicaid expansion

and enhanced Federal financial support for coverage populations; adjusting for socioeconomic status in a hospital readmissions policy; and ensuring that appropriate adjustments are included in any

provision aimed at reducing geographic spending variation. GNYHA has provided extensive comments on these and many other issues (including the Independent Payment Advisory Board, a cap on

year-to-year losses, funding of new residency slots and other GME-related provisions, value-based purchasing, device tax, and 340B drug discount program expansion) to key House and Senate Committee staffers, White House officials, and the entire New York Delegation. Read more about GNYHA Federal reform priorities at [www.gnyha.org](http://www.gnyha.org) ■

### GNYHA’S TOP HEALTH CARE REFORM PRIORITY AREAS

- Minimizing disproportionate share hospital (DSH) payment cuts
- Enhancing New York’s FMAP
- Weighing socioeconomic status in hospital readmission data
- Implementing a fair geographic variation policy

## Meaningful Use *continued*

### Incentive Fund Eligibility

CMS proposes to define a hospital, for the purposes of eligibility for incentive payments, based on its Medicare provider number, thereby counting hospitals in a multi-hospital system as one hospital for payment purposes. In addition, CMS excludes about 30% of physicians from the incentive program by leaving out hospital-based physicians, including those physicians practicing in ambulatory clinics owned by hospitals. Since last spring, GNYHA has been actively cautioning CMS against a narrow approach to defining eligibility for hospitals and physicians. Specifically, we have advocated against limiting the definition of a hospital to just its Medicare provider number, as this excludes many individual sites of multi-campus hospitals that share a provider number, and to expand the definition of an eligible professional to include physicians providing services in hospital-owned clinics. We will continue to press for this ahead of the final rule.

### Certification Criteria Regulation

Separate from the CMS proposed rule, the Office of the National Coordinator (ONC) for HIT released an interim final rule providing a definition for certified EHRs and issuing guidance on technical standards, specifications, and certification criteria that

will be necessary to meet “meaningful use” requirements. These standards and criteria map to the meaningful use criteria outlined in the CMS rule, with additional standards for protecting privacy and security.

Under the rule, providers may use a “complete EHR” that meets all certification criteria, or can adopt components of EHR modules, each of which must meet certification criteria that are outlined in the rule.

The interim final rule will be followed by a separate proposed rule that will outline the certification process for entities wishing to become certifying bodies.

### Next Steps

The CMS proposed rule and the ONC interim final rule are open to 60-day comment periods beginning January 13 when the rules are formally published. The ONC rule will be in effect in 30 days, because it has been published as an interim final rule. GNYHA has a number of activities planned to respond to the CMS rule, including convening member groups to discuss crafting formal comments. Groups will focus on technical aspects of meaningful use, finance and eligibility criteria, and clinical quality measures. A briefing for all members to summarize the regulation is scheduled for Friday, January 15 at GNYHA. For more information on the member briefing or the proposed regulations, contact Zeynep Sumer ([zsumer@gnyha.org](mailto:zsumer@gnyha.org)). ■

## Ethics, Fiscal Reform *continued*

duties. Other programs and reforms the Governor announced were the Excelsior Jobs Program, which will focus on high tech and clean energy growth jobs; economic development and job creation; and clean energy economy; among others.

### Changes in Senate 2010 Committee Leadership

State Senate Temporary President Malcolm Smith (D-Queens) assigned two Republicans as committee chairs. Senator George Maziarz (R-Newfane) will replace Senator Darrel Aubertine (D-Cape Vincent) as chair of the Standing Committee on Energy and

Telecommunication, and Senator Thomas Morahan (R-New City) will replace Senator Shirley Huntley (D-Queens) as chair of the Standing Committee on Mental Health. Senator Huntley will now chair the Standing Committee on Cities, vacated by Senator Daniel Squadron (D-Manhattan), who will now Chair the Standing Committee on Social Services, previously held by Senator Velmanette Montgomery (D-Brooklyn). Senator Huntley will also become Deputy Majority Leader for State/Federal relations, a position previously held by Senate Democratic Leader John Sampson (D-Brooklyn). ■

### In Memoriam: DENNIS DELEON DR. ROBERT P. WHALEN

**Dennis deLeon**, former president of the Latino Commission on AIDS and a former New York City Commissioner on Human Rights, died December 14 at the age of 61.

In 1990, David N. Dinkins appointed Mr. deLeon to serve as chairman of the City’s Commission on Human Rights. In 1994, he became president of the Latino Commission on AIDS.

Mr. deLeon was a member of the GNYHA’s Advisory Task Force on Diversity in Health Care Leadership. One of the recommendations Mr. deLeon championed was the creation of the GNYHA/Baruch College Health Care Leadership Institute, a 15-month executive development program designed to promote racial and ethnic diversity in health care management. The program graduated 64 participants in its inaugural class, with another 24 participants scheduled to graduate in June 2010. ■

GNYHA also mourns the loss of a great public health advocate in New York State, **Dr. Robert P. Whalen**, who died December 24 at the age of 84 from kidney failure. Dr. Whalen’s long career included service in the public and private sectors, as well as academia. From 1975 to 1979, Dr. Whalen was New York State’s Health Commissioner. An Army veteran who served during World War II, Dr. Whalen graduated from Albany Medical College in 1951. His public service career started as Medical Director at Albany County’s Department of Public Welfare. Dr. Whalen’s career in the private sector included serving as Interim President of Albany Medical Center, and as Executive Vice President at the Hospital Underwriter’s Mutual Insurance Company. Dr. Whalen was also a Community Health Professor at Albany Medical College. ■