



March 22, 2010

# Skyline news

Reporting on New York's Health Care News

## Health Bill Passes in Weekend Vote

**NOTE:** Since *Skyline News* went to press, the House voted on health reform legislation and a reconciliation measure that accompanied it. On March 21, the House passed the Senate's version of the bill by a vote of 219-212. The reconciliation measure passed by a vote of 220-211.

House Democratic leadership unveiled the long-anticipated health reform reconciliation measure, the "Health Care and Education Affordability Reconciliation Act of 2010," on March 18, after days of delays resulting from continuing negotiations in order to secure the necessary

votes for passage. The measure amends the health reform legislation the Senate passed on December 24, 2009, the "Patient Protection & Affordable Care Act." The changes to the Senate bill now would extend coverage to 32 million currently uninsured individuals, and bring the cost of the overall package of health reform provisions to \$940 billion over ten years, with a savings to the Federal deficit of \$138 billion over the same budget window (\$1.2 trillion over the following decade). As *Skyline News* went to press on March 19, a weekend vote on the measure was expected.

### **DSH, Market Basket Cuts**

The reconciliation measure makes a number of important changes to the Senate bills,

including reducing Disproportionate Share (DSH) cuts. The new bill reduces the size of the Medicare Disproportionate Share (DSH) cut from \$25.1 billion to \$22.1 billion from FY 2014–2019 compared to the Senate bill. In addition, the cuts would begin one year earlier, in FY 2014 rather than FY 2015, to comply with a procedural rule pertaining to reconciliation that requires all provisions have a budget impact within the first five years. The Medicaid DSH cut would be reduced from \$18.1 billion to \$14.0 billion from FY 2014–2019 compared to the Senate bill. In addition, similar to the Medicare DSH cuts, the Medicaid DSH cuts would begin one year earlier, in FY 2014. The

*continued on page 3*

## Save the Date

Please reserve the following dates for the GNYHA Annual Meeting and the GNYHA Annual Reception and Awards Ceremony

### **2010 Annual Meeting**

Tuesday, April 20, 2010

#### **Keynote**

Dr. David Blumenthal,  
National Coordinator for HIT

### **2010 Annual Reception and Awards Ceremony**

Thursday, May 27, 2010

## FHCDA Becomes Law

In a historic moment last week, New York Governor David Paterson signed the Family Health Care Decisions Act (FHCDA) into law. The FHCDA allows family members to make health care decisions, including those related to withholding or withdrawal of life-sustaining treatment, on behalf of patients who lose their ability to make such decisions and have not prepared advance directives outlining their wishes. Health care providers and others have advocated for passage of the FHCDA for more than 17 years.

The law takes effect in June, though pro-

viders may implement it before then if the policies and procedural safeguards it requires are in place. The law is quite complex and needs careful consideration with regard to how it relates to existing laws, such as those addressing DNR and Health Care Proxy. Members should also consider how FHCDA interacts with existing advance directive and end-of-life treatment decision-making policies that facilities have in place.

To assist our members, GNYHA is working with other organizations around the State to create a plan for implementation and training on the law's requirements. ■

# NYS Lawmakers Begin Budget Process

New York State lawmakers have begun meeting in earnest to discuss closing a projected \$9 billion budget gap for the 2010–11 State fiscal year, which begins April 1. As of last Thursday, both the State Senate and Assembly were aiming to advance one-house resolutions with their ideas on how to close the budget gap, which would signify the beginning of actual budget negotiations. GNYHA has been lobbying key negotiators to restore the majority of health care provider cuts, which amount to \$459 million. The message to legislators is that the \$1.5 billion available to New York in Federal Medicaid funding renders the proposed cuts and taxes unnecessary.

GNYHA has also spoken with legislators in both houses to support the Governor's plans for taxes on sugary beverages and cigarettes, which could yield an additional \$650 million in State revenues for SFY 2010–11. The Governor has earmarked both levies for health care in his budget and if the Legislature does not adopt this proposal, the cuts to providers could become markedly worse.

During the past two weeks, GNYHA, 1199 SEIU, and the Continuing Care Leadership Coalition (CCLC) briefed State legislators from the Staten Island delegation on the groups' budget concerns. GNYHA also partnered with the Healthcare Association of New York State and CCLC to brief several members from Senate Deputy Majority Leader Jeff Klein's (D-Bronx) health care study group. Senator Klein convened the group last fall to better understand health care financing and to learn how specific budget proposals affect health care providers. Members include Senators Diane Savino (D-Staten Island); Craig Johnson (D-Nassau); Kemp Hannon (R-Nassau); David Valesky (D-Syracuse); William Stachowski (D-Buffalo); Brian Foley (D-Suffolk); Tom Morahan (R-New City); Darrel Aubertine (D-Cape Vincent); and Neil Breslin (D-Albany).

## Ravitch Discusses 5-Year Plan

Last Thursday, Lieutenant Governor

Richard Ravitch met with GNYHA's Board of Governors and provided keen insight on the State's worsening budget deficit. He called upon the health care provider community to share in the sacrifice of closing the State's shortfall, which is expected to equal \$60 billion over the next five years. He also outlined his five-year plan to eliminate the structural imbalance of the State budget and maintain annual balanced budgets. Under the plan, future budgets would be monitored and reviewed on a quarterly basis by a Financial Review Board comprised of representatives appointed by the Governor, the Legislature,

and the Comptroller. The proposal also includes:

- recommendations for stronger reserve requirements;
- a plan to borrow \$6 billion over the first three years to address 10% of the five-year State budget gap; and
- a recommendation to transition the budget to one based on Generally Accepted Accounting Principles (GAAP) and start the fiscal year July 1 instead of the current April 1.

The proposal is being reviewed in Albany for possible inclusion in State budget legislation. ■

## CCLN Hosts Cardiac Critical Care Conference

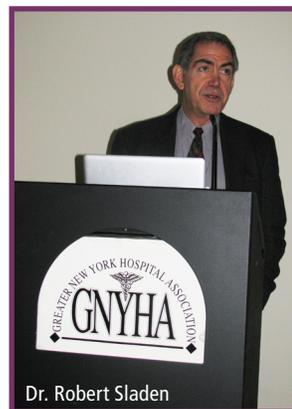
On March 12, GNYHA/United Hospital Fund's Critical Care Leadership Network (CCLN) hosted its third annual Cardiac Critical Care educational program on caring for cardiac surgery patients in the intensive care unit. The program was designed by lead faculty Dr. Vladimir Kvetan of Montefiore Medical Center and Dr. Robert Sladen of New York–Presbyterian Hospital/Columbia University Medical Center. Experts in cardiac critical care medicine addressed the perioperative management of patients undergoing cardiac surgery and covered a number of topics, including ventricular assist devices, cardiac critical care ultrasound, and treating the bleeding patient.

More than 130 critical care fellowship faculty, trainees, and practitioners who care for cardiac surgery patients attended the

conference. The interactive case discussions were well received by attendees who indicated that the program was “a very effective sharing of knowledge” and noted that the

faculty incorporated “great interactive scenarios.” The program continues CCLN's mission to provide high-quality educational programs to intensive care unit (ICU) teams, including fellows, attending physicians, physician assistants, and nurses. These educational programs aim to enhance the region's critical care services by creating a forum for reviewing local experi-

ences and sharing evidence-based practices to improve patient outcomes in the ICU. Materials from the conference are available to all members on GNYHA's Web site in the CCLN Resource Library. For more information, please contact Zeynep Sumer ([zsumer@gnyha.org](mailto:zsumer@gnyha.org)) or Alissa D'Amelio ([adamelio@gnyha.org](mailto:adamelio@gnyha.org)). ■



# GNYHA Comments on Key HIT Regulation

**G**NYHA submitted comments last week to the Centers for Medicare & Medicaid Services (CMS) on its proposed rule for the Medicare and Medicaid electronic health record (EHR) incentive program. In the proposed rule, CMS provides guidance on how it will determine eligibility for Federal HIT incentive funds, specifically offering a proposed definition for the “meaningful use” of EHRs. Providers deemed to be meaningful users stand to receive incentive payments from Medicare and Medicaid programs over a four-year period. CMS will enforce payment penalties beginning in 2015 for

providers that fail to meet meaningful use criteria.

GNYHA expressed concern that CMS’ proposed criteria are too aggressive and exceed what can be reasonably achieved by providers and the EHR vendor market in the suggested time frame. GNYHA suggested an alternative approach that was developed by the American Hospital Association with significant input from GNYHA’s Hospital HIT Steering and Quality and Outcomes Research committees, as well as other stakeholders nationwide. Using this alternative approach, GNYHA proposed that CMS identify a single, expanded set of meaning-

ful use objectives to be achieved between 2011 and 2017. Hospitals would be considered meaningful EHR users and qualify for the full EHR incentive payment if they meet a specified percentage of the hospital objectives in a given fiscal year, with the required percentage increasing over time.

GNYHA also expressed concern for how CMS interprets provider eligibility, specifically with respect to multi-campus hospitals with a common provider number and physicians practicing in hospital-owned clinics. CMS’ restrictive definitions of eligibility in these two areas would exclude certain hospitals and physicians from receiving incentives. GNYHA’s letter recommends specific approaches to expanding eligibility so that these providers would be included in the incentive payments made. GNYHA’s formal comments can be found on its Web site. CMS expects to release a final rule on the EHR Incentive Program by late spring. ■

## DOH Moves Ahead With CON Reform

**A**t the March 12 Public Health Council meeting, the New York State Department of Health (DOH) presented for discussion proposals to streamline and reform the State’s certificate of need (CON) program. The Department has indicated that the necessary regulatory changes are anticipated to be published on March 24, 2010, in the *State Register*. There will be a 45-day comment period and if there are no substantive comments that require amendments, the proposed regulations will be presented for adoption to the Public Health Council on May 14 and to the SHRPC Codes Committee on May 27. The proposed regulations will then be presented to the full SHRPC for adoption on June 10.

Measures in the proposed reform package include:

- increasing the threshold for full review from \$10 million to \$15 million;
- increasing the threshold for administrative review from \$3 million to \$6 million;

- maintaining the sliding threshold for administrative review of projects with a cost of up to 10% of operating costs, but raising the cap on projects eligible for administrative review under the sliding threshold from \$25 million to \$50 million for general hospitals.

Facilities with publicly backed debt would be eligible for administrative review under the sliding threshold. The proposed reforms would also eliminate full review of non-clinical and health information technology projects regardless of cost. Such projects with a total cost of up to \$15 million would instead be subject to limited review, and those in excess of \$15 million would be subject to administrative review. Finally, the proposed reforms would require only limited review of acquisitions of an MRI or CT scanner by a general hospital; the acquisition of lithotripters would no longer be subject to CON review; and prior review and limited architectural review would be combined into one category that will be called “limited review.” ■

## Health Bill *continued*

structure of the Medicaid cut was revised to ensure that the specific savings targets are achieved in each year, which effectively eliminates the trigger on the cuts that had been included in the Senate bill. The reconciliation bill also increases market basket update cuts in years 2014–2019 for inpatient and outpatient hospital services, long term care hospital and inpatient rehabilitation facility services.

### Other GNYHA Priority Issues

The reconciled bill eliminates the special FMAP agreements that were negotiated as part of the original Senate bill for states like Nebraska and provides more equitable treatment for states like New York and New Jersey that already extend Medicaid coverage to childless adults. Expansion states with a regular FMAP of 50% will receive increasing FMAP rates starting at 75% in 2014, maxing out at 90% in 2020 and thereafter. The enhanced FMAP represents significant new Federal money for expansion

*continued on page 4*

# Congress Considers Jobs Bills

Another bill with one-month extensions to temporarily address several expiring provisions—including a delay for a scheduled Medicare physician payment cut and a delay in the implementation of a financial cap on Medicare Part

B outpatient therapy services—is moving through Congress. Without passage of this measure, the “Continuing Extension Act of 2010,” physicians will see a 21.5% Medicare payment reduction starting April 1. The Senate is expected to take up this measure

## HEP Warns Against More Cuts

The State’s proposed health care cuts could result in a loss of 22,000 jobs throughout the State, including 12,300 permanent jobs lost in hospitals, nursing homes, and home care agencies, according to the GNYHA/1199 SEIU Healthcare Education Project (HEP). On March 8, HEP launched a related television ad explaining that health care has been cut seven times since 2007. With an eighth cut looming, health care access is disappearing and New Yorkers must tell their State legislators, “No More Healthcare Cuts, Enough is Enough.” The television ad, available at <http://www.healthcareeducationproject.org>, ran on TV stations statewide through



March 19.

HEP has also been running ads in newspapers around the State—including full-page ads in the *New York Post*, *Daily News*, *Newsday*, and *AM New York*—to urge New Yorkers to tell legislators, “Enough is Enough.” HEP has also started the first of thousands of patch-through calls to legislators, in addition to meeting face-to-face with lawmakers in Albany. GNYHA has been reinforcing the message that with more than \$1.5 billion in Federal Medicaid relief for New York State in the coming fiscal year, there is no need to cut health care by the \$459 million proposed in the State budget (see story, page 2). ■

## Health Bill *continued*

states because it supplants state funding. New York has preliminarily projected that the net value of the Federal enhancement will be approximately \$1.3 billion in State fiscal year 2014–2015.

The bill also removes the proposed expansion of the 340B drug discount program to inpatient drugs for DSH hospitals. In addition, the bill would replace the existing global tax on the gross receipts of medical device companies with an excise tax, but the tax would start in 2013 (i.e., two years later than the Senate bill proposed). Despite aggressive attempts by Members of Congress from certain rural states, the bill (as *Skyline News* went to press)

does not add any new geographic variation policies to those provisions that are already included in the Senate bill, nor does it include any improvements to the readmissions policy.

### Outcome Uncertain

As *Skyline News* went to press, Republicans were lining up unanimously against the measure, reportedly prepared to offer a slew of amendments and objections. However, Democrats picked up two more votes on Friday, as Ohio Democrats Rep. John Bocchieri and Rep. Charles Wilson both indicated their intention to vote for the bill. The two Ohioans join Reps. Dennis Kucinich (D-Ohio), Betsy Markey (D-CO) and Bart Gordon (D-TN) as previous “no” votes who switched their allegiance last week. ■

before the Congressional recess starts this weekend to prevent the existing extensions from expiring.

The bill also includes an important provision regarding health information technology. It clarifies that for purposes of Medicare and Medicaid incentive programs for the “meaningful use” of electronic health records, hospital-based physicians—who are not eligible for Medicare or Medicaid financial incentives—are those who furnish substantially all of their services in a hospital setting, defined as inpatient or emergency room settings only. The current law definition inappropriately excluded physicians in outpatient settings from being eligible to participate in this important incentive program.

On a separate track is a jobs package (HR 4213) which passed the Senate March 10 by a vote of 62–26. Republican Senators George Voinovich of Ohio and David Vitter of Louisiana broke ranks and voted for the bill. This package includes a larger group of both tax and health extenders with another temporary Medicare physician payment patch that would go through the end of the Federal fiscal year (September 30, 2010). A one-year extension is provided for a range of issues, including COBRA health benefits, unemployment aid, and a six-month extension (through July 2011) for the FMAP increase provided through last year’s economic stimulus package. This package also includes the same physician eligibility clarification for Medicare and Medicaid HIT financial incentives that has been included in the Continuing Extension Act mentioned above. The House passed its own extender bill (which also included a six-month FMAP extension) on December 9 by a vote of 241–181, and continues to unveil additional smaller bills encompassing several of the Senate’s policies. Democratic leadership hopes to reach consensus on a conference bill before the recess, though there is some doubt as to whether that will occur.

Lastly, on March 18, President Barack Obama signed into law the “HIRE Act” (HR 2847). Among its provisions is one that would provide tax incentives to employers who hire individuals who have been out of work for at least two months. ■