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Friday Fax

TO: NYSRA MEMBERS

Nearly \$4.1 billion recovered by US healthcare fraud prevention

Attorney General Eric Holder and Department of Health and Human Services (HHS) Secretary Kathleen Sebelius today released a new report showing that the government's health care fraud prevention and enforcement efforts recovered nearly \$4.1 billion in taxpayer dollars in Fiscal Year (FY) 2011. This is the highest annual amount ever recovered from individuals and companies who attempted to defraud seniors and taxpayers or who sought payments to which they were not entitled. The approximately \$4.1 billion stolen or otherwise improperly obtained came from federal health care programs was recovered and returned to the Medicare Trust Funds, as well as the federal treasury. A news release, with links to a report on the effort, can be viewed at the HHS web site:

<http://www.hhs.gov/news/press/2012pres/02/20120214a.html>

Governor Cuomo's 30 day amendments released

Governor Cuomo's office has released what should be the final package of formally issued amendments to his proposed state budget. The Governor's 30-day amendments were released late last night and, at first glance, do not appear to make significant changes to the health and mental hygiene areas of budget spending. The amendments do incorporate an agreement that the Governor reached this week regarding a teacher evaluation program and its role in determining whether school districts receive increased state aid next year. The 30-day amendments come in the wake, quite logically, of 21-day amendments released by the Governor early the week before. The 21-day package offered technical changes almost exclusively. We are looking at the newly released package to see if anything of significance may be included that we have not yet seen. We will certainly apprise NYSRA members of further developments as "budget season" unfolds. That season begins in earnest around March 1, the date when the legislative leaders and the Governor are scheduled to reach agreement on the amount of revenue available for the State Fiscal Year that starts April 1. The Legislature this week finished up its annual series of budget hearings (with NYSRA delivery testimony on mental hygiene issues at the final session on Tuesday). And, with Presidents' Day on Monday, the Legislature has now left for its February break and is due to return to Albany on Tuesday, February 28.

Affordable Care Act: Supreme Court hearing nears

Organizations, states and others are gearing up for what will certainly be the most important litigation of the year with regard to health care. The Supreme Court is scheduled to hear arguments next month on the matter of whether the landmark health care reform of the Obama Administration – The Affordable Care Act – is constitutional. Oral arguments at the Supreme Court are scheduled late March and may be conducted over a three-day period. Two major points are at issue: First, the "individual mandate" provision of the Act, which requires all individuals to have health insurance, is being challenged by individuals who believe the mandate is an overstepping by Congress of its authority. Second, some 25 states have challenged the large expansion of Medicaid eligibility that is part of the Act, saying the move and its expected addition of 14 million people nationwide is an unacceptable mandate on states, who must pay a portion of the costs of enrolling and covering these new beneficiaries. Lower court cases have reached different conclusions with regard to these issues. The most notable case, decided by a US Circuit Court in Florida, found that individual mandate was unconstitutional. But the court went further and said that, because the mandate was such an integral part of the entire legislative structure of the Act, it could not be severed from the rest of the Act. The court thus invalidated the entire ACA. Courts have been less willing to invalidate the expansion provisions of which the states complain, pointing out that Medicaid is, essentially, a voluntary program and states are not forced to operate Medicaid programs. States argue that, in reality, the Medicaid program is essential to the entire nation's health care system and is not, in actuality, voluntary. It is expected that the Court may hand down its ruling in June, when its current term ends. Were the court to invalidate the ACA altogether (as the US Circuit Court has done in Florida) there are real questions as to the impact of such a decision on programs like New York's "Health Homes" initiative, which is now under way. Many aspects of the HH project are largely funded by federal dollars authorized by the ACA.

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