

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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Your Host



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

TODAY'S AGENDA

Gabe Oberfield – (12:00PM - 12:10PM)

- **Introductions**
- **Gov. Hochul's Exec. Budget Proposal**

Kate Hajjar – (12:10PM - 12:20PM)

- **Higher Education – What's Ahead (Part 2)**

Frank Mayer – (12:20PM - 12:30PM)

- **Employee Retention Tax Credits**

Alison Roach – (12:30PM - 12:40PM)

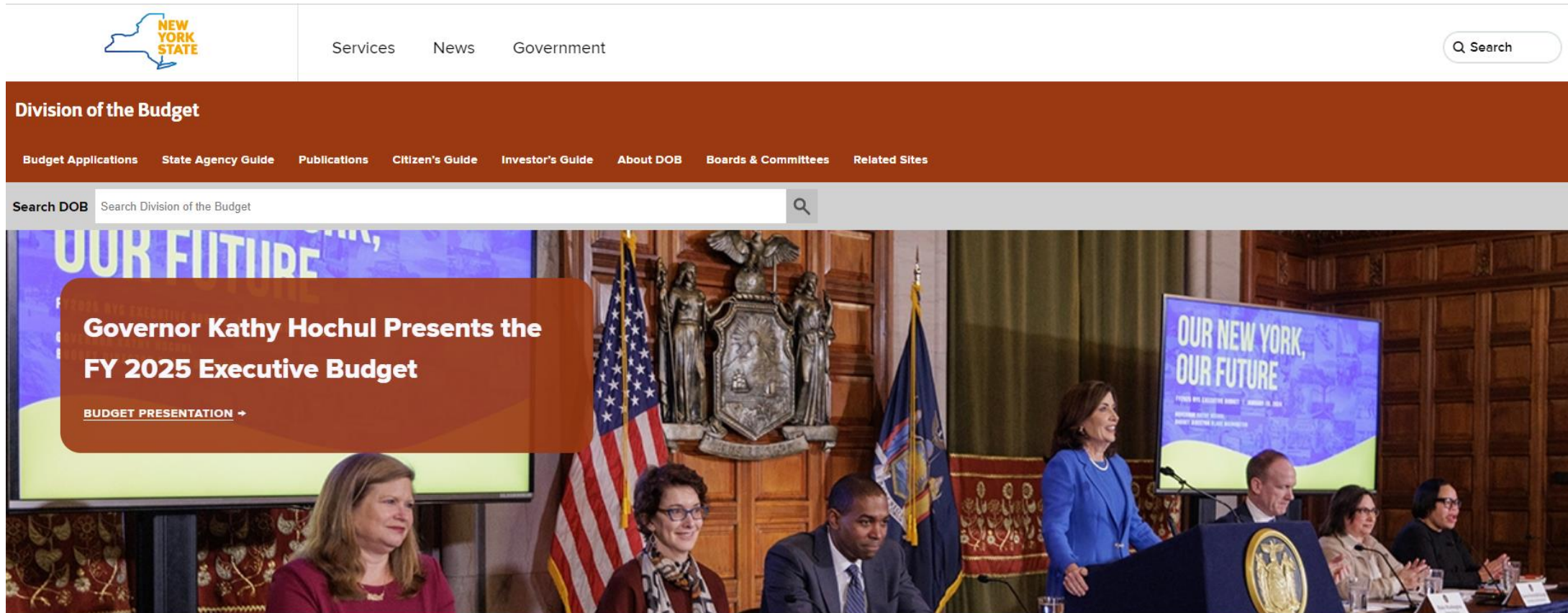
- **Borrower Defense Claims in the Student Loan Space**

G. Oberfield – (12:40PM - 12:45PM)

- **Your Questions**
- **Wrap Up**

Governor Hochul's Budget Proposal

Today's Focus: Healthcare and Human Services



Credit: Office of the Governor

The Big News: the 1115 Waiver Amendment

- The Medicaid 1115 Waiver Amendment was approved on January 9, 2024 – with c. \$7.5 billion in investment over the next several years.
- The Governor’s budget incorporates elements of this funding – as a primary source of new investment in healthcare.
 - Waiver focal areas include:
 - health related social needs,
 - funding for certain distressed downstate hospitals, and
 - workforce ‘pipeline’ initiatives.
- In parallel fashion, RFA language has issued for aspects of the funding rollout.

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Press release

CMS Approves New York’s Groundbreaking Section 1115 Demonstration Amendment to Improve Primary Care, Behavioral Health, and Health Equity

Jan 09, 2024 | Medicaid & CHIP

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New, innovative efforts will establish base rates for safety net providers, address critical social needs for millions of Medicaid recipients, and grow the health care workforce across the state

Today, as part of the Biden-Harris Administration’s efforts to build a health care system that benefits all Americans, the Centers for Medicare & Medicaid Services (CMS) approved an amendment to New York’s Medicaid section 1115 demonstration that bundles a series of actions to advance health equity and strengthen access to primary and behavioral health care across the state. CMS’ approval allows New York to make large investments in wide-ranging Medicaid initiatives, including establishing sustainable base rates for safety net hospitals that serve the state’s most underserved communities; connecting people to critical housing and nutritional support services; enhancing access to coordinated and comprehensive treatment for substance use disorders (SUDs); and making long-term, sustainable investments in

Credit: Centers for Medicare and Medicaid Services

On the Other Hand...

- Hundreds of millions in proposed cuts with effects on programming –
 - In the healthcare space, generally and long term care space, specifically:
 - Reductions are proposed in reimbursement rates for capital projects,
 - Proposed diminishment in the compensation attached to certain consumer directed care activities,
 - Moreover, the language incorporates a call for the industry to caucus and recommend from where to extract additional cuts.



Why?

- In her budget 'briefing book,' the Gov asserts growth in healthcare spending, particularly re: Medicaid, is unsustainable.
- Advocates have already begun to push back concerning the timing of these cuts as New York's population ages and demonstrates increasing frailty.
- Others have voiced concern about the true cost of delivering services relative to the size of existing Medicaid payments.
- Relatedly, human services organizations have voiced disappointment that the budget, as proposed, incorporates a modest 1.5% Cost of Living Adjustment (COLA) in contrast to last year's 5.4% COLA.
- Legislative hearings on the budget have begun.



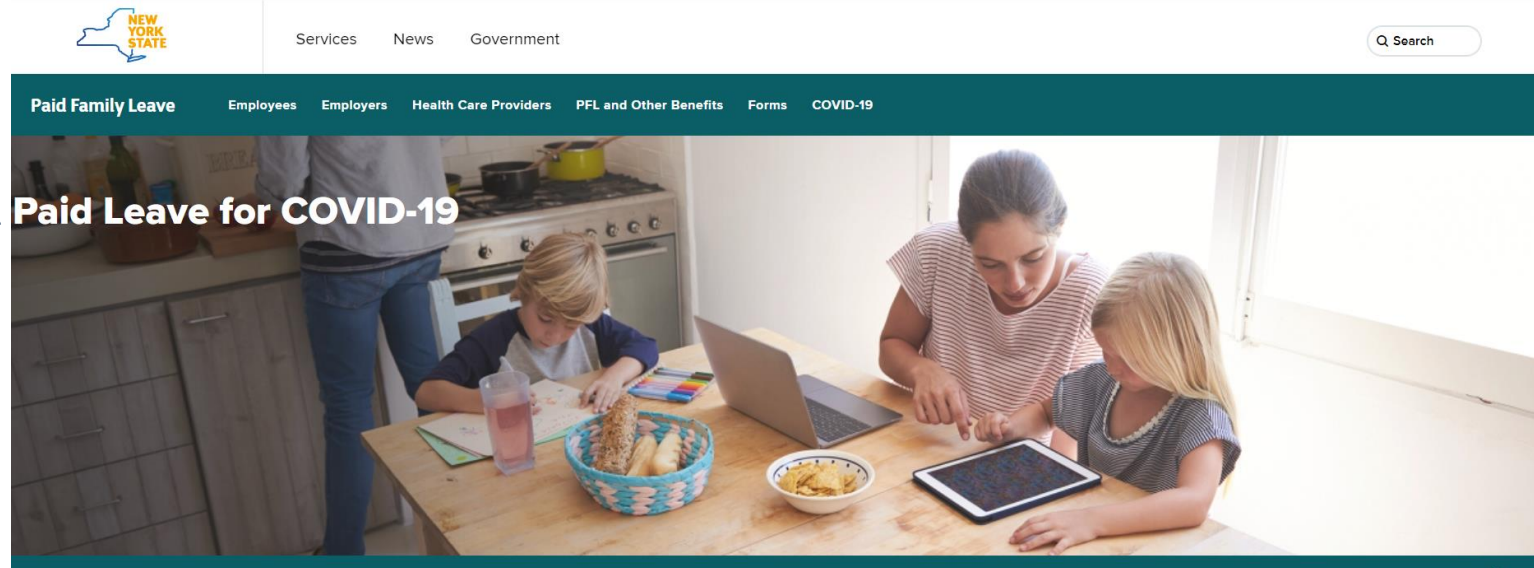
The Healthcare Workforce, and Other Items of Interest

- Budget proposes that New York enter into interstate compacts for licensed physicians and registered nurses (RNs) and licensed practical nurses (LPNs).
 - If adopted, entry into these compacts would permit reciprocal practice between New York-licensed professionals and those licensed in other compact states.
- Also embedded within is language to create quality and aligned standards in the assisted living space.
- The budget includes a provision to set a floor for commercial insurance rates for behavioral health services:
 - Requiring that commercial insurance pay, at a minimum, the reimbursement rate that Medicaid pays.
 - This proposal is part of the Hochul administration's larger effort to expand the availability of behavioral health services.



COVID-19 Sick Leave

Credit: New York State Paid Family Leave Website



- Employers in health and beyond may be exhaling sighs of relief concerning COVID-19 ‘sick leave.’
 - Policies established during the worst of the pandemic to provide compensated time for COVID-related illness affecting employees and their families has, in the eyes of many employers, extended beyond their usefulness;
 - The Governor proposes the end of the program through the budget approval process.
 - Recall: during the preceding legislative session, bill language had been proffered to do just that, but it did not advance.
- ‘Business’ Co-Host Kristen Smith will present on these and other labor developments tied to the proposed budget during next week’s program.

What's Next?

- Process of gubernatorial amendments and 'one house' bills is ahead.
- An agreed-upon budget expected to be signed into law on or about April 1, 2024.
- Bond's Government and Regulatory Affairs practice will monitor these activities closely, and provide updates during future broadcasts.

Government and Regulatory Affairs

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Overview

Bond has been providing New York State administrative, legislative and regulatory representation to our clients for more than 70 years.

We understand how the Legislature and the regulatory agencies work. With that knowledge, we chart action plans to meet our client's individual needs. If a client's problem requires a legislative solution, we will draft a bill and shepherd it through the Legislature. Sometimes a regulatory solution is available, in which case we will seek the adoption of an appropriate regulation. Other times, the client's needs may require negotiation with a state agency. And, there will be those instances when, despite best efforts, litigation against the agency must be pursued.

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[Our Team](#) +

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Government and Regulatory Affairs Contacts

Hermes Fernandez, Co-Chair

Matthew A. Young, Co-Chair

Roger Bearden, Co-Deputy Chair

Gabriel S. Oberfield Esq., M.S.J., Co-Deputy Chair

ALBANY, NY

Hermes Fernandez

Raymond A. Meier

Higher Education – What's Ahead in 2024 (Part II)



E. Katherine Hajjar

Senior Counsel
khajjar@bsk.com
New York, NY

Issues Impacting Higher Education in 2024

- Employee and Student Accommodations
 - Evolving work from home policies and related disability/health accommodations
 - Understanding “reasonable accommodations” – student responsibilities and college obligations
- Navigating Speech Issues on Campus
 - Parameters of student and faculty speech
 - Institutional response

Issues Impacting Higher Education in 2024

- Gender Equity in Athletics
 - U.S. Department of Education, Office for Civil Rights Guidance (February 2023)
 - Resource for colleges and universities:
<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-higher-ed-athletic-resource-202302.pdf>
 - Resource for K-12 schools: <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-k12-athletic-resource-202302.pdf>
- International Programs and Institutional Affiliations

Employee Retention Tax Credits



Frank C. Mayer

Member
fmayer@bsk.com
Albany, NY

Defending Borrower Defense Claims



Alison K. Roach

Associate

aroach@bsk.com

Buffalo, NY

What is Borrower Defense?

- Federal law/regulation that allows student borrowers to seek forgiveness for their student loans if they were “misled” by their college, university, or career school.
- When the U.S. Department of Education (“ED”) approves a borrower defense claim, the borrower may receive loan discharge and a refund of payments previously made on the loan(s).
- Under certain circumstances, ED may then recoup those funds from the institution.
- While borrower defense has been part of the Higher Education Act for many years, it has recently undergone significant changes due to rulemaking and litigation.

2023 Regulatory Changes

- Went into effect July 1, 2023
- Goal is to expand eligibility, remove barriers and provide for automatic discharges in some cases
- Claims can be brought by individuals or groups
- Borrowers with approved claims will receive full relief
- Allows for recoupment from institution and places the burden of persuasion on the institution once ED has made factual determinations

Why You Should Respond to BDR Claims

- ED adjudicates BDR claims using materials submitted as part of the application, evidence in ED's possession, evidence provided by the institution, and any other relevant information.
- The consequences of an adverse finding are potentially severe
- The evaluation process and criteria are opaque
- You need to preserve your legal defenses
- If the institution does not respond, ED may *presume* that that the institution does not contest the claim

Institutional Response – How to Prepare

- Figure out who will be leading response to the applications
 - External or in-house counsel
 - Designate an institutional point-person to track claims and coordinate document collection
- Review claims
- Collect documents
- Investigate (don't take borrowers' claims at face value)
- Coordinate response drafting with counsel

Institutional Response – Practically

- Factual Refutation
 - Include documentation, where available
- Legal Arguments
 - Legal defenses arising from claim
 - Some may be easy
 - Address actual damages
 - Tuition and fees may be less than loan
 - Factor-by-factor breakdown
 - Preservation of arguments and affirmative defenses

What To Do Now

- Designate a point-person
- Engage counsel
- Track claims
- Collect documents and investigate
- Draft and submit responses
- Watch and wait

Your Questions



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

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Gov. Hochul's Exec. Budget Proposal

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Education – What's Ahead in 2024 (Part II)

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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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