

# Federal and New York State Legislative Updates

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## Federal Consolidated Appropriations Act of 2022 *Telehealth Provisions*

### *Extension of key provisions to 151 days after the PHE ends*

*(Renewal thru July 2022 expected → running provisions thru bulk of 2022)*

- Originating site flexibility to include the 50 states and one's home;
- Including OT, PT, speech and audiologic professionals among permitted healthcare providers;
- Continuing Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) flexibilities;
- Postponing (until 152 days from the PHE) the standard that a Medicare reimbursed telehealth service be predicated on an in-person baseline consultation within six months before a telehealth visit – and similar flexibilities for FQHC and RHC services;
- Allowing continuing coverage of key audio-only exchange; and
- Keeping flexibilities in place concerning 'Face-to-Face' requirements affecting provision of hospice care.



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## Federal Consolidated Appropriations Act of 2022

### Cybersecurity Provisions

- Critical infrastructure sectors (includes hospitals and health systems) to report cyber incidents to the Cybersecurity and Infrastructure Security Agency (CISA) of the Department of Homeland Security (DHS) (72 hours)
  - As well as any ransomware payment (24 hours)
- The standards provide some allowance for avoidance of duplicative reporting if there already is a functionally similar reporting requirement in place
  - Cf: hospital and health system breaches affecting more than 500 people already are reportable to HHS within a maximum of 60 days (more flexible requirements for smaller-volume breaches)
    - *Unlikely this will meet the new standards.*
- Further details will be forthcoming...a layered regulatory process is ahead.



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## Federal Consolidated Appropriations Act of 2022

### Other Notable Provisions



Advanced Research Projects Agency for Health

- \$1 billion to establish ARPA-H
- Focus on science concerning cures for ALS, Alzheimer's disease, diabetes, and cancer

Opioid Abuse

- Focus on opioid abuse prevention activities



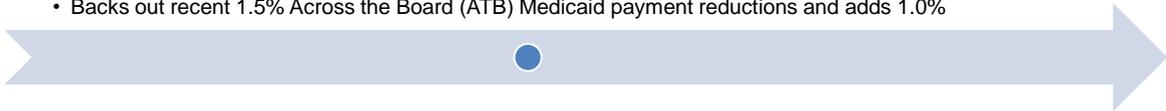
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## New York State – One-House Budget Resolutions Issued

Both houses of the NYS legislature issued their one-house budget resolutions –

*Negotiations with Gov. Hochul underway, ahead of the new State Fiscal Year that begins on April 1, 2022*

- Alignment of note:
  - Both houses support the functional 2.5% Medicaid increase →
  - Backs out recent 1.5% Across the Board (ATB) Medicaid payment reductions and adds 1.0%



## New York State – One-House Budget Resolutions Issued

Key differences include:

- **Rejection of global cap continuation**
  - *Senate would phase it out over one year*
- **Rejection of managed care procurement**
  - *Both Sen. Rivera and AM Gottfried on the record →*
  - *Suggesting that this should be mediated through existing DOH tools, or otherwise through non-budget legislation*

## New York State – One-House Budget Resolutions Issued

Key differences include:

- **Program elements stripped out**

- The Assembly eliminates most 'program' proposals, pushing for separate legislation on:
  - *Transfer of health care professions' licensure responsibilities from the State Education Department to the Department of Health;*
  - *Telehealth parity;*
  - *Interstate licensure compacts for physicians and nurses; &*
  - *Scope of practice changes.*
- Cf: Senate includes telehealth parity and interstate licensure in alignment with the Gov. – broadly silent on the others.



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## New York State – One-House Budget Resolutions Issued

### Home Health

- Fair Pay for Home Care → home care workers to be paid at least 150% of the minimum wage
  - Assembly → implementation as of October 1, 2022
  - Senate → January 1, 2023

### Behavioral Health

- Greater investment in behavioral health by both houses vis-à-vis Governor's proposal
  - *NB: Governor recently announced inpatient BH funding increases*

### Distressed Provider Funding

- Assembly → \$750 million pool affirmed
- Senate → \$1 billion pool (although possibly less depending on which funds are carved in)
- \$250 million Distressed Provider Assistance Account would be cancelled by both houses (with the Assembly permitting a one-year \$150 million phase out)



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## New York State – One-House Budget Resolutions Issued

### Healthcare worker bonuses

- Assembly largely eliminates them (focusing energy on home health enhancements earlier described)
- Senate supports them and expands eligibility

### Capital

- Assembly → affirms \$1.6B capital pool
- Senate → boosts the pool to \$2B (with drawdown from the additional \$400 million linked to high Medicaid volume)

### “Coverage for all”

- Health coverage to New Yorkers with incomes up to 250% of the FPL otherwise ineligible for Essential Plan due to immigration status



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## New York State – Recently Signed Bills Affecting LTC Issues

The following laws take effect in March or April 2022:

- Long Term Care Ombudsman Posting Requirements
- Infection Control Audits (discussion of amendments to hold implementation until 12/22)
- Anti-Microbial Stewardship Program
- Certificate of Need (CON) Character and Competence Standards



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## New York State – Recently Signed Bills Affecting LTC Issues

The following laws take effect in March or April 2022:

- Minimum staffing hours and spending ratios
  - To be implemented in January 2022 but held through March 2022, pending continuation of Executive Order 4.6 concerning staffing emergency
  - *NB: Senate added \$30M funding through one-house resolution to support implementation*
    - *Governor had included \$c.200M in January budget proposal*
    - *AG James weighed in this week on staffing*
- *And on March 16:*
  - The Governor signed S. 5870
  - Bars release of personnel records in response to complaints of harassment, excepting when validly requested in the context of legal proceedings
  - The law is immediately effective



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## New York State – Not Yet Law, And Worth Following

### Senate Bill [S.766](#)

- Barring certain 'no-rehire' clauses in settlement agreements
  - Would amend New York General Obligations Law to prohibit "no-rehire" clauses in settlement agreements for employees and independent contractors that have filed a claim against their employer.
  - The legislation renders settlement agreements unenforceable if they contain a no-rehire clause.
  - Passed by the Senate on March 1, 2022
  - The legislation would be enforceable 60 days from the date of gubernatorial signature.

### Senate Bill [S.849A](#)

- Extending SOL concerning 'unlawful discriminatory practices' in employment from 3 to 6 years
  - Would amend the CPLR, accordingly.
  - The bill cleared the Senate on March 1, 2022
  - Would be enforceable 60 days following the governor's signature



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## New York State – Not Yet Law, And Worth Following

### Senate Bill [S.566A](#)

- Concerning SOLs for complaints tied to 'alleged unlawful discriminatory practices' with the New York State Division of Human Rights (DHR)
- Would bump the SOL from one year to three years from the alleged action (currently only sexual harassment claims have this three-year SOL).
- Senate approval on March 1, 2022
- Law enforceable 90 days following gubernatorial signature

### Senate Bill [S.738](#)

- Let Survivors Speak Act
- Would permit disclosures, notwithstanding executed NDAs, in certain discrimination and harassment contexts.
- This would mean that negotiated liquidated damages could not be recouped even if included in an NDA, if concerning these concepts.
- Bill cleared Senate on March 1, 2022
- Law would have immediate effect – but would not be retroactive



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## Questions?

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