

2023

# BUSINESS IN 2022

WEEKLY WEBINAR SERIES

 **BOND** SCHOENECK  
& KING ATTORNEYS

# Your Host



## **Gabriel S. Oberfield**

Senior Counsel

[goberfield@bsk.com](mailto:goberfield@bsk.com)

New York, NY

# TODAY'S AGENDA

## Gabe Oberfield – (12:00PM-12:10PM)

- Introduction
- COVID Update
- New York State Legislative Session Wrap & NYC Budget Agreement

## Dustin Dorsino – (12:10PM-12:20PM)

- NY Approves First Regulations for Adult Cannabis Use

## Travis Talerico – (12:20PM-12:30PM)

- CURES Act Information Blocking Provisions

## Paul Buehler – (12:30PM-12:40PM)

- The Changing Landscape of Unemployment Insurance

## Catherine Graziose (12:40PM-12:45PM)

- Quick Telehealth Highlights

## Oberfield

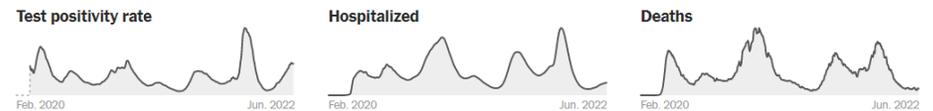
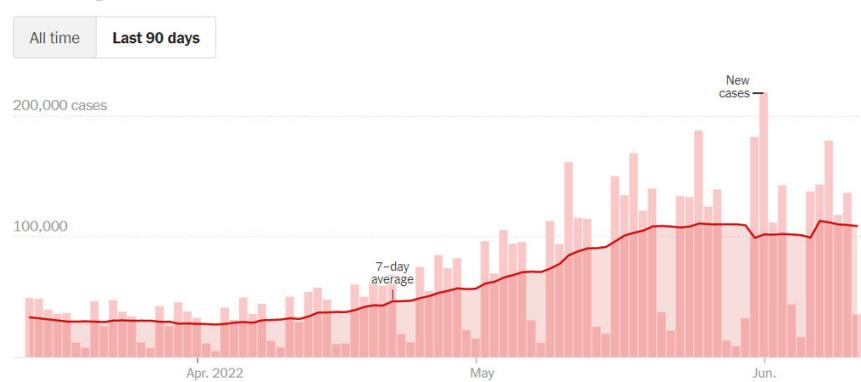
- Your Questions / Adjourn

# COVID Infection Trends & Information

# Today's COVID Picture, Nationally

Source: New York Times

## New reported cases

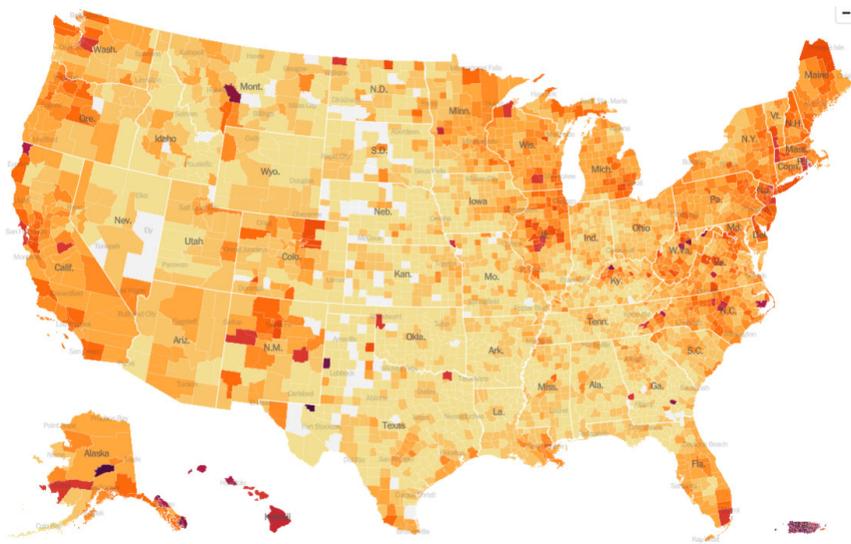


	DAILY AVG. ON JUN. 11	14-DAY CHANGE	TOTAL REPORTED
Cases	108,520	-1%	85,426,267
Test positivity	14%	—	—
Hospitalized	29,615	+11%	—
In I.C.U.s	3,210	+13%	—
Deaths	332	-11%	1,007,826

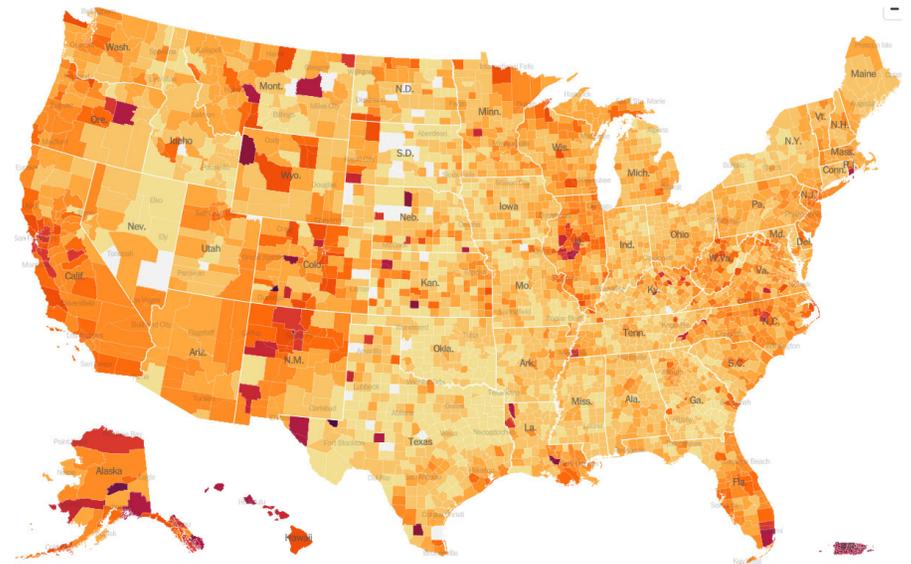
Some leveling off since late May – a one-percent drop nationally in cases

# Today's COVID Hotspots

Source: New York Times



As of May 31, 2022



As of June 14, 2022:  
*More spread in the Western United States*

# Today's COVID Picture, in New York State

Sources: New York Times and Politico

NEW YORK

## New York City scraps school mask mandate for toddlers

The city lifted the indoor mask mandate for K-12 students in early March, but retained the requirement for toddlers — citing their ineligibility for vaccines.



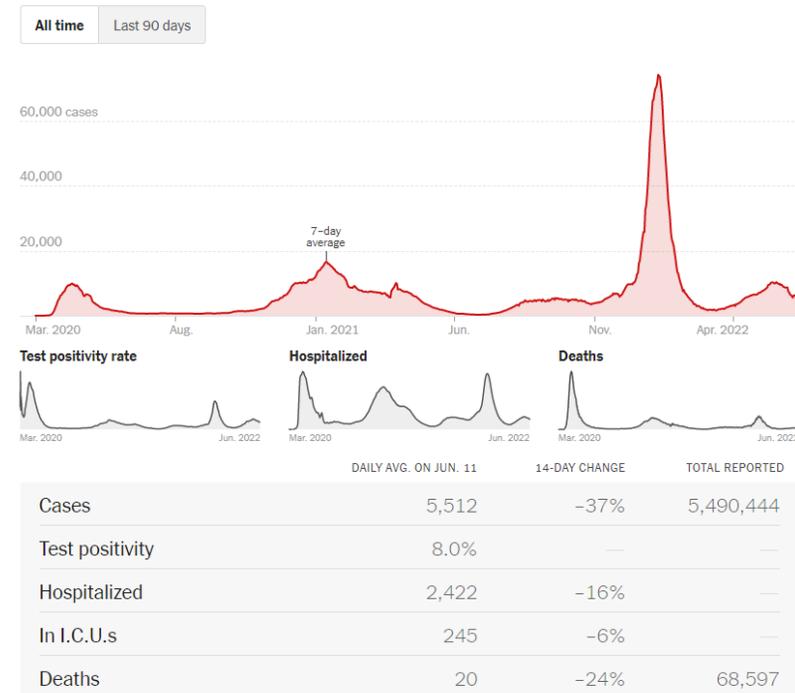
An 'unmask my toddler' sign is displayed during a rally. | Jon Cherry/Getty Images

By MADINA TOURE  
06/09/2022 03:29 PM EDT

New York City toddlers won't be required to wear masks in schools or day cares starting Monday, Mayor Eric Adams announced Thursday morning in a move that lifted the public school system's last remaining mask mandate.

- *A better story...*
- *Average daily caseload statewide has dropped by 37 percent over a two-week period*
- *No new mandates (Federal, State or local)*
- *Recommendations concerning indoor masking remain in place*
- *However, in NYC, masking mandates involving toddler education are over*

## New reported cases



# Two-Week Differentials in New York

Source: New York Times

May 31, 2022

June 14, 2022

	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000
New York	8,705	45	-14%	15	+3%	25.7	0.13
Nassau ›	770	57	-15%	20	—	1.1	0.08
New York City ›	4,433	53	+2%	11	—	10.1	0.12
Suffolk ›	770	52	-5%	15	—	2	0.14
Westchester ›	456	47	-18%	14	—	0.8	0.08
Putnam ›	45	46	-15%	10	—	0	—
Tompkins ›	45	44	-23%	31	—	<0.1	0.08
Rensselaer ›	68	43	-18%	20	—	0.3	0.16
Sullivan ›	32	42	-5%	16	—	<0.1	0.11
Warren ›	27	42	-37%	13	—	0	—
Schenectady ›	65	42	-31%	10	—	0.4	0.23

	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	TEST POSITIVITY	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000
New York	5,512	28	-37%	8%	12	-16%	19.6	0.10
New York City ›	3,754	45	-15%	8%	13	+1%	10.4	0.13
Nassau ›	516	38	-33%	11%	26	+4%	1.6	0.12
Westchester ›	311	32	-32%	9%	16	+13%	0.3	0.03
Suffolk ›	458	31	-41%	10%	19	+5%	1.9	0.13
Orange ›	96	25	-37%	10%	12	Flat	0.6	0.16
Putnam ›	24	25	-47%	11%	12	-4%	0	—
Clinton ›	20	24	-32%	13%	38	+26%	0.1	0.18
Rockland ›	80	24	-33%	7%	10	-5%	0.2	0.05
Dutchess ›	69	24	-40%	12%	10	-15%	0.2	0.06
Sullivan ›	17	23	-47%	9%	13	-25%	0.2	0.20

# The NYS Legislature – A Session in Review



# New York State Passes Reproductive Rights Protections



Comprehensive Six-Bill Package Protects Both Patients and Providers in Anticipation of Final Decision by Supreme Court on *Dobbs v. Jackson*

S.9039A/A.10094A Establishes a Cause of Action for Unlawful Interference with Protected Rights

S.9077A/A.10372A Relates to Legal Protection for Abortion Service Providers

S.9079B/A.9687B Prohibits Misconduct Charges Against Healthcare Practitioners for Providing Reproductive Health Services to Patients Who Reside in States Where Such Services Are Legal

S.9080B/A.9718B Prohibits Medical Malpractice Insurance Companies from Taking Adverse Action Against a Reproductive Healthcare Provider Who Provides Legal Care

S.9384A/A.9818A Includes Abortion Providers and Patients in the Address Confidentiality Program

S.470/A.5499 Authorizes a Study to Examine Unmet Health and Resource Needs and Impact of Limited Service Pregnancy Centers

Source: Office of Gov. Hochul:  
<https://www.governor.ny.gov/news/governor-hochul-signs-nation-leading-legislative-package-protect-abortion-and-reproductive>

- Response to Supreme Court deliberations
- Several bills
- A broader Constitutional amendment did not advance
- Bill signing yesterday



Source: Wikipedia (KC Kratt (2017))

# Other Legislation

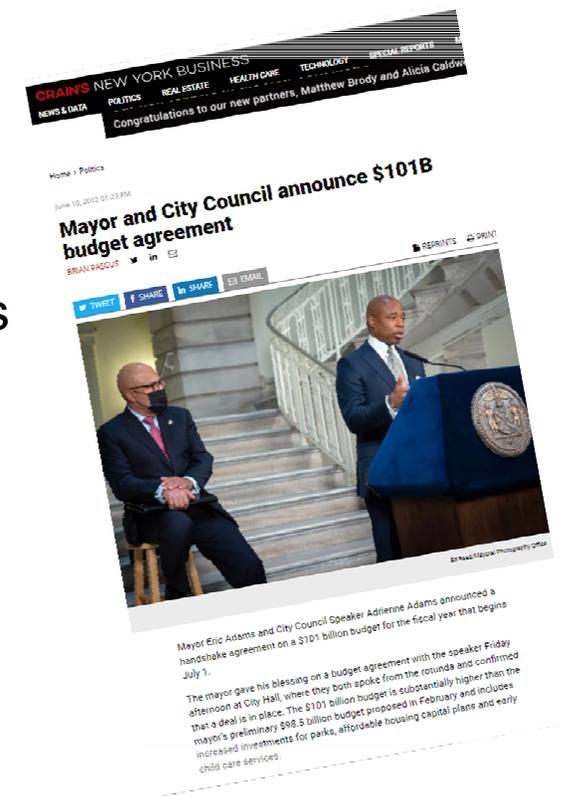
- Examples include:
  - Gun control measures focused on assault rifles –
    - *In wake of mass shootings in Buffalo and in Uvalde, TX*
      - *Legislation S.9458/A.10503 Bars Purchase of Semiautomatic Rifles by Anyone Under Age 21 by Requiring a License*
      - *Legislation S.9407-B/A.10497 Prohibits Purchase of Body Armor with Exception of Those in Specified Professions*
      - *Legislation S.9113-A./A.10502 Expands List of People Who Can File Extreme Risk Protection Orders and Requires Law Enforcement to File ERPOs Under Specified Set of Circumstances*
      - *Package Also Strengthens Crime Reporting; Closes "Other Gun" Loophole; Requires Microstamping of New Semiautomatic Pistols; Eliminates Grandfathering of High-Capacity Feeding Devices; Requires Social Media Companies to Improve Response to and Reporting of Hateful Content*



Summary courtesy of the office of Gov. Hochul: <https://www.governor.ny.gov/news/governor-hochul-signs-landmark-legislative-package-strengthen-gun-laws-and-protect-new-yorkers>

# New York City Budget Agreement

- \$101B budget – up from the proposed \$98.5B
- Relative largesse due to better than projected revenues
- Sizable amount invested in City’s ‘rainy day fund’
- Significant COLA increases for Human Services



# NY Approves First Regulations for Adult Cannabis Use



## Dustin M. Dorsino

Associate

[ddorsino@bsk.com](mailto:ddorsino@bsk.com)

Syracuse, NY

## The Regulations

- Establish minimum standards for packaging, labeling and marketing recreational cannabis products
- Purpose: promoting consumer safety; protecting children; product safety and sustainability
- Approved by the Office of Cannabis Management on June 1. Public comment period ends on July 31, 2022.

# Packaging

- All packaging must be child and tamper-resistant
- Adult-only marketing strategies
- Limitations on brand logos and names
- Focus on environmental sustainability

# Labeling

- Must include state-licensed logo on all products
- All products must have an informational label and edible cannabis products must include a nutritional label
- Required product warnings must be presented in such a way that they stand out from the rest of the packaging
- Violations = suspension, cancellation or revocation of license

## Marketing and Advertising

- Primary purpose must be to inform consumers of dispensary location. Must include warning statements.
- Prohibitions on various marketing and advertising activities:
  - No marketing to children (anyone under the age of 21)
  - No using billboards or mascots
  - No promotion of THC level or use of the word “organic”
  - No colloquial references (e.g., stoner, weed, pot, chronic)
- Limitations on event sponsorship

# CURES Act Information Blocking Provisions



## Travis R. Talerico

Associate

[ttalerico@bsk.com](mailto:ttalerico@bsk.com)

Rochester, NY

## Cures Act Information Blocking

- Went into effect on April 5, 2021, codified at 45 C.F.R. §171.1, §171.2, and § 171.3.
- The stated purpose of the information blocking provisions of the Cures Act is to increase transparency between health care providers and their patients, cut costs, improve care, and allow faster access for patients to access their records. There is commentary in the Final Rule such as setting a goal of patients being able to see their test results concurrently when they are released to their doctors, and that EHI should be available for patients “when and where they want it.”

# Cures Act Information Blocking

- What is information blocking?
  - According to the Cures Act, it is a “practice that is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.”

# Cures Act Information Blocking

- Who is subject to these provisions?
  - Healthcare Providers, Developers of Certified IT, and Health Information Networks and Exchanges.
  - “Health care provider” includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center, renal dialysis facility, blood center, ambulatory surgical center, emergency medical services provider, federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician, a practitioner, a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe, tribal organization, or urban Indian organization, a rural health clinic, a covered entity under Section 340B, a therapist, and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the HHS Secretary.

# Cures Act Information Blocking

- What is required of providers?
  - In sum, the Cures Act requires health care providers to allow access to their EHI in real-time, without having to go through the delayed procedures of requesting records or test results, with a delay for the patient in getting their information. In practice, this could mean a patient would be able to access their EHI such as test results in parallel to the availability of the test results to the ordering clinician.
  - The Act does not specify exactly what type of mediums a provider must use in order to satisfy this instantaneous access, but seems to strongly encourage use of portals and apps to allow patients to access their EHI, with API's appearing to be the preferred method of access.

## Cures Act Information Blocking

- The Cures Act does not require a provider to take any proactive measures to provide EHI to their patients who have not requested it. However, if a patient requests their EHI, the provider must have a system in place to be able to readily provide that information in a timely manner. A delay in the release or availability of EHI in response to a request for legally permissible access, exchange, or use of EHI may be an interference under the information blocking regulations. If the delay were to constitute an interference under the information blocking regulations, an actor's practice or actions may still satisfy the conditions of an exception under the information blocking regulations (45 CFR 171.200-303).

# Cures Act Information Blocking

- Exceptions:
  - Preventing Harm Exception
  - Privacy Exception
  - Security Exception
  - Infeasibility Exception
  - Health IT Performance Exception
  - Content and Manner Exception
  - Fees Exception
  - Licensing Exception

# Cures Act Information Blocking

- What is EHI?
  - Initially, ONC will define EHI as the data elements in the United States Core Data for Interoperability (USCDI) standard. Almost all USCDI data elements are already captured in 2015 Edition certified EHRs today – which means that the information blocking policies will apply to the information that is likely available on an actor's system.
  - However, under ONC's rule, the definition of EHI will eventually expand beyond the USCDI. Starting on October 6, 2022, the EHI definition will include the full HIPAA electronic designated data set. Any health information which is in the possession of a provider but not maintained electronically, is still subject to the relevant HIPPA requirements.

# Cures Act Information Blocking

- Penalties?
  - At the moment, there are not any sort of defined penalties for noncompliance with these provisions of the Cures Act for providers, other than generalized references to “disincentives.”

# The Changing Landscape of Unemployment Insurance



**Paul J. Buehler**

Associate

[pbuehler@bsk.com](mailto:pbuehler@bsk.com)

Albany, NY

## Quick Telehealth Highlights



### **Catherine A. Graziose**

Associate

[cgraziose@bsk.com](mailto:cgraziose@bsk.com)

Albany, NY

# New York Executive Order 4.9

No. 4.9

## EXECUTIVE ORDER

Continuing the Declaration of a Statewide Disaster Emergency Due to Healthcare Staffing Shortages  
in the State of New York

WHEREAS, there are staffing shortages in hospitals and other healthcare facilities and they are expected to continue;

WHEREAS, severe understaffing in hospitals and other healthcare facilities is expected to continue to affect the ability to provide critical care and to adequately serve vulnerable populations;

WHEREAS, there is an immediate and critical need to supplement staffing to assure healthcare facilities can provide care;

NOW, THEREFORE, I, Kathy Hochul, Governor of the State of New York, by virtue of the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, do hereby extend the state disaster emergency as set forth in Executive Order 4, as continued in Executive Order 4.8, and continue the terms, conditions, and suspensions contained in Executive Order 4 and its successors through June 29, 2022.



BY THE GOVERNOR

A handwritten signature in black ink, appearing to be "U. P. K.", written over a horizontal line.

Secretary to the Governor

GIVEN under my hand and the Privy Seal of the State  
in the City of Albany this thirtieth day of  
May in the year two thousand twenty-  
two.

A handwritten signature in black ink that reads "Kathy Hochul".

## 14 NYCRR § 596

- Office of Mental Health Approval to Utilize Telehealth Services
- Emergency Regulation adopted effective April 25, 2022
- Expires June 23, 2022
- Amended definition of *originating site*
- Provision of telehealth services- to provide and support *mental* health services at a distance.

# HHS Issues Guidance on HIPAA and Audio-Only Telehealth

- On June 13, 2022, the U.S. Department of Health and Human Services through its Office of Civil Rights Issued guidance
- OCR's Telehealth Notification no longer in effect
- What does this mean?

# Your Questions

## COVID Update and New York State Legislative Session Wrap & NYC Budget Agreement

Gabriel S. Oberfield, [goberfield@bsk.com](mailto:goberfield@bsk.com)

## NY Approves First Regulations for Adult Cannabis Use

Dustin M. Dorsino, [ddorsino@bsk.com](mailto:ddorsino@bsk.com)

## CURES Act Information Blocking Provisions

Travis R. Talerico, [ttalerico@bsk.com](mailto:ttalerico@bsk.com)

## The Changing Landscape of Unemployment Insurance

Paul J. Buehler, [pbuehler@bsk.com](mailto:pbuehler@bsk.com)

## Quick Telehealth Highlights

Catherine A. Graziose, [cgraziose@bsk.com](mailto:cgraziose@bsk.com)

## 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

The information in this presentation is intended as general background information.  
It is not to be considered as legal advice.  
Laws can change often, and information may become outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form without the express  
written authorization of Bond, Schoeneck & King PLLC.