

BUSINESS IN

WEEKLY WEBINAR SERIES



BOND

**SCHOENECK
& KING** ATTORNEYS

2023

2022

2021

2020

2019

Your Host



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Intros / Agenda
- COVID Update
- Monkeypox Update

Barbara Lee (12:10PM-12:20PM)

- Cannabis on Campus

Theresa Rusnak (12:20PM-12:30PM)

- NYS Launches Sexual Harassment Hotline

Seth Gilbertson – (12:30PM-12:40PM)

- New Bundy Aid Requirement: Faculty Diversity Data and Improvement Plan

Oberfield – (12:40PM-12:45PM)

- Proposed Rulemaking on Medicaid Fraud, Waste and Abuse Prevention

Oberfield – (12:45PM)

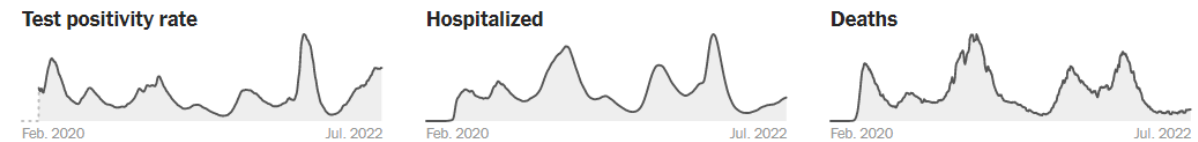
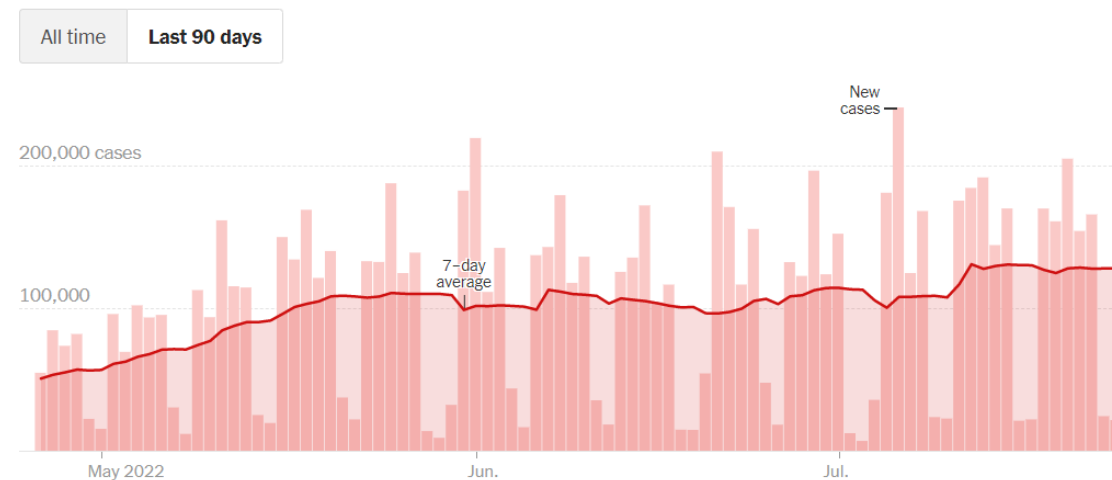
- Final Remarks / Adjourn

COVID Infection Trends & Information

Today's COVID Picture, Nationally

Source: New York Times

New reported cases

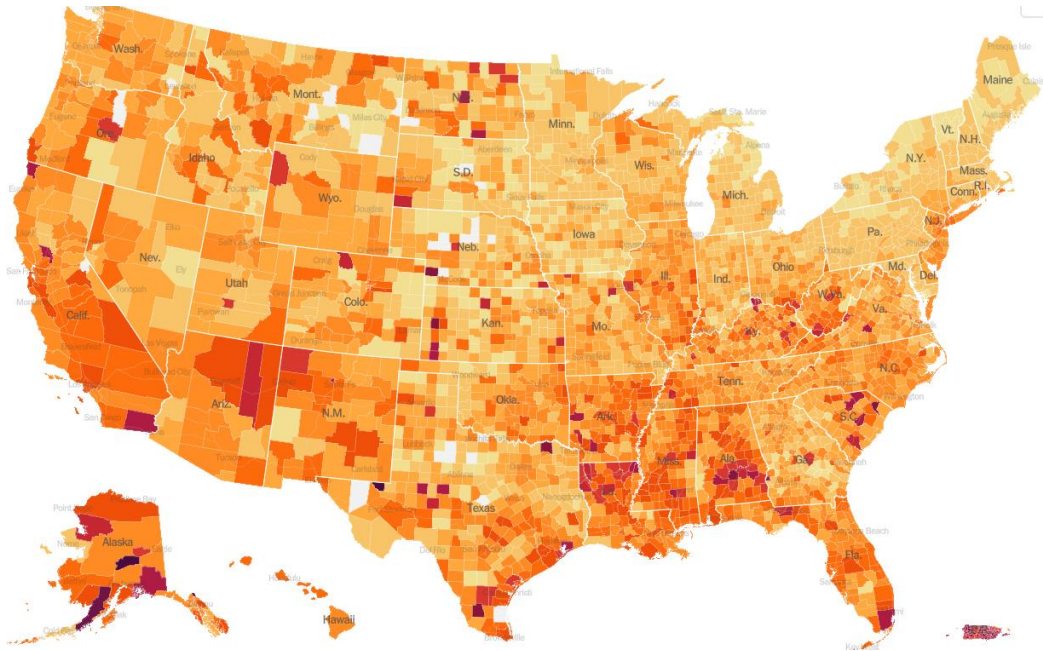


	DAILY AVG. ON JUL. 24	14-DAY CHANGE	TOTAL REPORTED
Cases	127,756	+19%	90,277,062
Test positivity	18%	—	—
Hospitalized	43,102	+15%	—
In I.C.U.s	4,822	+14%	—
Deaths	444	+38%	1,023,395

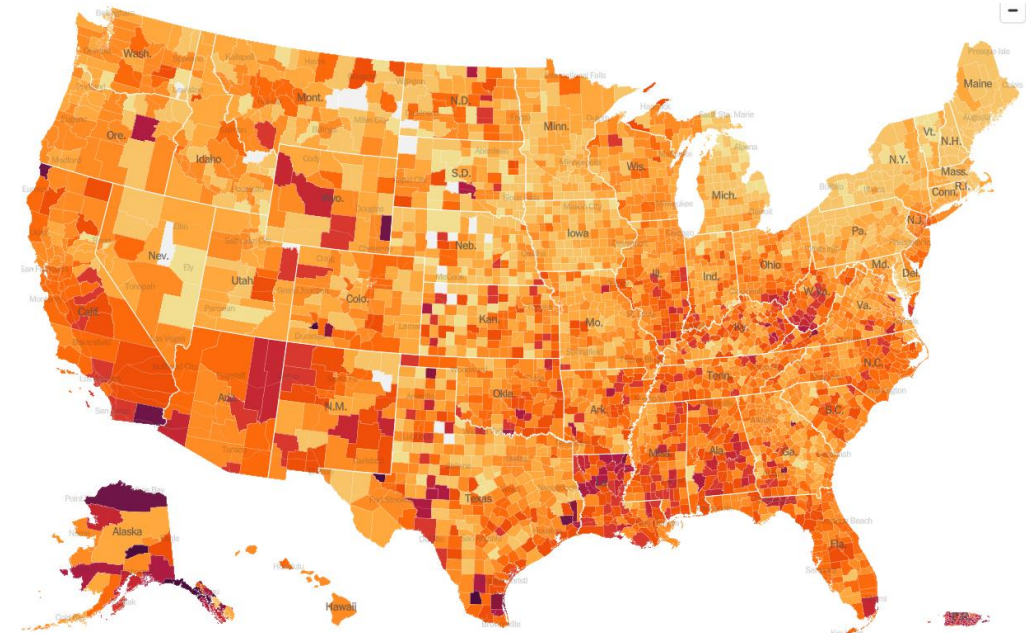
We still are seeing upticks in the 14-day change rate ... the positivity climb continues.

Today's COVID Hotspots

Source: New York Times



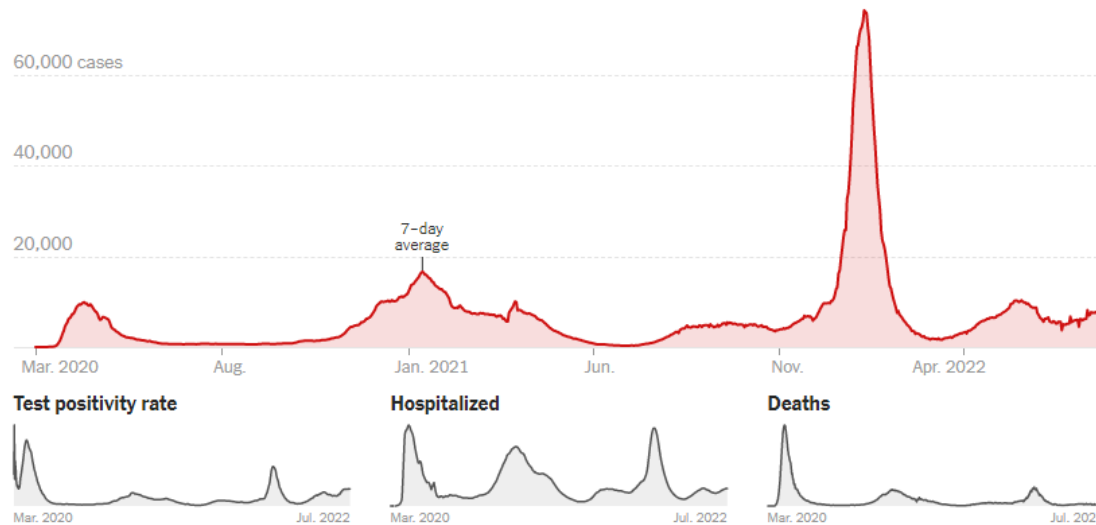
As of July 12, 2022



As of July 26, 2022
Trending upward across the nation...

Today's COVID Picture, in New York State

Source: New York Times



- Average daily caseload statewide has risen by 21 percent (again) over a two-week period
- **Recommendations** concerning indoor masking remain in place

	DAILY AVG. ON JUL. 24	14-DAY CHANGE	TOTAL REPORTED
Cases	7,503	+21%	5,758,805
Test positivity	13%	—	—
Hospitalized	2,937	+11%	—
In I.C.U.s	274	+12%	—
Deaths	23	+52%	69,408

About this data

Two-Week Differentials in New York

Source: New York Times

July 12, 2022

	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	8,139	42	+21%	13%	13	+19%	17.3	0.09
New York City ›	3,923	47	+24%	15%	16	+22%	7.7	0.09
Nassau ›	610	45	+23%	16%	30	+21%	0.6	0.04
Westchester ›	334	35	+18%	14%	18	+32%	0.3	0.03
Suffolk ›	493	33	+19%	12%	16	+23%	1.0	0.07
Putnam ›	29	30	+23%	16%	10	+71%	0	—
Rockland ›	94	29	+13%	6%	6	+39%	0.2	0.05
Tioga ›	13	28	+166%	5%	9	+3%	0	—
Orange ›	105	27	+29%	12%	8	-20%	0.6	0.14
Dutchess ›	68	23	+9%	16%	9	+45%	0.2	0.08
Warren ›	14	23	+35%	7%	5	-40%	0.1	0.22

July 26, 2022

	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	7,503	39	+21%	13%	15	+11%	23.3	0.12
New York City ›	4,527	54	+22%	14%	18	+25%	12.0	0.14
Nassau ›	635	47	+3%	15%	33	+23%	2.4	0.18
Suffolk ›	583	39	+15%	14%	17	+13%	1.3	0.09
Orange ›	142	37	+41%	15%	10	+20%	0.2	0.05
Rockland ›	116	36	+28%	14%	7	+24%	0.2	0.06
Westchester ›	337	35	+1%	14%	18	+25%	1.3	0.13
Dutchess ›	80	27	+13%	17%	10	+42%	0.3	0.10
Schenectady ›	41	27	+62%	18%	4	+27%	0.3	0.16
Putnam ›	25	25	-13%	14%	10	+66%	0.1	0.15
Warren ›	16	25	+14%	10%	7	+7%	0	—

Monkeypox

Source: New York Times



By **Apoorva Mandavilli**

Apoorva Mandavilli has covered the 2022 monkeypox outbreak since the first case in the United States was identified.

July 23, 2022

For the second time in two years, the World Health Organization has taken the extraordinary step of declaring a global emergency. This time the cause is monkeypox, which has spread in just a few weeks to dozens of countries and infected tens of thousands of people.

Dr. Tedros Adhanom Ghebreyesus, the W.H.O.'s director general, on Saturday overruled a panel of advisers, who could not come to a consensus, and declared a “public health emergency of international concern,” a designation the W.H.O. currently uses to describe only two other diseases, Covid-19 and polio.

W.H.O. Declares Monkeypox Spread a Global Health Emergency



Cannabis on Campus



Barbara A. Lee

Of Counsel
blee@bsk.com
New York, NY

Federal Prohibitions on Drugs on Campus

- Controlled Substance Act (CSA) prohibits the sale or possession of Schedule I Drugs
 - methamphetamine, heroin, cocaine, cocaine base, PCP, LSD, fentanyl, fentanyl analogue, and marijuana
- Drug-Free Schools and Communities Act Amendments of 1989
 - requires schools, colleges, and universities to implement and enforce drug and alcohol prevention programs and policies as a condition of eligibility to receive federal funds and assistance, including Title IV federal student aid funds

Restrictions on Cannabis Research

- The Drug Enforcement Administration (DEA), a unit of the U.S. Department of Justice, determines the extent to which marijuana may be used in research.
- The DEA controls who may grow marijuana, requires licensed growers to sell their product to the DEA, and requires organizations that wish to use marijuana for research to purchase the marijuana from the DEA.
- These requirements apply in all U.S. states, even those that have legalized the possession and sale of cannabis.

Requirements for Cannabis Research

- The Food and Drug Administration (FDA) considers cannabis containing more than 0.3% THC to be a regulated drug, and thus requires an individual or an organization that wishes to conduct research on cannabis to submit a New Drug Application (NDA)
- The researcher must propose an Investigational New Drug (IND) to the FDA's Center for Drug Evaluation and Research (CDER), just as any other potential drug research would require.
- Potential conflict of interest/conflict of commitment issues if researchers work independently with private companies on research

Cannabis Curriculum Issues

- Some colleges and universities offer degree or certificate programs in cannabis studies
 - The science of cannabis
 - The business of cannabis
- Even in states that have decriminalized the possession of cannabis, federal law prohibits the use of cannabis with >0.3% tetrahydrocannabinol (THC) on campus or in private laboratories without a federal license
- Hemp, which has less than 0.3% THC, is excluded from the list of Schedule I drugs and therefore may be used in research

Risk Assessment Issues

- Is the program using a Schedule I drug in research; if so, does the institution have a federal license?
- Has the marketing information explained that students will not be working with marijuana, but with hemp or some other substance that does not contain more than 0.3 percent THC?

Harassment Hotline



Theresa E. Rusnak

Associate

trusnak@bsk.com

Rochester, NY

Confidential Hotline Announced

- On July 19, 2022, the Governor's office announced the launch of a sexual harassment hotline for employees
- The hotline is part of legislation that was passed earlier this year.
- It will be operative from 9:00 a.m. to 5:00 p.m., and is run by the Division of Human Rights.
- It is staffed by pro bono attorneys who can provide advise on legal rights and individual facts and circumstances.
- Hotline number: 1-800-427-2773
- Policies? Training?

Hotline Announced

- On July 19, 2022, the Governor's office announced a hotline for employees to report wage theft.
- This is run by the Department of Labor, and is part of a Wage Theft Task Force.
- Hotline Number: 833-910-4783
- Online reporting to follow
- Impact: Renewed focus on wage theft; employers should be ready to address common areas of wage theft, including: exempt/non-exempt positions, meal periods, pay for manual workers, etc.

New Bundy Aid Requirement: Faculty Diversity Data and Improvement Plan



Seth F. Gilbertson

Senior Counsel

sgilbertson@bsk.com

Buffalo, NY

By September 20, 2022

- Submit gender and race/ethnicity **data** on faculty from the 2021-2022 academic year
- Submit a “Faculty Diversity Plan For Independent Institutions”
 - Three customized **goals** designed by the institution to improve faculty diversity with measurable metrics

Summer 2024 & Summer 2026

- Submit progress (data? report?) on the institution’s goals
 - Deadlines provided at a later date

Diversity Definition

“Diversity: Includes but is not limited to race, color, ethnicity, nationality, religion, socioeconomic status, veteran status, education, marital status, language, age, gender, gender expression, gender identity, sexual orientation, mental or physical ability, genetic information, and learning styles.”

Faculty Diversity Plan – DATA

Faculty Diversity Plan - Data

	Full-Time Faculty	Part-Time Faculty
Gender		
Male		
Female		
Non-Binary		
Unknown		
Total		
Race and Ethnicity		
Hispanic (Hispanic only, or Hispanic and any race category)		
American Indian/Alaska Native (Not Hispanic)		
Asian (Not Hispanic)		
Black (Not Hispanic)		
Native Hawaiian or Other Pacific Islander (Not Hispanic)		
White (Not Hispanic)		
Two or more races (Not Hispanic)		
Unknown race and ethnicity		
Nonresident alien (Do not report any other Race/Ethnicity information)		
Total		

Faculty Diversity Plan – Goals

- Three *measurable* goals designed by the institution to improve faculty diversity
 - May address gender, race, ethnicity and/or another category related to diversity
 - Include baseline data that will be used to measure progress
 - Metrics may, but do not necessarily need to, relate to data provided in table
- Must submit progress on goals in two- and four-year intervals (i.e., Summer 2024, Summer 2026)

Faculty Diversity Plan – Goals

Faculty Diversity Plan - Goals

Goal 1	
Measurable Goal	
Data/information informing the goal	

Goal 2	
Measurable Goal	
Data/information informing the goal	

Goal 3	
Measurable Goal	
Data/information informing the goal	

Setting Your Goals

- What are you already doing?
 - No requirement that goals/plans be new
- What are your existing data/demographic trends?
- What strengths and expertise can you leverage?
- Create goals that you control

But What About the Plan?

- Have a plan tied to goals and data
 - Appoint responsible individual for each goal/plan
 - Two and four year trajectory
 - Be Water
- Not required to publish or submit, but . . .
 - SED could change its mind
 - Faculty/student/media requests
 - Internal stakeholder audience

Pitfalls to Avoid

- Setting specific targets or headcounts for characteristic or demographic categories
- Limiting programs to specific racial/ethnic or sex/gender groups
 - Programs can be targeted, but not exclusionary
- Setting goals that you do not control
- Unintentionally producing discoverable or FOILable materials
 - Make use of your legal counsel and privilege
 - Assume anything you give to NYSED will become public
- Oversharing data about individual characteristics

Proposed Rulemaking on Medicaid Fraud, Waste and Abuse Prevention



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

Overview of OMIG's July 13, 2022, Proposed Rulemaking

- The Proposed Rule implements statutory changes to Social Services Law 363-d adopted in the state's 2020-21 Enacted Budget and contained in the Medicaid Program Integrity Reform Initiatives.
- The Proposed Rule would repeal and replace 18 N.Y.C.R.R. 521 and contains three Subparts:
 - **Subpart 521-1** *Compliance Programs*
 - **Subpart 521-2** *Medicaid Managed Care Fraud, Waste and Abuse Prevention*
 - **Subpart 521-3** *Self-Disclosure Programs*

Subpart 521-1 — Key Revisions

- **The definition of Required Providers, *i.e.*, to whom the Subpart applies, is amended:**
 - To include all Medicaid managed care and managed long-term care organizations (MMCOs); and
 - To increase the threshold of “substantial portion of business activities” from \$500,000 to \$1,000,000 claimed or received by a small business in Medicaid payments.
- **Updates to other key areas of a Provider’s Compliance Program, including:**
 - Written Policy Requirements,
 - Record Retention Obligations,
 - A Provider’s Training and Education Program Requirements,
 - Compliance Officer Responsibilities,
 - Annual Certification Requirements for MMCOs,
 - Annual Review Procedures and Policies, and
 - OMIG’s Ability to Conduct Compliance Program Reviews.

Subpart 521-2 — Key Revisions

- **The Proposed Subpart would require all MMCOs—regardless of enrollment—to develop a fraud, waste and abuse prevention plan that complies with the Regulation.**
 - Existing Regulations apply only to MMCOs with an enrollment exceeding 10,000.
- **Special Investigation Unit (SIU)**
 - All MMCOs with 1,000 or more enrollees must establish an SIU, which investigations any reports of fraud, waste or abuse, and is **separate and distinct** from the MMCO.
 - At a minimum, the SIU must employ:
 - (i) An SIU Director, and (ii) One full-time lead investigator; and
 - One full-time investigator per 60,000 enrollees for MMCOs and one full-time investigator per 6,000 enrollees for Medicaid managed long-term care plans.
- **Other Key Provisions** include:
 - Audit, investigation and Review Requirements;
 - Deadlines regarding Submission of an MMCOs Fraud, Waste and Abuse Prevention plan to OMIG;
 - Requirements of the MMCOs Annual Report Describing Fraud, Waste and Abuse Prevention Activities

Subpart 521-3 — Key Provisions

- **The Proposed Subpart applies to all “Persons,” defined as**
 - (i) any statutorily recognized Medicaid Provider and
 - (ii) all MMCOs and any subcontractors or networks providers of an MMCO.
- **Generally consistent with existing statutory obligations (Social Services Law 363-d(7)) governing the report, return and explain Medicaid overpayments, except:**
 - OMIG’s Self Disclosure program is the **exclusive mechanism** Persons shall use to report, return and explain any Medicaid overpayments.
- **Reiterates Key Components of the Disclosure Program, including**
 - Components of the Self-Disclosure statement, used in applying to the Self-Disclosure Program;
 - Procedures for applying for either (i) repayment through installments or (ii) a waiver of interest on repayment;
 - Procedures governing OMIG’s review of a Person’s Self-Disclosure application;
 - Procedures governing a Person’s return of an overpayment; and
 - Compilation of enforcement penalties available to OMIG for failure to comply with the Subpart.

Questions



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

Your Host

Gabriel S. Oberfield, goberfield@bsk.com

Cannabis on Campus

Barbara A. Lee, blee@bsk.com

Harassment Hotline

Theresa E. Rusnak, trusnak@bsk.com

New Bundy Aid Requirement: Faculty Diversity Data and Improvement Plan

Seth F. Gilbertson, sgilbertson@bsk.com

Proposed Rulemaking on Medicaid Fraud, Waste and Abuse Prevention

Gabriel S. Oberfield, goberfield@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.