

# BUSINESS IN 2022

WEEKLY WEBINAR SERIES



**BOND** SCHOENECK  
& KING ATTORNEYS

2023

2021

2020

2019

# Your Host



## **Gabriel S. Oberfield**

Senior Counsel

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New York, NY

# TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:15PM)

- Intros / Agenda
- COVID Update
- Monkeypox and Polio Update
- Inflation Reduction Act of 2022

Giuseppe Franzella (12:15PM-12:25PM)

- Twitter/Musk case and the Potential Ramifications of the Chancery Court's Decision on Other Contracts

G. Oberfield (12:25PM-12:35PM)

- Health Care and Mental Hygiene Worker Bonus Program and Dept. of Health Matters

Sandra Casey – (12:35PM-12:45PM)

- Update of Federal Title IV Regulations

G. Oberfield – (12:40-12:45PM)

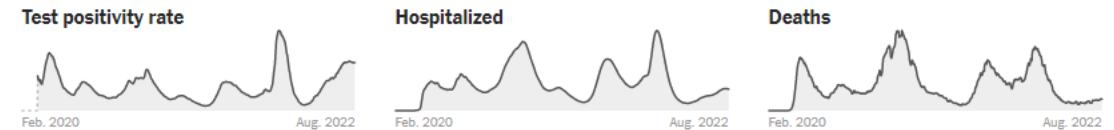
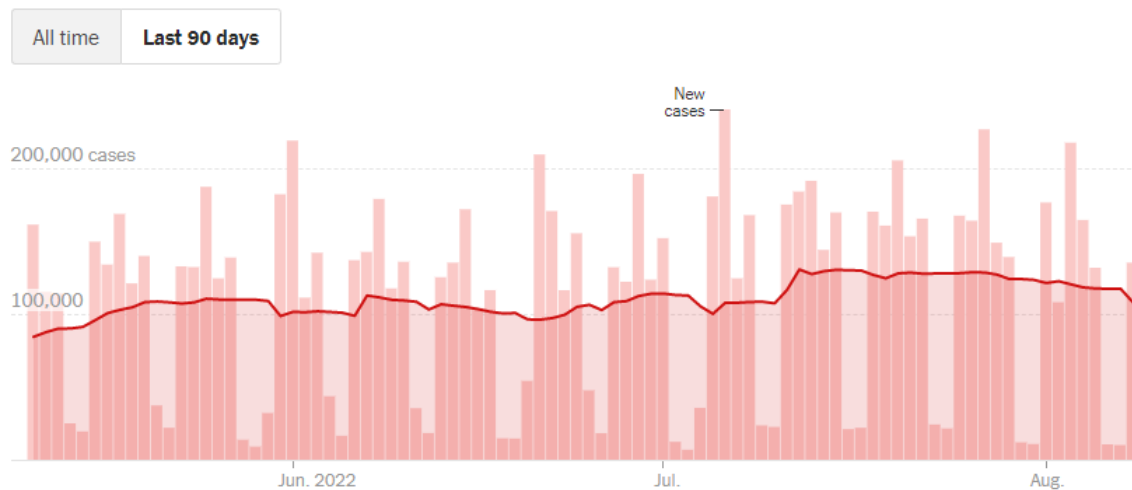
- Final Remarks / Adjourn

# COVID Infection Trends & Information

# Today's COVID Picture, Nationally

Source: New York Times

## New reported cases



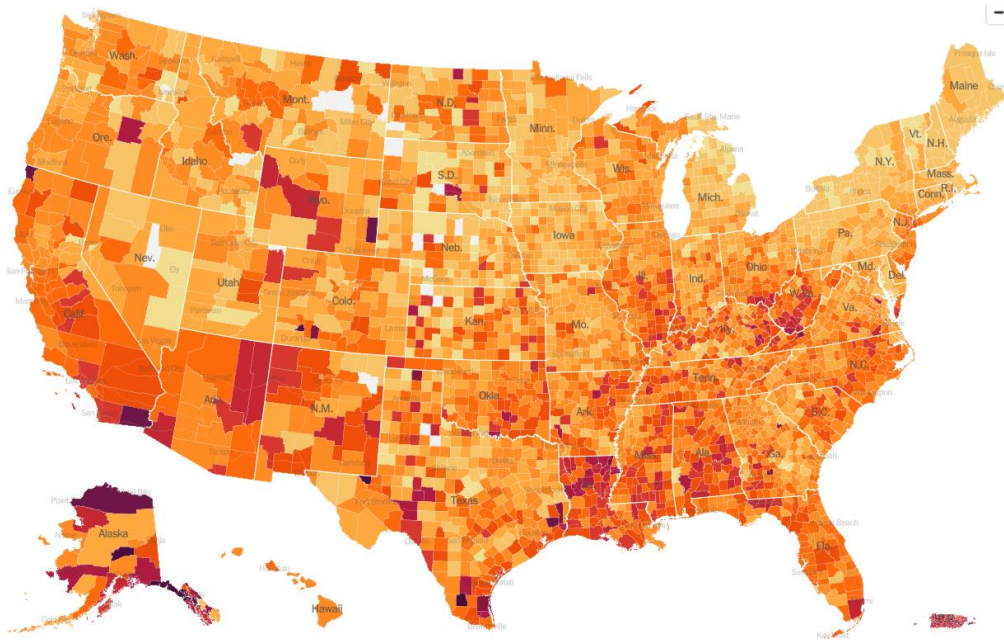
	DAILY AVG. ON AUG. 8	14-DAY CHANGE	TOTAL REPORTED
Cases	108,261	-16%	92,074,840
Test positivity	18%	—	—
Hospitalized	43,070	-1%	—
In I.C.U.s	4,927	Flat	—
Deaths	483	+10%	1,030,371

A (slight) dip in the climb...

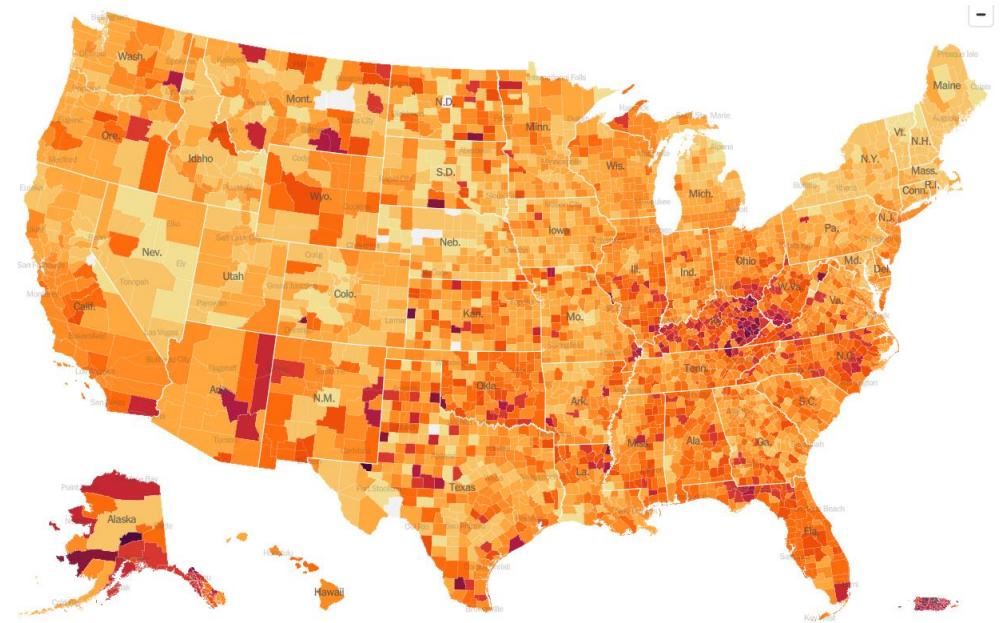


# Today's COVID Hotspots

Source: New York Times



As of July 26, 2022

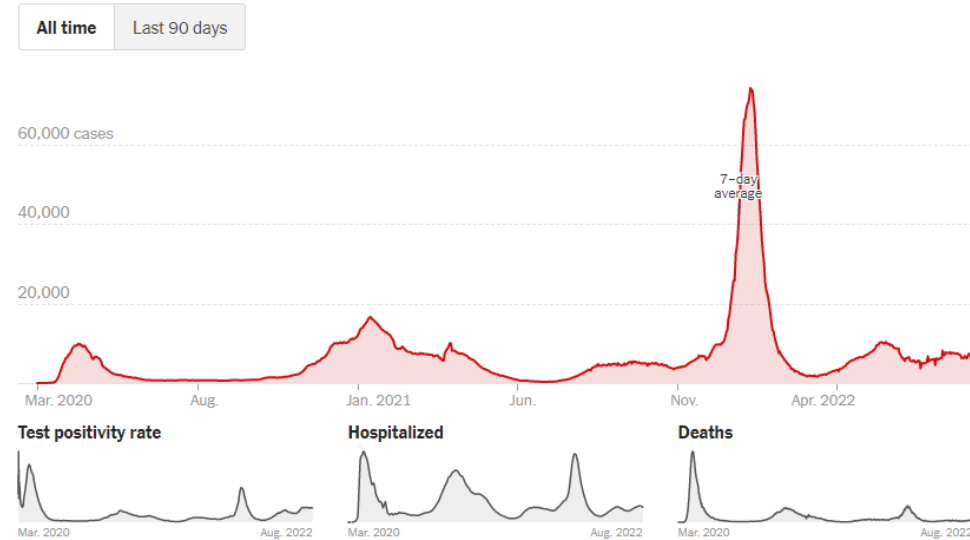


As of August 9, 2022  
*A bit of a break in the intensity...*

# Today's COVID Picture, in New York State

Source: New York Times

## New reported cases



DAILY AVG. ON AUG. 8 14-DAY CHANGE TOTAL REPORTED












Cases	6,150	-16%	5,864,089
Test positivity	13%	—	—
Hospitalized	2,905	-6%	—
In I.C.U.s	260	-12%	—
Deaths	27	+12%	69,815

- Average daily caseload statewide has **dropped** 16 percent over a two-week period
- **Recommendations** concerning indoor masking remain in place












# Two-Week Differentials in New York

Source: New York Times

## 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	—

## August 9, 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	6,150	32	-16% 	13%	15	-6%	26.7	0.14
New York City ›	3,565	43	-18% 	14%	19	Flat	17.0	0.20
Nassau ›	462	34	-28% 	14%	36	-1%	1.3	0.09
Sullivan ›	25	33	+29% 	16%	15	+40%	0	—
Orange ›	124	32	-14% 	15%	14	+27%	0.3	0.07
Rockland ›	103	32	-11% 	14%	8	-13%	0.4	0.11
Suffolk ›	453	31	-23% 	13%	19	-4%	1.1	0.08
Warren ›	19	29	+10% 	10%	12	+50%	0.1	0.22
Westchester ›	281	29	-18% 	14%	18	Flat	0.9	0.09
Fulton ›	14	26	+71% 	21%	12	+164%	0.1	0.21
Putnam ›	24	25	-7% 	14%	11	-1%	<0.1	0.07



# Monkeypox ... Where We Were Two Weeks Ago

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.

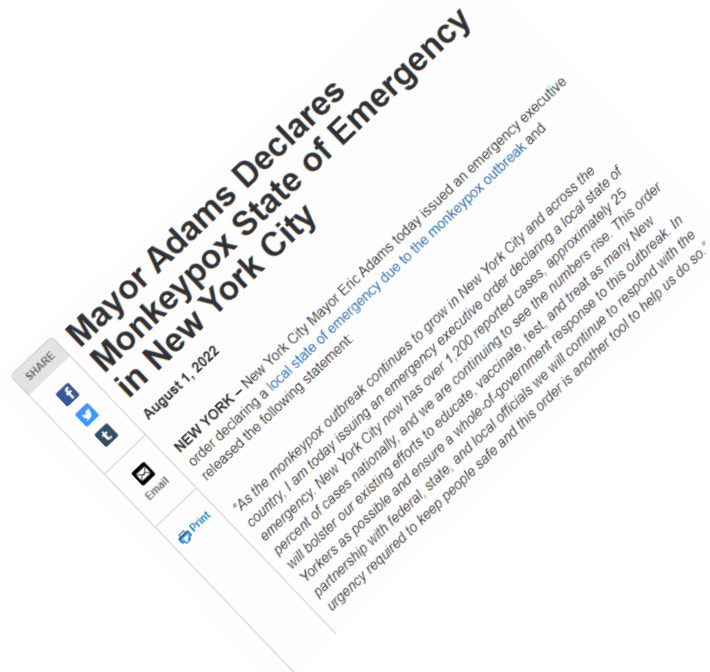
Dr. Tedros Adhanom Ghebreyesus, the W.H.O.'s director general, on Saturday overruled a panel of advisers, who could not come to a consensus, and declared a “public health emergency of international concern,” a designation the W.H.O. currently uses to describe only two other diseases, Covid-19 and polio.

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



# Monkeypox ... Where We Are Now

Sources: New York Times,  
HHS.gov, nyc.gov, &  
politico.com



- Monkeypox has been declared a Federal public health emergency (PHE)
  - See: Section 319 of the Public Health Service Act
- Other jurisdictions in alignment – including NYS and NYC
  - Per Mayor Eric Adams: c. 150K New Yorkers @ risk of infection
- Implications:
  - Expedited resources to control community spread
  - Relaxation of related regulatory elements
- Issues ‘on the Ground’ Continue:
  - There remains a dearth of available vaccine
  - Timing and supply chain issues



## *Why Monkeypox Vaccine Shortage May Threaten the Immunocompromised*

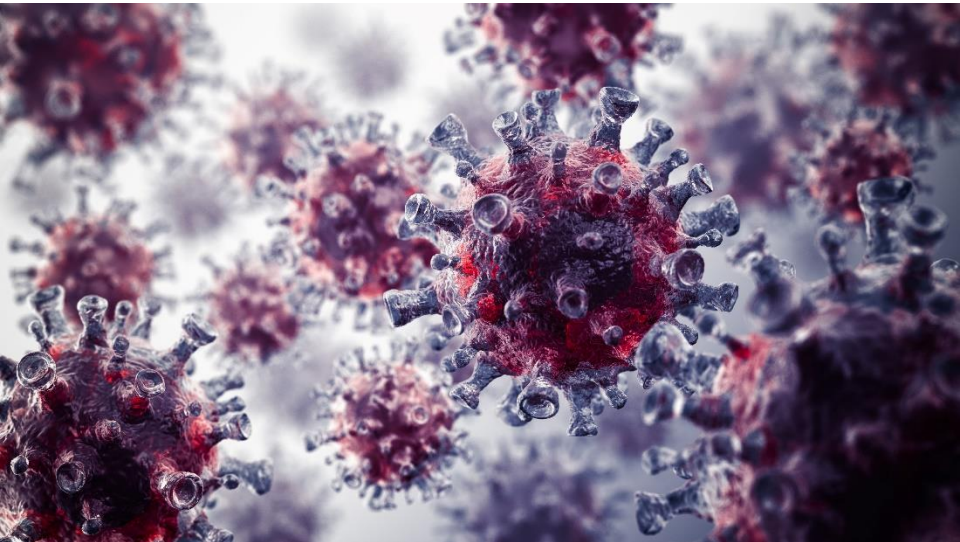
People with H.I.V. and other immune-system problems may need the full two-dose regimen, researchers say. But the shots, particularly second doses, are hard to come by.



# And Concerning Polio...

Source: New York Times

- Evidence of community spread in NYS counties (primarily lower Hudson Valley)
- DOH and other health officials monitoring closely, in the context of vaccination numbers in related communities



## *New York May Face 'Tip of the Iceberg' With Polio, Health Chief Says*

With increased urgency, state officials called for residents to get vaccinated against the disease after it was found in a second county's wastewater.

 Give this article



Rockland County's Health Department opened a pop-up clinic to distribute polio vaccine last month. Victor J. Blue for The New York Times

By **Ed Shanahan**

Aug. 4, 2022



# Inflation Reduction Act of 2022

Sources: Politico.com & thehill.com

- **Cleared Senate over weekend**
  - Followed uncertainty concerning positions of Senators Manchin and Sinema
  - Party-line vote
- **Some key attributes**
  - Energy and Climate Provisions
    - \$27 billion in 'Greenhouse Gas Reduction' funding
  - Prescription Drug Pricing
    - Medicare program permitted to negotiate elements of drug pricing
    - Some cost capping permitted (primarily in Medicare)
- **Next steps**
  - House to review bill on or about August 12 (broader Democratic majority expected to ease passage)
  - President Biden expected to sign legislation into law



Sen. Manchin  
(see <https://www.manchin.senate.gov/>)



Sen. Sinema  
(see <https://www.sinema.senate.gov/>)

# Specific Performance and the Case Against Elon Musk



## Giuseppe Franzella

Member

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

Melville, NY

# The Musk Offer

## Exhibit B

Bret Taylor  
Chairman of the Board,

I invested in Twitter as I believe in its potential to be the platform for free speech around the globe, and I believe free speech is a societal imperative for a functioning democracy.

However, since making my investment I now realize the company will neither thrive nor serve this societal imperative in its current form. Twitter needs to be transformed as a private company.

As a result, I am offering to buy 100% of Twitter for \$54.20 per share in cash, a 54% premium over the day before I began investing in Twitter and a 38% premium over the day before my investment was publicly announced. My offer is my best and final offer and if it is not accepted, I would need to reconsider my position as a shareholder.

Twitter has extraordinary potential. I will unlock it.

/s/ Elon Musk

Elon Musk

## Script

[SEND VIA TEXT]

As I indicated this weekend, I believe that the company should be private to go through the changes that need to be made.

After the past several days of thinking this over, I have decided I want to acquire the company and take it private.

I am going to send you an offer letter tonight, it will be public in the morning.

Are you available to chat?

[VOICE SCRIPT]

1. Best and Final:
  - a. I am not playing the back-and-forth game.
  - b. I have moved straight to the end.
  - c. It's a high price and your shareholders will love it.
  - d. If the deal doesn't work, given that I don't have confidence in management nor do I believe I can drive the necessary change in the public market, I would need to reconsider my position as a shareholder.
    - i. This is not a threat, it's simply not a good investment without the changes that need to be made.
    - ii. And those changes won't happen without taking the company private.
2. My advisors and my team are available after you get the letter to answer any questions
  - a. There will be more detail in our public filings. After you receive the letter and review the public filings, your team can call my family office with any questions.



# The Delaware Chancery Court

8/8/22, 11:57 AM

Court of Chancery - Delaware Courts - State of Delaware

## Court of **Chancery**



### WHO WE **Are**

The Delaware Court of Chancery is widely recognized as the nation's preeminent forum for the determination of disputes involving the internal affairs of the thousands upon thousands of Delaware corporations and other business entities through which a vast amount of the world's commercial affairs is conducted. Its unique competence in and exposure to issues of business law are unmatched.



(history.aspx)

#### **History (history.aspx)**

A short history of the Court of Chancery, which dates back to 1792.



(jurisdiction.aspx)

#### **Jurisdiction (jurisdiction.aspx)**

<https://courts.delaware.gov/chancery/>

1/10

# Specific Performance

- Existence of a valid and binding agreement
- Plaintiff's compliance with the agreement
- Defendant's failure to abide by the agreement

# Health Care and Mental Hygiene Worker Bonus Program & Dept. of Health Matters



## **Gabriel S. Oberfield**

Senior Counsel

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

New York, NY

# Health Care and Mental Hygiene Worker Bonus Program – Open Now, and First Deadline is Sept. 2, 2022

Sources: New York State Dept. of Health and the Office of the Governor

## New York State Launches Health Care and Mental Hygiene Worker Bonus (HWB) Program and Submissi...



Medicaid Redesign Team Update List <MRT-L@LISTSERV.HEALTH.STA  
To: MRT-L@LISTSERV.HEALTH.STATE.NY.US

Reply Reply All Forward

Wed 8/3/2022 11:19 AM

External Email: Use caution before clicking links or opening attachments.

Dear MRT Listserv Subscriber,

New York's essential frontline health care and mental hygiene workers have seen us through a once-in-a-century public health crisis that transformed our state into a model for battling COVID-19. As part of the Fiscal Year 2023 New York State Executive Budget legislation, \$1.2 billion has been allocated by Governor Kathy Hochul and the State Legislature via the **Health Care and Mental Hygiene Worker Bonus (HWB) Program** for the payment of bonuses to "recruit, retain, and reward health care and mental hygiene workers" who meet specified eligibility requirements. The official press release can be found at the following link: [Governor Hochul Launches Health Care Worker Bonus Program](#).

This listserv notice is to inform our provider community that the New York State Department of Health, working with the Governor's Office and other state agency partners, has launched the [HWB Program Portal](#) to facilitate submission by eligible employers on behalf of their employees who qualify for bonus payments.

As a next step, all providers are strongly encouraged to visit the following links for more information:

### HWB Program Announcement and Information

[https://www.health.ny.gov/health\\_care/medicaid/providers/hwb\\_program/](https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/)

### HWB Program FAQs

[https://www.health.ny.gov/health\\_care/medicaid/providers/hwb\\_program/hwb\\_program\\_faq.htm](https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/hwb_program_faq.htm)

### HWB Program Portal

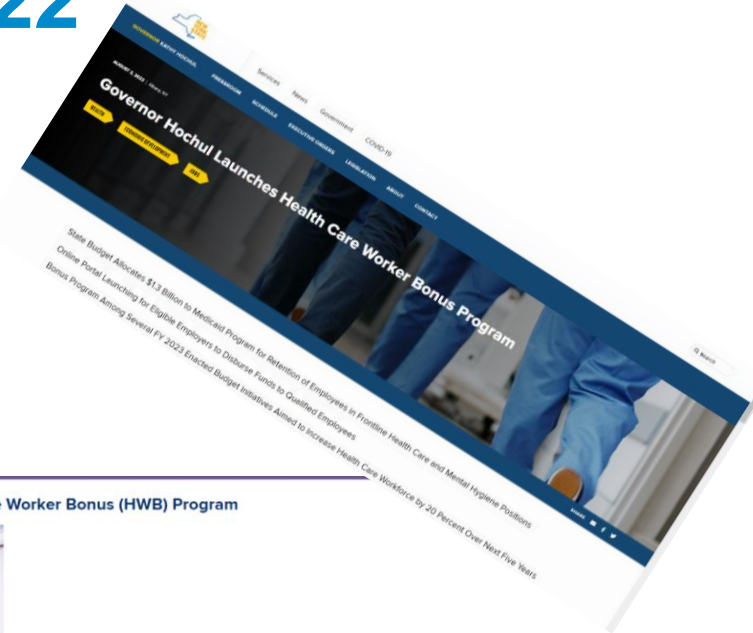
<https://www.nysworkerbonus.com/>

Providers with additional questions may contact the **Health Care Worker Bonus Call Center** at (866) 682-0077 or via email at [nysworkersbonus@health.ny.gov](mailto:nysworkersbonus@health.ny.gov).

Thank you.

### Medicaid Redesign Team (MRT) Updates

New York State Department of Health  
Office of Health Insurance Programs  
One Commerce Plaza  
Albany, NY 12237  
[mrtupdates@health.ny.gov](mailto:mrtupdates@health.ny.gov)



## New York State Health Care and Mental Hygiene Worker Bonus (HWB) Program



HWB Program Portal Eligible Worker Titles Frequently Asked Questions (FAQ)

### Program Information

New York's essential front line health care and mental hygiene workers have seen us through a once-in-a-century public health crisis and turned our state into a model for battling and beating COVID-19.

To attract talented people into the profession at a time of such significant strain, while also retaining those who have been working so tirelessly these past two years, we must recognize the efforts of our health care and mental hygiene workforce and reward them financially for their service. To do so, as part of the Fiscal Year 2023 New York State Executive Budget legislation, \$1.2 billion in funding has been allocated for the payment of bonuses for certain frontline healthcare workers.

Located within Part 22 of Chapter 56 of the Laws of 2022, the HWB provision allows for the payment of bonuses to "recruit, retain, and reward health care and mental hygiene workers" meeting specified eligibility requirements.

# Bonus Program – Its Origins

- Connected to 'health care worker bonus' language approved in SFY 2022-23 State budget
  - More than \$1B set aside for envisioned 'front line' healthcare worker bonuses
    - Up to \$3K, each – with \$1.5K per vesting period and no more than two vesting periods of eligibility
  - An outgrowth of the pandemic
    - Predicated on salary
    - \$125K cap (excluding bonuses and OT) and role



# Bonus Program – Employer Elements

- Eligibility:
  - Generally those with linkages to Medicaid programs, some aligned State programs, and some education programs (e.g., medical education – fellows and residents)
- Timing of bonus payments – must be no later than 30 days after receiving State funding for bonus purposes
  - Limitations on employers' ability to 'opt out' (e.g., to avoid administrative hurdles)
  - Penalties dependent on eligible employees
- Attestation requirements





# Bonus Program – Employee Requirements

- Employee requirements:
  - Six months of continuous employment over the span of ‘vesting’ period(s)
  - Employees cannot claim the bonuses w/out involvement of their employer(s)
  - Attestation requirements
  - Eligible titles:
    - Lengthy list, available here:  
[https://www.health.ny.gov/health\\_care/medicaid/providers/hwb\\_program/#titles](https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/#titles)



# Bonus Program – Department of Health Resources



- DOH has established
  - a related Web portal: [https://www.health.ny.gov/health\\_care/medicaid/providers/hwb\\_program/](https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/) and
  - an FAQ resource: [https://www.health.ny.gov/health\\_care/medicaid/providers/hwb\\_program/hwb\\_program\\_faq.htm](https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/hwb_program_faq.htm)

# Bonus Program – Vesting Periods

- Five successive ‘vesting’ periods – first open now:
  - October 1, 2021–March 31, 2022
    - Related submittals due by **September 2, 2022**
  - Others:
  - October 2022
  - May 2023
  - October 2023
  - May 2024

New York State Health Care and Mental Hygiene Worker Bonus (HWB) Program



[HWB Program Portal](#) [Eligible Worker Titles](#) [Frequently Asked Questions \(FAQ\)](#)

## Program Information

New York's essential front line health care and mental hygiene workers have seen us through a once-in-a-century public health crisis and turned our state into a model for battling and beating COVID-19.

To attract talented people into the profession at a time of such significant strain, while also retaining those who have been working so tirelessly these past two years, we must recognize the efforts of our health care and mental hygiene workforce and reward them financially for their service. To do so, as part of the Fiscal Year 2023 New York State Executive Budget legislation, \$1.2 billion in funding has been allocated for the payment of bonuses for certain frontline healthcare workers.

Located within [Part 27 of Chapter 56 of the Laws of 2022](#), the HWB provision allows for the payment of bonuses to "recruit, retain, and reward health care and mental hygiene workers" meeting specified eligibility requirements. Bonus amounts will be commensurate with the number of hours worked by eligible workers covered by the HWB Program during designated vesting periods for up to a total of \$3,000 per covered worker.

The official New York State press release can be found at the following link: [Governor Hochul Launches Health Care Worker Bonus Program](#).

# Bonus Program – Portal Elements

- Elements of the Portal
  - Facilitates submittals for providers
  - Employer and employee attestations required –
    - concerning salary,
    - hours worked, and
    - when worked

# Periodic Table of the Elements

The periodic table displays elements organized by atomic number (1 to 118) and grouped into 18 vertical columns (groups). The groups are labeled at the top: 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A.

Key elements shown include:

- Hydrogen (H):** Atomic Number 1, Symbol H, Name Hydrogen, Atomic Weight 1.008.
- Helium (He):** Atomic Number 2, Symbol He, Name Helium, Atomic Weight 4.0026.
- Lithium (Li):** Atomic Number 3, Symbol Li, Name Lithium, Atomic Weight 6.941.
- Beryllium (Be):** Atomic Number 4, Symbol Be, Name Beryllium, Atomic Weight 9.0122.
- Sodium (Na):** Atomic Number 11, Symbol Na, Name Sodium, Atomic Weight 22.9898.
- Magnesium (Mg):** Atomic Number 12, Symbol Mg, Name Magnesium, Atomic Weight 24.3047.
- Aluminum (Al):** Atomic Number 13, Symbol Al, Name Aluminum, Atomic Weight 26.9815.
- Silicon (Si):** Atomic Number 14, Symbol Si, Name Silicon, Atomic Weight 28.0855.
- Phosphorus (P):** Atomic Number 15, Symbol P, Name Phosphorus, Atomic Weight 30.9738.
- Sulfur (S):** Atomic Number 16, Symbol S, Name Sulfur, Atomic Weight 32.06.
- Chlorine (Cl):** Atomic Number 17, Symbol Cl, Name Chlorine, Atomic Weight 35.453.
- Argon (Ar):** Atomic Number 18, Symbol Ar, Name Argon, Atomic Weight 39.948.
- Potassium (K):** Atomic Number 19, Symbol K, Name Potassium, Atomic Weight 39.0983.
- Calcium (Ca):** Atomic Number 20, Symbol Ca, Name Calcium, Atomic Weight 40.078.
- Scandium (Sc):** Atomic Number 21, Symbol Sc, Name Scandium, Atomic Weight 44.9559.
- Titanium (Ti):** Atomic Number 22, Symbol Ti, Name Titanium, Atomic Weight 47.88.
- Vanadium (V):** Atomic Number 23, Symbol V, Name Vanadium, Atomic Weight 50.9415.
- Chromium (Cr):** Atomic Number 24, Symbol Cr, Name Chromium, Atomic Weight 51.9961.
- Manganese (Mn):** Atomic Number 25, Symbol Mn, Name Manganese, Atomic Weight 54.938.
- Iron (Fe):** Atomic Number 26, Symbol Fe, Name Iron, Atomic Weight 55.845.
- Cobalt (Co):** Atomic Number 27, Symbol Co, Name Cobalt, Atomic Weight 58.9332.
- Nickel (Ni):** Atomic Number 28, Symbol Ni, Name Nickel, Atomic Weight 58.6934.
- Copper (Cu):** Atomic Number 29, Symbol Cu, Name Copper, Atomic Weight 63.546.
- Zinc (Zn):** Atomic Number 30, Symbol Zn, Name Zinc, Atomic Weight 65.38.
- Gallium (Ga):** Atomic Number 31, Symbol Ga, Name Gallium, Atomic Weight 69.723.
- Germanium (Ge):** Atomic Number 32, Symbol Ge, Name Germanium, Atomic Weight 72.64.
- Arsenic (As):** Atomic Number 33, Symbol As, Name Arsenic, Atomic Weight 74.9216.
- Selenium (Se):** Atomic Number 34, Symbol Se, Name Selenium, Atomic Weight 78.96.
- Bromine (Br):** Atomic Number 35, Symbol Br, Name Bromine, Atomic Weight 79.904.
- Krypton (Kr):** Atomic Number 36, Symbol Kr, Name Krypton, Atomic Weight 83.80.
- Rubidium (Rb):** Atomic Number 37, Symbol Rb, Name Rubidium, Atomic Weight 85.4678.
- Sr** (Strontium): Atomic Number 38, Symbol Sr, Name Strontium, Atomic Weight 87.62.
- Y** (Yttrium): Atomic Number 39, Symbol Y, Name Yttrium, Atomic Weight 88.9058.
- Zr** (Zirconium): Atomic Number 40, Symbol Zr, Name Zirconium, Atomic Weight 91.224.
- Nb** (Niobium): Atomic Number 41, Symbol Nb, Name Niobium, Atomic Weight 92.90638.
- Mo** (Molybdenum): Atomic Number 42, Symbol Mo, Name Molybdenum, Atomic Weight 95.94.
- Tc** (Technetium): Atomic Number 43, Symbol Tc, Name Technetium, Atomic Weight 98.
- Ru** (Ruthenium): Atomic Number 44, Symbol Ru, Name Ruthenium, Atomic Weight 101.07.
- Rh** (Rhodium): Atomic Number 45, Symbol Rh, Name Rhodium, Atomic Weight 102.9055.
- Pd** (Palladium): Atomic Number 46, Symbol Pd, Name Palladium, Atomic Weight 106.3676.
- Ag** (Silver): Atomic Number 47, Symbol Ag, Name Silver, Atomic Weight 107.8682.
- Cd** (Cadmium): Atomic Number 48, Symbol Cd, Name Cadmium, Atomic Weight 112.411.
- In** (Indium): Atomic Number 49, Symbol In, Name Indium, Atomic Weight 114.818.
- Sn** (Tin): Atomic Number 50, Symbol Sn, Name Tin, Atomic Weight 118.710.
- Sb** (Antimony): Atomic Number 51, Symbol Sb, Name Antimony, Atomic Weight 121.757.
- Te** (Tellurium): Atomic Number 52, Symbol Te, Name Tellurium, Atomic Weight 127.6.
- I** (Iodine): Atomic Number 53, Symbol I, Name Iodine, Atomic Weight 126.905.
- Xe** (Xenon): Atomic Number 54, Symbol Xe, Name Xenon, Atomic Weight 131.29.
- Cs** (Cesium): Atomic Number 55, Symbol Cs, Name Cesium, Atomic Weight 132.905.
- Ba** (Barium): Atomic Number 56, Symbol Ba, Name Barium, Atomic Weight 137.327.
- Hf** (Hafnium): Atomic Number 72, Symbol Hf, Name Hafnium, Atomic Weight 178.49.
- Ta** (Tantalum): Atomic Number 73, Symbol Ta, Name Tantalum, Atomic Weight 180.9479.
- W** (Tungsten): Atomic Number 74, Symbol W, Name Tungsten, Atomic Weight 183.84.
- Re** (Rhenium): Atomic Number 75, Symbol Re, Name Rhenium, Atomic Weight 186.207.
- Os** (Osmium): Atomic Number 76, Symbol Os, Name Osmium, Atomic Weight 190.23.
- Ir** (Iridium): Atomic Number 77, Symbol Ir, Name Iridium, Atomic Weight 192.222.
- Pt** (Platinum): Atomic Number 78, Symbol Pt, Name Platinum, Atomic Weight 195.084.
- Au** (Gold): Atomic Number 79, Symbol Au, Name Gold, Atomic Weight 196.96657.
- Hg** (Mercury): Atomic Number 80, Symbol Hg, Name Mercury, Atomic Weight 200.59.
- Tl** (Thallium): Atomic Number 81, Symbol Tl, Name Thallium, Atomic Weight 204.38.
- Pb** (Lead): Atomic Number 82, Symbol Pb, Name Lead, Atomic Weight 207.2.
- Bi** (Bismuth): Atomic Number 83, Symbol Bi, Name Bismuth, Atomic Weight 208.9804.
- Po** (Polonium): Atomic Number 84, Symbol Po, Name Polonium, Atomic Weight 209.
- At** (Astatine): Atomic Number 85, Symbol At, Name Astatine, Atomic Weight 210.
- Rn** (Radon): Atomic Number 86, Symbol Rn, Name Radon, Atomic Weight 222.
- Fr** (Francium): Atomic Number 87, Symbol Fr, Name Francium, Atomic Weight 223.
- Ra** (Radium): Atomic Number 88, Symbol Ra, Name Radium, Atomic Weight 226.
- Ac** (Actinium): Atomic Number 89, Symbol Ac, Name Actinium, Atomic Weight 227.
- Rf** (Rutherfordium): Atomic Number 104, Symbol Rf, Name Rutherfordium, Atomic Weight 261.
- Db** (Dubnium): Atomic Number 105, Symbol Db, Name Dubnium, Atomic Weight 262.
- Sg** (Seaborgium): Atomic Number 106, Symbol Sg, Name Seaborgium, Atomic Weight 266.
- Bh** (Bohrium): Atomic Number 107, Symbol Bh, Name Bohrium, Atomic Weight 264.
- Hs** (Hassium): Atomic Number 108, Symbol Hs, Name Hassium, Atomic Weight 277.
- Mt** (Meitnerium): Atomic Number 109, Symbol Mt, Name Meitnerium, Atomic Weight 268.
- Ds** (Darmstadtium): Atomic Number 110, Symbol Ds, Name Darmstadtium, Atomic Weight 271.
- Rg** (Roentgenium): Atomic Number 111, Symbol Rg, Name Roentgenium, Atomic Weight 272.
- Cn** (Copernicium): Atomic Number 112, Symbol Cn, Name Copernicium, Atomic Weight 285.
- Nh** (Nihonium): Atomic Number 113, Symbol Nh, Name Nihonium, Atomic Weight 284.
- Fl** (Flerovium): Atomic Number 114, Symbol Fl, Name Flerovium, Atomic Weight 289.
- Mc** (Moscovium): Atomic Number 115, Symbol Mc, Name Moscovium, Atomic Weight 288.
- Lv** (Livermorium): Atomic Number 116, Symbol Lv, Name Livermorium, Atomic Weight 293.
- Ts** (Tennessine): Atomic Number 117, Symbol Ts, Name Tennessine, Atomic Weight 289.
- Og** (Oganesson): Atomic Number 118, Symbol Og, Name Oganesson, Atomic Weight 294.
- La** (Lanthanum): Atomic Number 57, Symbol La, Name Lanthanum, Atomic Weight 138.905.
- Ce** (Cerium): Atomic Number 58, Symbol Ce, Name Cerium, Atomic Weight 140.12.
- Pr** (Praseodymium): Atomic Number 59, Symbol Pr, Name Praseodymium, Atomic Weight 140.90765.
- Nd** (Neodymium): Atomic Number 60, Symbol Nd, Name Neodymium, Atomic Weight 144.242.
- Pm** (Promethium): Atomic Number 61, Symbol Pm, Name Promethium, Atomic Weight 145.
- Sm** (Samarium): Atomic Number 62, Symbol Sm, Name Samarium, Atomic Weight 150.36.
- Eu** (Europium): Atomic Number 63, Symbol Eu, Name Europium, Atomic Weight 151.964.
- Gd** (Gadolinium): Atomic Number 64, Symbol Gd, Name Gadolinium, Atomic Weight 157.25.
- Tb** (Terbium): Atomic Number 65, Symbol Tb, Name Terbium, Atomic Weight 158.92535.
- Dy** (Dysprosium): Atomic Number 66, Symbol Dy, Name Dysprosium, Atomic Weight 162.50087.
- Ho** (Holmium): Atomic Number 67, Symbol Ho, Name Holmium, Atomic Weight 164.93033.
- Er** (Erbium): Atomic Number 68, Symbol Er, Name Erbium, Atomic Weight 167.259.
- Tm** (Thulium): Atomic Number 69, Symbol Tm, Name Thulium, Atomic Weight 168.93032.
- Yb** (Ytterbium): Atomic Number 70, Symbol Yb, Name Ytterbium, Atomic Weight 173.05468.
- Lu** (Lutetium): Atomic Number 71, Symbol Lu, Name Lutetium, Atomic Weight 174.967.
- Ac** (Actinium): Atomic Number 89, Symbol Ac, Name Actinium, Atomic Weight 2

# What We've Been Learning ...

## As We Help Clients Navigate the Program

- **Eligible Titles:**
  - We understand that NYSDOH intends to adhere to the list of titles
    - If a title is not on the list, it is not eligible
- **Treatment of the Bonus Payment:**
  - Likely part of the “regular hourly rate” for the basis of overtime pay calculations
    - Consequently, if an employee worked overtime during the vesting period, the employer must calculate and pay an additional amount in overtime pay
- **Multi-Employer Benefit Funds:**
  - Some employers that contribute to multi-employer benefit funds based on compensation made may have an addition contribution obligation –
    - This depends on the terms of the CBA or contribution agreement and so will vary across employers

# Bonus Program – Some Questions We've Been Fielding

- Who are the eligible employees?
- Does my organization have to participate?
- What happens if an employee works for a third party and is functionally leased to my organization?
- How quickly do I need to move on this?



# New York State Dept. of Health Announces Reorganization

Source: New York State Dept. of Health



## Department of Health

ALBANY, N.Y. (July 29, 2022) –

"Public health touches every facet of our lives," **State Commissioner of Health Dr. Mary T. Bassett** said. "Our new organizational focus and leadership team structure will better position the Department to shape our priorities and delivery systems to improve health access and outcomes for all New Yorkers. The scope of this Department extends beyond traditional public health and comprises a regulatory function for health care delivery institutions and health insurance programs that provide coverage to over one-third of New Yorkers. In my tenure as commissioner, I intend to do my utmost to fulfil our mandate. New Yorkers deserve no less."

Since becoming Health Commissioner, Dr. Bassett has sought to optimize cross-functional collaboration, recruit and retain a more diverse workforce, elevate health equity and the needs of older New Yorkers, foster a culture of inclusivity, and prioritize using data to drive public health decisions. She has also sought out ideas from staff, the backbone of the Department. A staff survey, focus groups and multiple conversations were essential to understanding the challenges the Department faces and how to address them."

### Key changes:

- Creating a new Office of Health Equity & Human Rights
- Creating a new Office of Aging & Long-Term Care
- Establishing a Chief Medical Officer
- Creating a new Commissioner's Cabinet
- Strengthening the Regional Offices

# High-Level Look at U.S. Department of Education's Title IV Proposed Rules



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# Title IV Proposed Rules

There were two sets of proposed federal financial aid regulations that were published in July of this year. These regulations were subject to negotiated rulemaking where committees were formed by the U.S. Department of Education (USED). The committees reached consensus on some of the rules-meaning they had unanimous support-but not all. Where there is not consensus, the Department is allowed to issue its own proposed rules, which is what occurred with regard to the proposed Borrower Defense Rules.

The comment period for these proposed rules is short-only thirty days. And the Department is in a rush to finalize the rules before November 1 for an effective date of July 1, 2023. If the final rules are not published by then, the effective date of the rules would be July 1, 2024. This rigid schedule is a result of the requirements in the federal Higher Education Act related to student aid provisions under Title IV.

## NPRM of July 28, 2022

- The comment period for these proposed rules runs until August 26, 2022.
- These rules set forth eligibility requirements for incarcerated individuals to receive Pell grants in a Prison Education Program (“PEP”).
- Specifically, the proposed regulation defines incarcerated individual as one “who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution.”

# NPRM of July 28, 2022

- The proposed rules would also amend the 90/10 requirement for proprietary institutions. Under the federal Higher Education Act, proprietary institutions are prohibited from deriving more than 90 percent of their revenue from federal sources and therefore must receive at least 10 percent of their revenue from non-federal sources. The proposed rules would specify what funds should be considered federal funds and provide more regulatory oversight over calculation of federal versus non-federal revenue.
- The NPRM would also create a new requirement for when proprietary institutions must request and disburse Title IV from USED.

# NPRM of July 28, 2022

- The proposed rules also provides greater oversight when there is a change in ownership that moves a proprietary institution from profit-making to a nonprofit institution. Specifically, the proposed regulations would clarify the existing definition of a “nonprofit institution” to ensure that institutions converting from proprietary status meet the standards to qualify as a nonprofit, including to avoid providing net earnings of the institution to a private entity or person; establish clearer upfront requirements for applications for changes in ownership; and provide for greater clarity in the procedures USED follows in reviewing changes in ownership for continued eligibility for Title IV aid.



## NPRM of July 13

- The comment period for these proposed rules runs until August 12, 2022.
- These proposed rules touch upon various requirements in the Direct Loan Program, the Federal Perkins Loan Program, and the Federal Family Education Loan Program and provide more favorable treatment to the borrower in terms of discharge of loans due to disability or public service loan forgiveness.

# NPRM of July 13 - Borrower Defense Rules

- The proposed regulations make sweeping changes to rules allowing individuals to apply for a discharge of their loans based upon the institution's conduct. Specifically, a borrower defense discharge would occur when the USED determines an institution engaged in substantial misrepresentations or substantial omissions of fact, breached a loan contract, engaged in aggressive academic recruitment, or was subject to a judgment based on Federal or State law in a court or administrative tribunal of competent jurisdiction based upon these behaviors, or was subject to a prior sanction by USED.

# NPRM of July 13 - Borrower Defense Rules

- Where the borrower's defense is warranted, the proposed regulations would also enhance the USED's recoupment authority, making it easier for USED to hold institutions accountable for costs by recouping the costs of the discharged loans.
- There is also a process in the proposed rules to allow not only individuals to apply for discharge of loans but also for USED to institute its own action on behalf of an entire group of borrowers to pursue a discharge. Both the individual application and the USED group action would be decided by USED staff and not an impartial hearing official.
- The new rules would apply to any borrower defense applications pending on or filed after July 1, 2023, without regard to when the conduct upon which the claim is based took place. Thus, past conduct that does not constitute the basis for a discharge under current law, could be deemed to violate the law after the new rule becomes effective.
- There is also a presumption in the rules that the borrower was harmed by the conduct of the institution's conduct so the borrower would need not show actual harm.

# Conclusion

- Institutions will need to pay close attention to these Title IV proposed regulations, especially the borrower defense rules, if and when, they are finalized. All institutional operations will be scrutinized under the borrower defense rules and institutions faced with borrower defense claims will be hampered in their own defense of such claims given the proposed regulatory framework.
- We encourage all to review the borrower defense rules with your counsel and your trade associations and comment if at all possible.

# Questions



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## Health Care and Mental Hygiene Worker Bonus Program & Dept. of Health Matters

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## High-Level Look at U.S. Department of Education's Title IV Proposed Rules

Sandra Casey, [scasey@bsk.com](mailto:scasey@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.

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