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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)

- Intros / agenda
- COVID and other public health updates

Jeffrey Gleason (12:10PM-12:20PM)

- Just in time for the NFL season – the latest on gambling in New York State

Dustin Dorsino (12:20PM-12:30PM)

- Cannabis 'gifting' in New York State

G. Oberfield (12:30PM-12:40PM)

- Healthcare updates

G. Oberfield – (12:40-12:45PM)

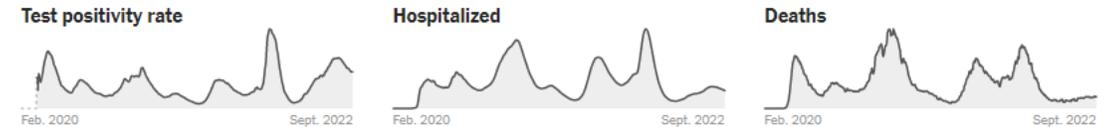
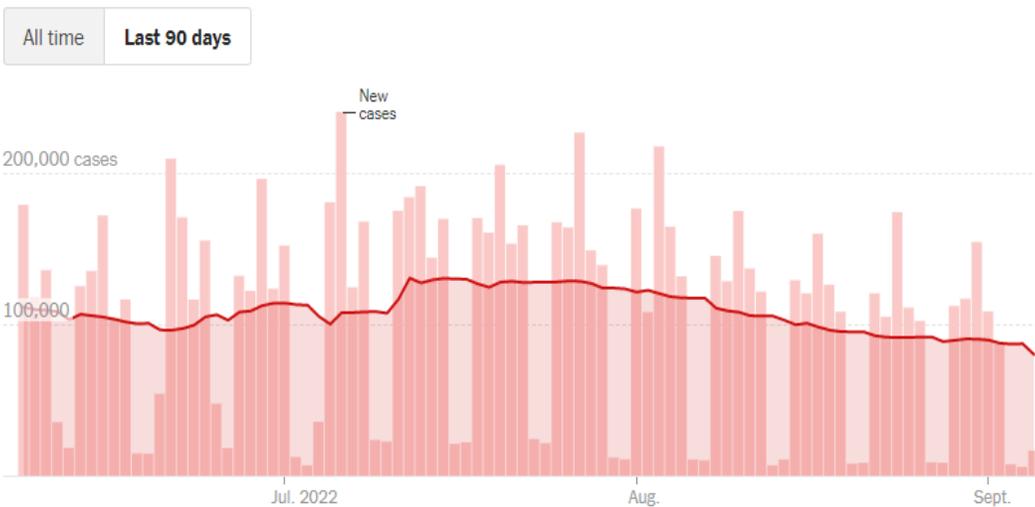
- Fielding open questions and final remarks

COVID Infection Trends & Information

Today's COVID Picture, Nationally

Source: New York Times

New reported cases

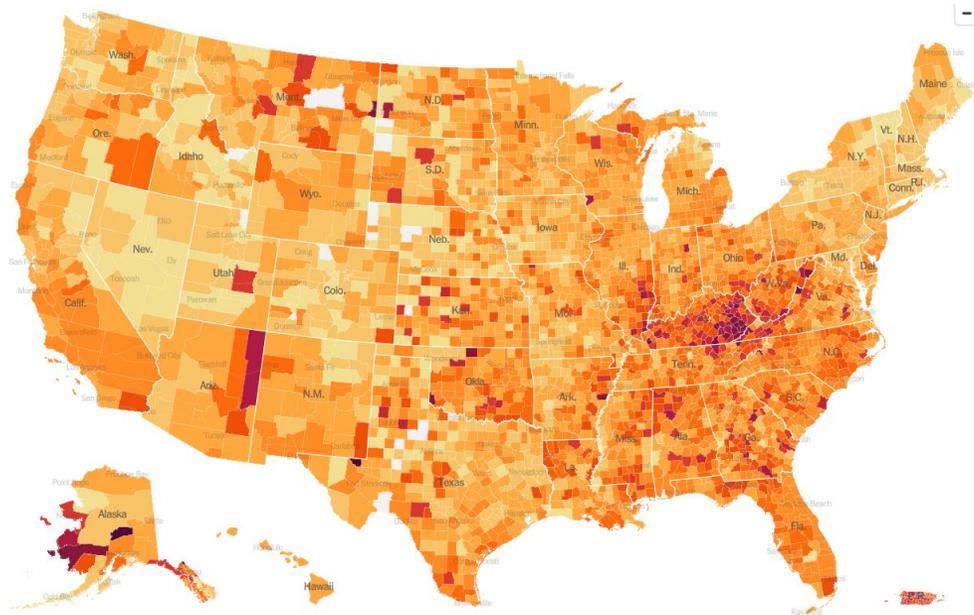


	DAILY AVG. ON SEPT. 5	14-DAY CHANGE	TOTAL REPORTED
Cases	80,230	-13%	94,568,521
Test positivity	13%	—	—
Hospitalized	35,769	-11%	—
In I.C.U.s	4,245	-11%	—
Deaths	489	+7%	1,043,446

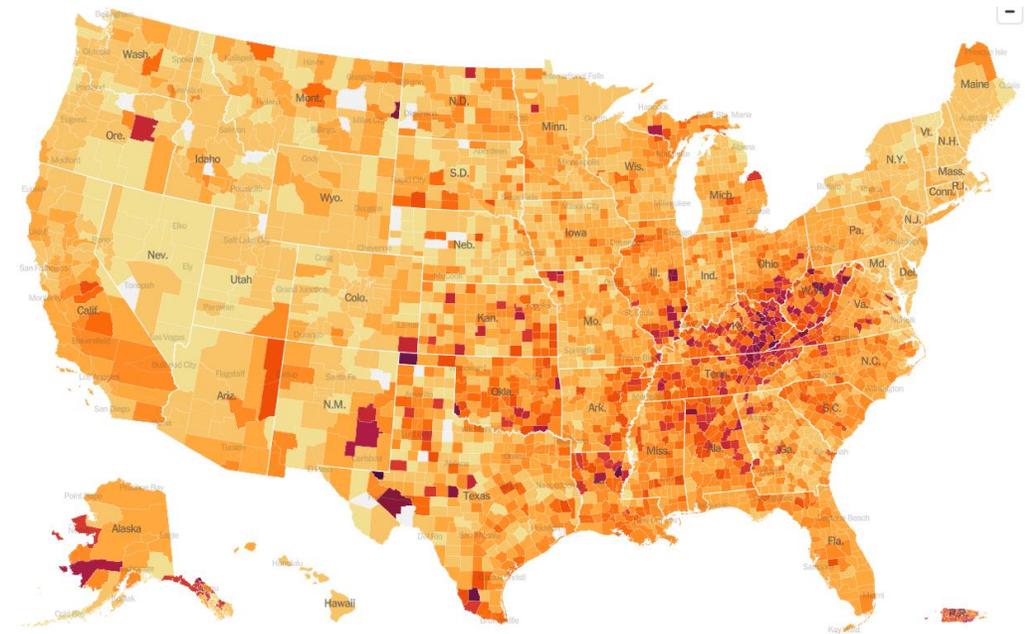
For now, a (continuing) drop...per public health experts, this may change as colder weather comes.

Today's COVID Hotspots

Source: New York Times



As of August 23, 2022



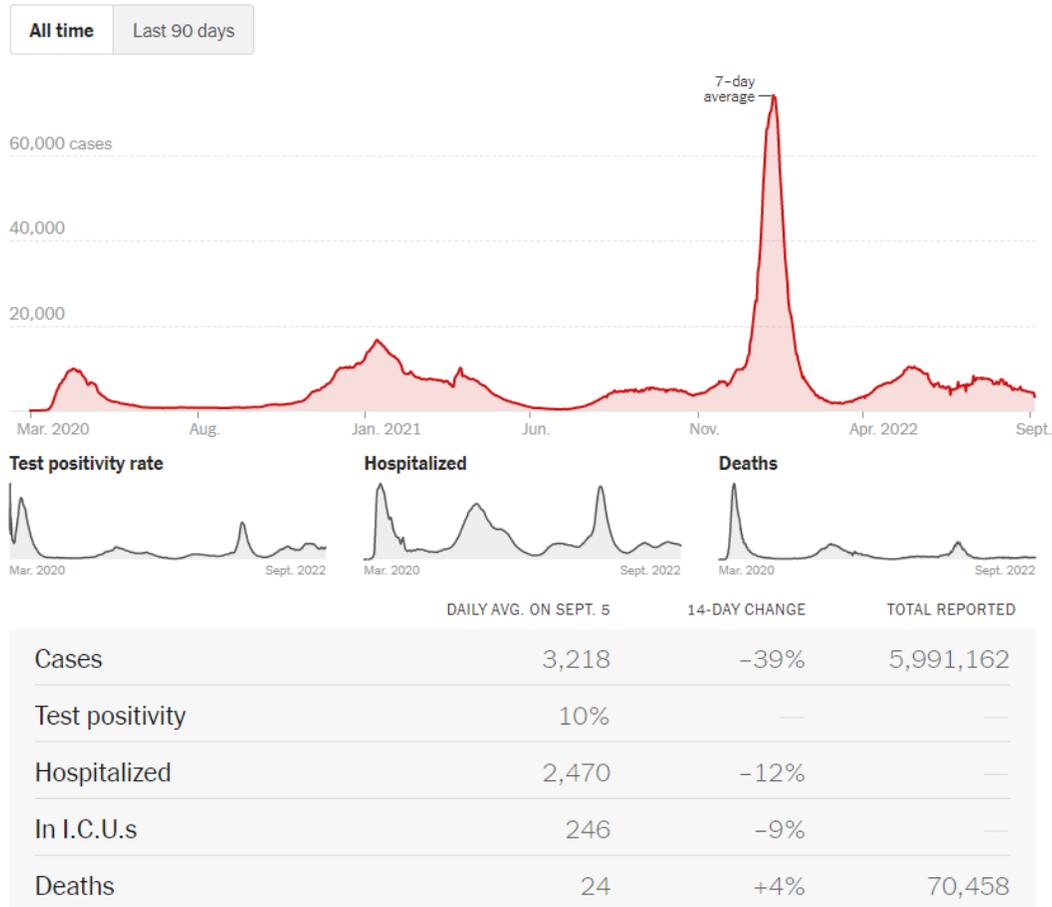
September 6, 2022

The slight downward trend continues...

Today's COVID Picture, in New York State

Source: New York Times

New reported cases



- Average daily caseload statewide has **dropped** 39 percent over a two-week period
- Recommendations concerning indoor masking remain in place
- Recommended isolation protocols loosened

Two-Week Differentials in New York

Source: New York Times

August 23, 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	4,927	25	-32%	10%	14	-7%	22.0	0.11
New York City ›	2,647	32	-34%	11%	16	-22%	13.4	0.16
Sullivan ›	24	31	-8%	4%	15	-5%	0.1	0.19
Fulton ›	16	31	+30%	27%	10	+52%	0	—
Nassau ›	381	28	-19%	12%	33	-10%	0.9	0.06
Orange ›	103	27	-17%	9%	14	-6%	0.3	0.06
Suffolk ›	388	26	-18%	11%	20	+6%	1.6	0.11
Oswego ›	29	25	+25%	18%	12	+33%	0	—
Rockland ›	79	24	-26%	2%	10	+8%	0.1	0.03
Jefferson ›	26	24	+56%	13%	7	+7%	0.1	0.09
Montgomery ›	12	24	+24%	28%	6	-14%	0.1	0.25

September 6, 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	3,218	17	-39%	10%	13	-12%	24.0	0.12
Tompkins ›	28	27	+32%	13%	15	+33%	<0.1	0.07
New York City ›	2,103	25	-30%	9%	16	-13%	16.1	0.19
Cattaraugus ›	19	25	+30%	18%	12	+45%	0.1	0.19
Broome ›	46	24	+41%	14%	18	+30%	0.1	0.07
Nassau ›	326	24	-13%	12%	26	-14%	0.4	0.03
Sullivan ›	18	23	-26%	3%	20	+34%	0	—
Suffolk ›	343	23	-11%	11%	18	-8%	1.4	0.10
Fulton ›	12	23	-21%	19%	6	-25%	0	—
Oswego ›	26	22	-9%	17%	13	+30%	<0.1	0.07
Tioga ›	10	21	+4%	16%	16	+30%	0	—

COVID-19 Vaccines

Source: Politico

- Last week the Centers for Disease Control and Prevention endorsed bivalent COVID-19 boosters (targeting key Omicron subvariants)
- CDC's independent vaccine advisory panel recommended:
 - updated Moderna shot for all adults, and
 - updated Pfizer-BioNTech vaccine for those 12+
- *NYS DOH is organizing distribution networks and rollout*
- *Reformulated vaccines already available in other geographies – e.g., within FL*



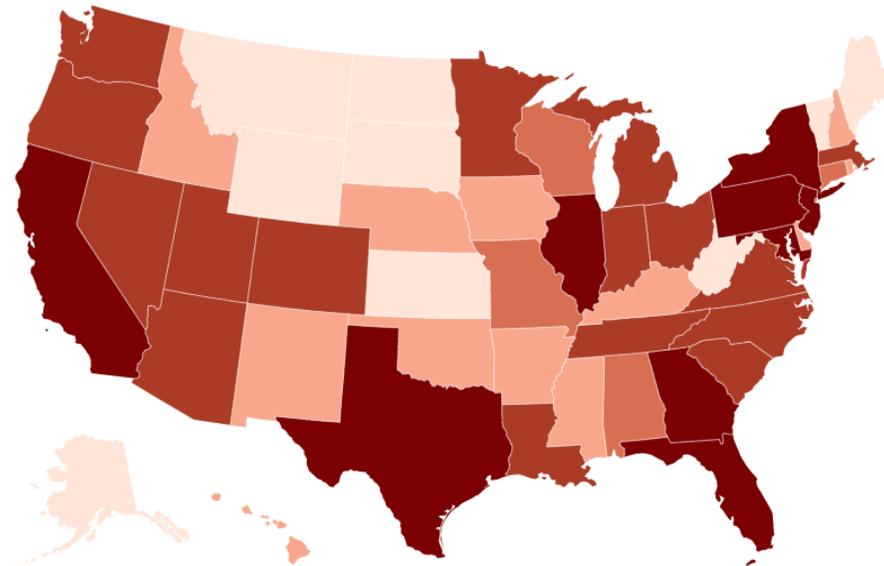
Monkeypox ... Where We Are Now

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

Where monkeypox is spreading

Confirmed monkeypox cases as of Sept. 1 2022

1-10 11-50 51-100 101-500 >500



Source: Centers for Disease Control and Prevention

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Mayor Adams Declares Monkeypox State of Emergency in New York City

August 1, 2022

NEW YORK – New York City Mayor Eric Adams today issued an emergency executive order declaring a local state of emergency due to the monkeypox outbreak and released the following statement.

"As the monkeypox outbreak continues to grow in New York City and across the country, I am today issuing an emergency executive order declaring a local state of emergency. New York City now has over 1,200 reported cases, approximately 25 percent of cases nationally, and we are continuing to see the numbers rise. This order will bolster our existing efforts to educate, vaccinate, test, and treat as many New Yorkers as possible and ensure a whole-of-government response to this outbreak. In partnership with federal, state, and local officials we will continue to respond with the urgency required to keep people safe and this order is another tool to help us do so."

FOR IMMEDIATE RELEASE
August 4, 2022

Biden-Harris Administration Bolsters Monkeypox Response; HHS Secretary Becerra Declares Public Health Emergency

U.S. Department of Health and Human Services Secretary Xavier Becerra announced today that he will declare the ongoing spread of monkeypox virus in the United States a Public Health Emergency (PHE). This action will further strengthen and accelerate the Biden-Harris Administration's response in recognition of the continued rapid transmission of monkeypox in the U.S. and globally, and to signal the seriousness and urgency with which the Administration is responding. The announcement comes on the heels of President Biden appointing Robert Fenton of the Federal Emergency Management Agency as White House National Monkeypox Response Coordinator and Dr. Demetris Daskalakis of the Centers for Disease Control and Prevention as White House National Monkeypox Response Deputy Coordinator.

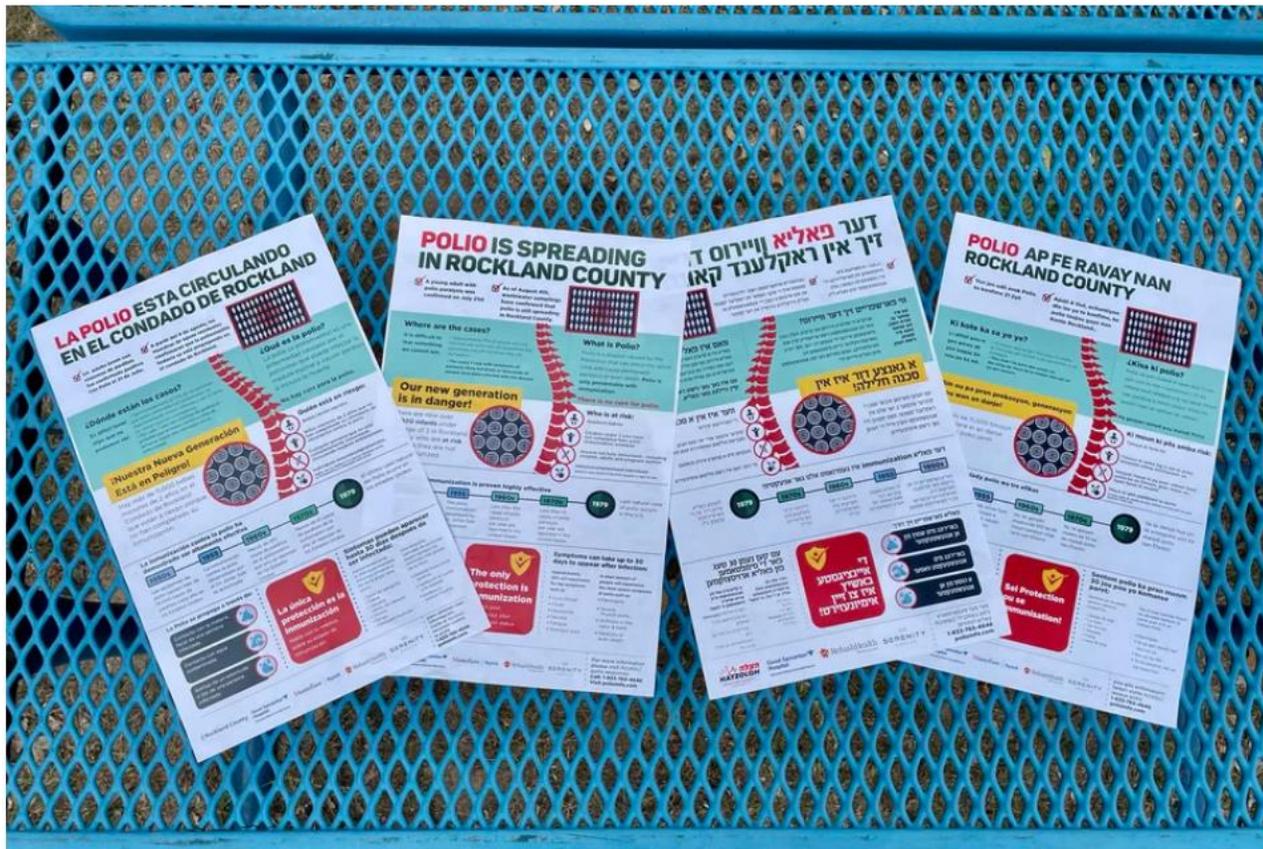
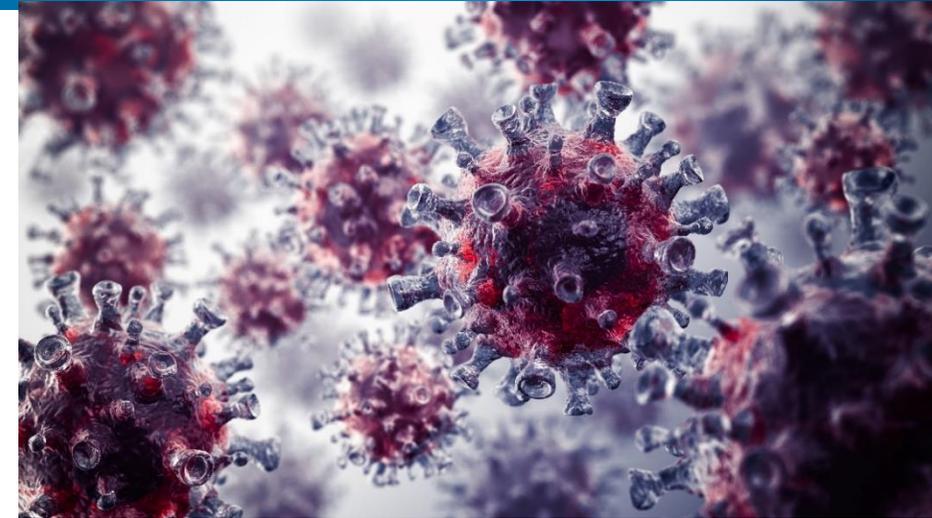
Contact: HHS Press Office
202-690-6343
media@hhs.gov

Text Resize AAA Print Share [Facebook] [Twitter] [LinkedIn] [Email]

- Monkeypox vaccination rollout continues
- Public health goal → to avoid endemic presence in U.S.

And Concerning Polio...

Sources: New York Times, NPR.org



- NYS DOH continuing to track polio cases through wastewater sampling and other surveillance techniques

Update on Gaming in New York State



Jeffrey P. Gleason

Senior Counsel

jgleason@bsk.com

Buffalo, NY

Where We Stand with Sports Betting

- Official launch of mobile sports betting in 2022
 - All nine operators selected have now launched
 - Added to eleven retail sportsbooks across the state
 - Over \$10 billion wagered, over \$390 million in taxes collected
- NFL season likely to lead to additional growth

Casino Expansion

- 2013 referendum amending NY constitution authorized up to seven full-scale commercial casinos
- Upstate New York Gaming Economic Development Act – no licenses would be awarded for downstate gaming facilities for at least seven years after first license awarded for upstate casino
 - “Downstate” meant the counties of Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk
- Fiscal Year 2023 Budget – accelerated the timeline for issuing downstate casino licenses

Casino Expansion

- Gambling Facility Location Board – in place by October 6, 2022
- Request for Applications – must be issued within 90 days
 - Applications will be reviewed by GFLB
 - Consultation with Community Advisory Committees in the proposed casino locations
 - Gaming Commission votes on applicants that have been recommended by GFLB and approved by Community Advisory Committees

Casino Expansion

- Timeline for some may be shorter than expected
- Proposed locations next to Citi Field, Coney Island, Belmont Park, Kips Bay, and Manhattan
- Significant requirements beyond \$500 million initial license fee
 - GFLB must consider provision of highest numbers of quality jobs, partnerships with local governments and businesses, utilization of sustainable development practices, implementation of well-rounded workforce development plans

What Else is Next for New York Gaming?

- iGaming?
- Adjustments to Sports Betting?
- Fixed-Odds Horse Racing?

Why Cannabis Does Not Make a Good “Gift” in New York State



Dustin M. Dorsino

Associate

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Syracuse, NY

Current NY Cannabis Regulatory Landscape

- **Recreational Cannabis**
 - NY has not yet released regulations that govern the licensure and sale of recreational cannabis by the general public
 - Conditional Retail Dispensaries – regulations adopted August 3; application period closes September 26
- **Medical Cannabis**
 - Home Cultivation of Medical Cannabis – public comment period closed July 25; regulations not yet finalized

Can I Share Cannabis With My Friends?

- Medical: According to the revised ***proposed*** regulations, certified patients and/or their designated caregivers cannot *sell*, but can ***transfer***, up to 3 ounces ***only*** to other certified patients or caregivers
- Recreational: Since NYS hasn't authorized recreational sales, many businesses have taken to "gifting" cannabis to others as a loophole
 - "Gifting" = selling an unrelated product to a customer and giving them cannabis for 'free'

Why is “gifting” a bad idea?

- The Office of Cannabis Management (OCM) recently sent out cease-and-desist letters to 66 cannabis storefronts across NYS
- According to OCM, businesses and persons that continue to “gift” cannabis to others risk:
 - Losing eligibility for future licensing opportunities
 - Monetary fines
 - Criminal penalties

What Should I Be Doing Now?

- If you are gifting cannabis, stop immediately
- Start gathering documents to apply for a NYS cannabis dispensary license (see application mockups on OCM's website)
- Talk to an accountant about financing your retail operation

Healthcare Updates



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

Health Care and Mental Hygiene Worker Bonus Program – First Deadline Was 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.ST>
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/

HWB Program FAQs

https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/hwb_program_faqs.htm

HWB Program Portal

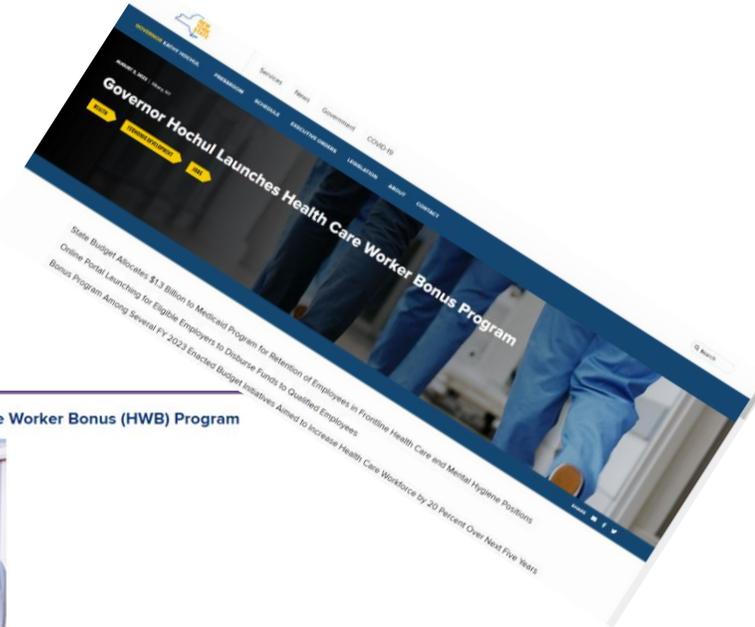
<https://www.nysworkerbonus.com/>

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.

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



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.

FAQs Updated on August 31, 2022

NYS Healthcare Worker Bonus Program

Frequently Asked Questions (FAQ)

Last Updated 8/31/2022

- Key changes in this update:
 - o DOH indicates that *temporary* staff (e.g., through staffing agencies) are NOT eligible
 - This represents a clarification concerning contracted staff, generally
 - “Q: *Would a provider enrolled in the medical assistance program (e.g. hospital, nursing home) (“provider”), who enters into a contract with the supplemental staffing agency (“staffing agency”), be considered an Employer (under the statute), with respect to those front-line healthcare workers (agency staff) who are assigned by the staffing agency to work at the provider’s facility on a temporary basis?*”
 - “A: *No. Qualified Employers should submit claims for bonuses only for individuals they employ directly or indirectly on a permanent basis. Contracted temporary staff that are employed or contracted by a staffing agency or other intermediary entity on a temporary basis are not eligible for the HWB program.*”

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[Tax Questions](#)

[Eligibility \(Employees\)](#)

[Portal Registration and Claims Submission](#)

[Employee Separation](#)

[Enforcement](#)

[Help and Support](#)

General

Q. What is the Healthcare Worker Bonus (HWB) Program?

A. As part of the 2022-2023 enacted New York State Budget, Governor Hochul and the State Legislature allocated \$1.2 billion in funding to the NYS **Healthcare Worker Bonus (HWB)** program for the payment of bonuses for certain frontline healthcare workers as [Part ZZ 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 certain eligibility requirements.

FAQ Updated on August 31, 2022

NYS Healthcare Worker Bonus Program

Frequently Asked Questions (FAQ)

Last Updated 8/31/2022

- Other updates to highlight
 - *Employment generally deemed continuous if someone moves from employer to employer within a recognized health system*
 - *Intent of \$125K cap clarified as affecting individual vesting periods (effects of per-diem arrangements, overall amounts earned, etc.)*
 - *Bond to continue tracking updates → and will keep this audience informed*

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General

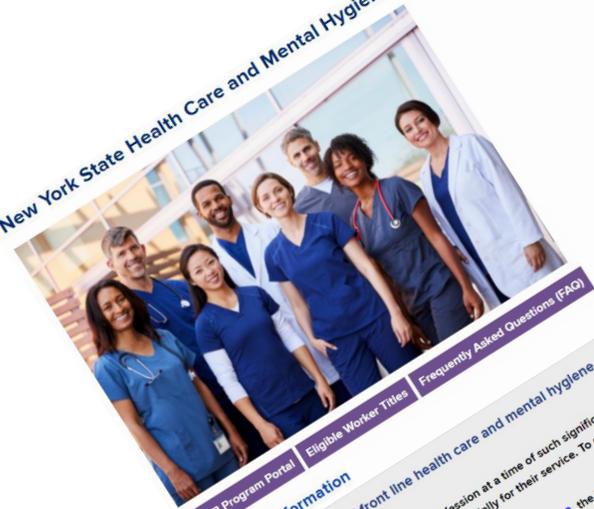
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The HWB provision allows for the payment of bonuses to “*recruit, retain, and reward health care and mental hygiene workers*” meeting certain eligibility requirements.

Bonus Program – Department of Health Resources

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



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](#).

- DOH has established
 - a related Web portal: 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

Bonus Program – Vesting Periods

- Five successive ‘vesting’ periods:
 - October 1, 2021–March 31, 2022
 - Related submittals **were due by September 2, 2022** – **notwithstanding good-faith extension**

Vesting Period	Vesting Period Start Date	Vesting Period End Date	Employer Submission Start Date	Employer Submission Close Date
One	October 1, 2021	March 31, 2022	August 3, 2022	September 2, 2022
Two	April 1, 2022	September 30, 2022	October 1, 2022	October 31, 2022
Three	October 1, 2022	March 31, 2023	April 1, 2023	May 1, 2023
Four	April 1, 2023	September 30, 2023	October 1, 2023	October 31, 2023
Five	October 1, 2023	March 31, 2024	April 1, 2024	May 1, 2024

Legislation

The Laws of New York > Consolidated Laws of New York > CHAPTER 55 Social Services > TITLE 11 Medical Assistance For Needy Persons > ARTICLE 5 Assistance and Care > TITLE 11 Medical Assistance For Needy Persons

PREVIOUS SECTION 367-V County long-term care financing demonstration program

UP TITLE 11 Medical Assistance For Needy Persons

NEXT SECTION 368-10

THIS ENTRY WAS PUBLISHED ON 2022-04-22

SEE MOST RECENT VERSION BEFORE OR ON: 2022-04-22

SECTION 367-W
Health care and mental hygiene worker bonuses

Social Services (SOS) CHAPTER 55, ARTICLE 5

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

Employer Information (to be completed by the Employer)

Employer Name: _____

Employer MMIS (or SFS) number: _____

This attestation applies to the following vesting period:

Vesting Period 1: 10/1/21 – 3/31/22

Vesting Period 2: 04/1/22 – 9/30/22

Vesting Period 3: 10/1/22 – 3/31/23

Vesting Period 4: 04/1/23 – 9/30/23

Vesting Period 5: 10/1/23 – 3/31/24

Employee Information (to be completed by the Employee)

Employee Name: _____ (print employee name).

Federally issued Social Security number (SSN): _____

or

 **BOND** SCHOENECK & KING ATTORNEYS

Home Health Minimum Wage Updates

- NYSDOH hosting a Webinar re: home care worker minimum wage increase –
 - Set to take effect October 1, 2022.
- **Webinar to be held on:
Monday, September 12, 2022 from 1:00 PM to 2:00 PM.**
- Register through this url:
- [NYS Information Technology Service WebEx Enterprise Site](#)



Licensed Home Care Services Agency *Licensure Process Reopened*



Department
of Health

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

August 17, 2022

DHCBS DAL: 22-14

SUBJECT: Licensed Home Care Services
Application Changes

Dear Administrator:

Effective April 1, 2020, applications for licensure as a Licensed Home Care Services Agency (LHCSA) are subject to review based on new public need and financial feasibility standards, in addition to the existing character and competence review process. Information regarding the new standards and application process are included in this letter and its attachments.

Background

Part B of Chapter 57 of the Laws of 2018 amended Public Health Law (PHL) Section 3605, Subdivision 4 to require that the Public Health and Health Planning Council (PHHPC) "not approve an application for licensure unless it is satisfied as to: (a) the public need for the existence of the licensed home health care service agency at the time and place and under the circumstances proposed; (b) the character, competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders, or operators; (c) the financial resources of the proposed licensed home health care service agency and its sources of financial revenues; and (d) such other matters as it shall deem pertinent".

The Department of Health (Department) amended its regulations to include the requirements set forth by law. The regulations were effective on April 2, 2020 and the adopted regulation package can be found as [Attachment 1](#) to this letter.

Public Need Methodology

The public need methodology applies to all applications for licensure submitted on or after April 1, 2020.

- The public need methodology includes a rebuttable presumption of no need for additional LHCSAs in a county if there are five or more LHCSAs actively serving patients within the county as of April 1, 2020. The target date for the Department to determine need has been adjusted to April 1, 2022 and the counties with need are identified in the attached LHCSA County No Need Report.
- A LHCSA applicant can overcome the presumption of no need based on local factors related to an applicant's services or planning area, including, but not limited to:

- Licensure application process for *new* Licensed Home Care Services Agencies (LHCSAs) reopened.
- Applies to all applications for licensure submitted on or after April 1, 2020
- Clarifies pathway to change ownership – market prognosticators suggest there will be an uptick in transactions, that had been held pending release of guidance (delayed due to the pandemic) –
 - a 'two-year' moratorium spanned four years
- Rebuttable presumption of no need based on geographic saturation
- Character and competence considerations

Licensed Home Care Services Agency *Licensure Process Reopened*

- Per the 'DAL:'
 - “Applications for licensure based on change of ownership for LHCSAs actively serving at least 25 patients *will not be subject to public need review* and shall be evaluated only on financial feasibility and the character and competence of the proposed operator, unless the proposed operator seeks to serve patients outside of the agency’s approved counties. ...
 - “LHCSAs affiliated with an Assisted Living Program (ALP), Program of All-Inclusive Care for the Elderly (PACE), Nurse Family Partnership (NFP), or Continuing Care Retirement Community (CCRC) will be exempt from the public need methodology if the agency exclusively serves patients within those programs. The agency will be subject to the need methodology if they apply to serve patients outside of the specific program. Any exemption will be noted on the agency’s license.”
- Questions on the new requirements may be sent to homecareapplications@health.ny.gov

Questions



Gabriel S. Oberfield

Senior Counsel

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New York, NY

Your Host

Gabriel Oberfield, goberfield@bsk.com

Update on Gaming in New York State

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Why Cannabis Does Not Make a Good “Gift” in New York State

Dustin Dorsino, ddorsino@bsk.com

Healthcare Updates

Gabriel 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.

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