

2024

# BUSINESS IN 2023

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# Your Host



## **Gabriel S. Oberfield**

Senior Counsel

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

New York, NY



# Happy Halloween!







# October is National Cybersecurity Awareness Month



**#SecureOurWorld**

# TODAY'S AGENDA

## Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda
- Recent New York State Bill Signings

## Roger Bearden – (12:05PM-12:15PM)

- Medicaid Payment Transparency Activities Affecting Home and Community Based Services

## Pete Jones – (12:15PM-12:25PM)

- Addressing Difficult Workplace Speech Issues

## Jessica Copeland – (12:25PM-12:35PM)

- Cybersecurity Awareness Month - That's a Wrap, but Not the End of Awareness

## Jared Joyce – (12:35PM-12:45PM)

- U.S. Department of Commerce Issues Expanded Notice of Funding Opportunity Under the CHIPS Act

## G. Oberfield – (12:45PM)

- Questions / Wrap Up



# Recent Bill Signings in New York State

- 1) S.5400/A.1967 – concerns flood insurance disclosures (affecting co-ops and condos);
- 2) S.5162/A.5772 – allows an affirmation signed by any person to be used in a civil action in New York in lieu of an affidavit;
- 3) S.5806/A.6940 – which amends Section 704(a) of the N-PCL to authorize non-membership not-for-profit corporations to classify their boards through their bylaws; and
- 4) Various bills liberalizing alcohol consumption and sales.



*Legislation S.5731/A.6941 Allows for the Retail Sale of Beer on Sundays*

*Legislation S.2854/A.7305 Expands Hours of Operation for Liquor and Wine Stores on Sundays*

*Legislation S.6443/A.6135 Lengthens the Duration of a Brewer's License*

*Legislation S.3364/A.2902 Authorizes the Use of a Pressurized Mixing and Dispensing System*

*Legislation S.3567/A.6050A Permits the Sale or Promotional Gifting of Certain Complementary Products for Wine and Spirits*

*Legislation S.6993A/A.7688 Relates to Licensing Restrictions for On-Premises Alcohol Consumption for Manufacturers and Wholesalers of Alcoholic Beverages at Specific Locations*

*Credit: Website of NY Governor Hochul*

# A Sampling of Bills Not Yet Signed in NYS



- 1) Clean Slate Act – A1029-C/S7551-A
- 2) Reparations Commission – A7691/S1163-A
- 3) Grieving Families Act – A6698/S6636
- 4) Campaign Finance Standards – A7760/S7564
- 5) Noncompete Restrictions – A1278-B/S3100-A
- 6) LLC Disclosures – A3484-A/S0995-B

# Medicaid Payment Transparency



**Roger Bearden**

Senior Counsel  
rbearden@bsk.com  
Albany, NY



# Payment Transparency Trends

- Fiscal concern about growth in Medicaid spending
- Capitated payment structures provide flexibility to managed care plans, but may have less transparency in how funds are being used
- At the same time, continuing shortages in workforce throughout the health industry leads to demands for increased government investment
- Regulators want to assure that government funds are used to support the workforce and not for other purposes

# Home Care Transparency Bill (A. 1926A)

- Would require the Department of Health to publish annual data:
  - the number of individuals receiving home care services listed by type of home care service; county of recipient; and services authorized by the local department of social services and by each managed care plan;
  - the number of individuals receiving home care services by specific public third-party payors;
  - the number of individuals who have had a permanent transfer from home care services to a nursing home or assisted living facility; and
  - aggregated information about service usage.

# Home Care Transparency Bill

- Would increase the information available to understand the growth in home care utilization
- Would allow for providers and consumers to compare utilization trends
- Should be understood in light of ongoing federal initiatives to increase transparency



# Federal Access Proposed Rule

- Draft regulation published in April 2023
- Would require that at least 80% of Medicaid payments for personal care, homemaker, and home health aide services be spent on compensation for the direct care workforce
- Would require states to publish the average hourly rate paid to direct care workers delivering personal care, home health aide, and homemaker services

# Managed Care Federal NPRM

- Draft regulation published in April 2023
- Would require annual payment rate analysis for personal care, homemaker, and home health aide services

# Implications

- Health and human services industry can expect continuing focus on transparency
- While helpful in trying to understand the fiscal health of industries dependent on government funds, it may impose additional regulatory burdens to an already stretched industry where information is not already readily available



# Addressing Difficult Workplace Speech Issues



**Peter A. Jones**

Member

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

Syracuse, NY

# Employee Speech Affecting the Workplace

- On duty
  - Work time
  - Discipline Meetings
  - Co-worker discussions
  - Email Content
  - Posters, Tag Lines, other speech
- Off Duty

# What to assess?

- Harassment on the basis of . . .
  - Religion
  - National origin
  - Race
  - Sex
  - Sexual orientation
  - Gender identity
  - Any protected characteristic
- First Amendment rights



# What to assess?

- NLRA Protected Activity
- Employee Handbooks
- Academic Freedom (Higher Education)
- Political viewpoint

# Difficult Issues

- Employee misconduct in discipline meetings
- Politically charged positions taken off duty on social media
- Conflicting protections under EEO laws
- Legitimate discourse mixed with harassment, discrimination, etc.
- Bullying activity
- Disciplining for conduct where retaliation may be alleged based on timing

# Steps to take

- Examine your policies and handbooks
- Examine your practices
- Encourage respect for the positions and feelings of others
- Neutral and consistent enforcement



# Cybersecurity Awareness Month - That's a Wrap, but Not the End of Awareness



**Jessica L. Copeland**

Member

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

Buffalo, NY

# Cybersecurity Awareness - Fundamentals

- MFA
- Threat Monitoring
- Training employees – Phishing etc.
- Evaluate current cyber coverage

# Cybersecurity Awareness – Where do I begin?

- Risk Assessment
- Understand risk to employee, client or customer information
- Incident response plan
- Vendor Management

# Cybersecurity Awareness – enforcement

- SHIELD Act – recent uptick in enforcement actions
  - Requiring adherence to the cybersecurity mandate
  - Not only levying regulatory fines but imposing significant costs in improving cybersecurity within organizations that have suffered data breaches

# Let's shift gears – AI Executive Order

- Biden issued an executive order regulating AI which builds upon the AI Bill of Rights. The order is seeking to balance national security and consumer rights with an increase in use of AI.
- The order established a tool called, the National AI Research Resource, which will be used to research health care and climate change.
- The order aims to regulate AI to ensure it is a trust worthy and reliable source. For example, the Commerce Department must develop guidance for authenticating and watermarking AI content. In addition, it addresses equity and civil rights by addressing discrimination and developing best practices for use of AI within the criminal justice system. Specifically mentioning the use of AI in sentencing, pretrial release, risk assessment surveillance, and crime forecasting, among other uses.
- The order seeks to use AI to mitigate the harms of AI when used in relation to job displacement, labor standards, and data collection.
- It also includes new standards for using AI, which includes requiring companies to notify and share the results of the safety nets with the federal government if they develop models that pose a serious risk to national or economic security or public health.
- The order applies to all companies with powerful AI technologies, regardless of whether the company contracts with the federal government.



# U.S. Department of Commerce Issues Expanded Notice of Funding Opportunity Under the CHIPS Act



**Jared A. Joyce**

Associate

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

Syracuse, NY

# Chips and Science Act of 2022

- Provides \$52.7 billion in federal funding to revitalize the domestic semiconductor industry.
- The U.S. Department of Commerce has been allotted \$39 billion to allocate amongst various semiconductor initiatives.

# 1<sup>st</sup> Notice of Funding Opportunity: Commercial Fabrication Facilities

- Issued: February 28, 2023
  - This funding opportunity seeks applications for projects for the construction, expansion, or modernization of commercial facilities for the fabrication of leading-edge, current-generation, and mature-node semiconductors.
- Revised: June 23, 2023
  - Opened applications for the construction, expansion, or modernization of commercial facilities for semiconductor materials and manufacturing equipment, for which the capital investment equals or exceeds \$300 million.

## 2<sup>nd</sup> Notice of Funding Opportunity: Small-Scale Supply Chain Projects

- Issued: September 29, 2023.
  - Open to projects for the construction, expansion, or modernization of commercial facilities for semiconductor materials and manufacturing equipment for which the capital investment falls below \$300 million.

# Preferred Applicants

- Projects with capital investments of \$20 million or more.
- Applications by consortiums that advance semiconductor clusters by closing critical gaps in the U.S. supply chain.
  - Clusters - "a geographically compact area with multiple commercial-scale fabs owned and operated by one or more companies; a large, diverse, and skilled workforce; nearby suppliers to the semiconductor industry; R&D facilities; utilities; and specialized infrastructure, such as chemical processing and water treatment facilities."



# Application Procedure

- Phase 1: Interested applicants must submit a concept plan between December 1, 2023 and Feb 1, 2024.
- Phase 2: The most promising applicants will be contacted by the Department of Commerce and given an opportunity to submit a full application.
- The Department of Commerce estimates that most funding awards will equal 10% of the project capital expenditure, with 20-30% being awarded in compelling cases.

# Future Funding Opportunities

- The Department of Commerce expects to release an additional (third) funding opportunity for research and development facilities at a later date.

# Your Questions



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Senior Counsel

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

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Jared Joyce, [jjoyce@bsk.com](mailto:jjoyce@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

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It is not to be considered as legal advice.  
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