



# Health Law Diagnosis

## Monitoring the Pulse of Health Care and Life Sciences

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### [New York Enacts Long Negotiated Budget Bill with Sweeping Implications for Health Care](#)

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On May 2, 2023, legislators approved the \$229 billion New York State FY 2023-2024 Budget Bill (“the Budget”), which was signed by Governor Hochul on May 3, 2023. Article VII of the Budget touches almost every aspect of the New York healthcare system, including home health, hospitals, laboratories, and reproductive health. It contains wide-ranging provisions that expand access to care, allow clinicians to provide more services, and allocate needed resources to providers. It targets Medicaid in multiple ways, including an extension of the Medicaid Global Cap on system-wide spending growth through FY 2025.[i] Here, we outline some of the key provisions that this Budget contains.

#### **Homecare and Home Health**

The Budget extends and expands various provisions of existing law affecting homecare and home health agencies. Included is an extension of age eligibility from 18 to 21 for Care at Home I and II waivers for providing home care services for children with physical disabilities.[ii] Also included is an extension of the Home Care Medicare Maximization program, extended authorization of bad debt and charity care allowances, and an extension of the limitation on reimbursement of administrative and general costs not to exceed the statewide average.[iii] The Budget also extends a provision that expanded Medicaid coverage for some patients in need of more than 120 days of long-term care by allowing them to stay enrolled in a Managed Long Term Care and establishes performance standards for those plans.[iv] The Budget also extends an expansion of home health aides’ scope of practice, authorizing them to administer routine and prefilled medications under certain circumstances, and sets stricter parameters around the minimum wage for home health aides.[v]

#### **Statewide Health Care Facility Transformation Program**

The Budget also establishes a \$1 billion Statewide Health Care Facility Transformation Program, aimed at funding projects that improve health care delivery and IT infrastructure and facilitate the State’s ongoing pandemic response.[vi] \$500 million of these dollars are earmarked specifically for projects that improve and modernize IT systems. Certified home health agencies are eligible to apply for funds under this program. Hospitals are also eligible providers under the new Statewide Health Care Facility Transformation Program.[vii] Up to half of the \$1 billion fund is set aside for projects aimed at improving quality of and access to care, while the other half is set aside for technology and telehealth improvement projects.

#### **Hospitals**

The Budget extends certain provisions of existing laws pertaining to hospitals. It includes extensions to the cooling off period after the end of a contract between an Article 44 health plan and a hospital, to provisions

allowing for flexibility in contracts for the purchase of goods and services for state hospitals, and to provisions allowing for the conversion of the Upper Payment Limit Payment to a rate add-on.[viii] It also reauthorizes the Health Care Reform Act (HCRA)—a law that funds public health initiatives through a surcharge for certain health care services—through March 31, 2026.[ix] HCRA was originally set to sunset on March 31 of this year.

The Budget also implements several reforms affecting hospitals, most notably a 7.5 percent increase to inpatient rates and a 6.5 percent increase for hospital outpatient rates.[x] Other reforms include opening up the Rural Emergency Hospital designation to smaller general hospitals to allow them access to federal funding streams, and expanding the eligible recipients of Vital Access Provider Assurance Program funding to include DSRIP Performing Provider Systems.[xi] In terms of additional requirements for hospitals, the Budget establishes a uniform application for patients seeking financial assistance, and it expands requirements for Hepatitis C screenings.[xii] The Budget also creates additional enforcement avenues for providers who fail to comply with mental hygiene laws, which is particularly relevant for hospitals that have psychiatric beds on their license, but have not brought those beds online.[xiii] It also expands the definition of a utilization review by a health plan by adding medical necessity reviews that are performed at a hospital-based outpatient clinic.[xiv]

Hospitals should also be aware of the new requirements for temporary health care services agencies discussed below.

### **Review of Material Transactions**

While limiting the scope of the [original Executive Budget Bill](#), the Budget does include requirements for the disclosure of “material transactions,” which include:

- A merger with a health care entity
- An acquisition of one or more health care entities
- An affiliation agreement or contract formed between a health care entity and another person
- The formation of a partnership, joint venture, accountable care organization, parent organization, or management services organization for the purpose of administering contracts with health plans, third-party administrators, pharmacy benefit managers, or health care providers as prescribed by the commissioner by regulation.[xv]

Under the new provision, health care entities (including physician practices, groups, or management services organizations) must disclose their intent to engage in any of the above-described transactions to the Department of Health (DOH) at least 30 days before the closing date of the transaction.[xvi] Such law will take effect as of August 1, 2023. The law does exempt “de minimis transactions,” which is defined as a transaction or a series of related transactions that results in a health care entity increasing its total gross in-state revenues by less than \$25 million.[xvii] The provision also directs the DOH to promulgate further requirements regarding how the required information must be submitted. Finally of note, the law requires DOH to send electronic copies of the written notices and supporting documentation to the antitrust, health care, and charities bureaus of the New York State Attorney General’s Office.[xviii]

### **Privacy and Prohibition of Geofencing**

The Budget also prohibits “geofencing”—establishing a digital boundary through tracking an individual user’s location data—around a health care facility, unless it is their own, in order to target that user with digital advertisements for the purpose of “building consumer profiles, or to infer health status, medical condition, or medical treatment of any person”.[xix] A health care facility includes any governmental or private entity providing medical care including those licensed under PHL Articles 28, 31, 32 or MHL Article 16.[xx] By prohibiting geofencing around health care facilities generally, this Budget has wide-ranging implications for digital advertisers who seek to target individuals who are receiving health care services.

### **Protection and Privacy in Reproductive Care**

The Budget has several provisions that aim to expand access to and protections around reproductive care. To protect out-of-state patients who seek abortions in New York, the Budget prohibits sharing of abortion records with out-of-state law enforcement, except in limited circumstances where a warrant has been obtained.[xxi] It protects out-of-state providers who perform abortion services in New York in the same manner.[xxii] The geofencing prohibitions above will also prevent companies from specifically targeting people seeking abortions through digital ads.

Another important expansion for reproductive health care in the Budget is aimed at abortion access. The Budget requires covered drugs prescribed for an abortion to include those that are not FDA-approved, so long as they are recognized medication for abortion in one of several established reference compendia.[xxiii]

## Electronic Health Information Protection

The Budget also amends the General Business Law by adding additional electronic health information protections. The new law prohibits any law enforcement agency or law enforcement officers from purchasing or obtaining personal health information (PHI) without a warrant.[xxiv] There are some exemptions from this new law including but not limited to (i) information processed by local, state and federal governments, (ii) PHI collected by covered entity or business associate, (iii) information collected as part of a clinical trial, (iv) information processed under FERPA.

## Temporary Health Care Services Agencies and Health Care Technology Platforms

As part of the Budget, New York now requires temporary health care services agencies to register with the Department. Regulations will follow but the Budget contains a number of requirements for conditions of registration including documentation related to licensure, training and certifications and other such qualifications. [xxv] Notably, a contract between a temporary health care services agency shall “not require the payment of liquidated damages, employment fees or other compensation should the health care personnel be hired as a permanent employee of a health care entity.”[xxvi]

\*This post was co-authored by Ivy Miller, legal intern at Robinson+Cole. Ivy is not admitted to practice law.

## ENDNOTES

[i] FY 2024 New York State Budget, Health and Mental Hygiene Article VII Legislation, p.6, *available at* [https://assembly.state.ny.us/leg/?default\\_fld=&leg\\_video=&bn=A03007&term=&Summary=Y&Text=Y](https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03007&term=&Summary=Y&Text=Y).

[ii] *Id.* at p. 7, amending 1984 N.Y. Laws ch. 906 § 3; N.Y. Soc. Serv. Law §§ 366(6)(b)(i), 366(7)(b)(i), 366(9)(b)(i).

[iii] *Id.* at p. 9, 11-16, 29, amending N.Y. Pub. Health Law § 3614(13)(a), 2018 N.Y. Laws ch. 57, 2021 N.Y. Laws ch. 57.

[iv] *Id.* at p. 110-13.

[v] *Id.* at 134, adding 2016 N.Y. Laws ch. 471 § 12(b); *id.* at 178-82, amending N.Y. Pub. Health Law § 3614-c.

[vi] *Id.* at p. 123-25, adding N.Y. Pub. Health Law § 2825-h.

[vii] *Id.* at p. 123.

[viii] *Id.* at p. 6, 8, 18-19.

[ix] *Id.* at 22-88.

[x] *Id.* at 94, amending 2022 N.Y. Laws ch. 57.

[xi] *Id.* at 90-93, amending N.Y. Pub. Health Law §§ 2801(1), 2801-g, 2826.

[xii] *Id.* at 139 and 146-47.

[xiii] *Id.* at 171.

[xiv] *Id.* at 114-18.

[xv] *Id.* at 119-21, adding N.Y. Pub. Health Law §§ 4550-52.

[xvi] *Id.*

[xvii] *Id.*

[xviii] *Id.*

[xix] *Id.*

[xx] *Id.* at 131-33, adding N.Y. Gen. Bus. Law §394-g

[xxi] *Id.* at 131-33, adding N.Y. Gen. Bus. Law §§ 394-f, 394-g.

[xxii] *Id.*

[xxiii] *Id.* at 172-74.

[xxiv] *Id.* at adding N.Y. Gen. Bus. Law §394-h.

[xxv] Adding N.Y. Pub. Health Law Article 29-K.

[xxvi] *Id.*

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