

## HEALTHCARE

Using a multidisciplinary approach, the attorneys at Hodgson Russ provide counsel to a wide range of health care providers, including hospitals, skilled nursing facilities, assisted living providers, home health agencies, hospices, clinics, ambulatory surgery centers, behavioral health providers, clinical laboratories, pharmacies, and individual practitioners. We represent nonprofit, for-profit, and public health care organizations, including some of the largest hospital systems in New York State. We assist with corporate, transactional, regulatory, reimbursement, compliance, enforcement, and litigation matters. With a broad understanding of the New York regulatory landscape, we help clients anticipate and respond to the increasingly complex rules governing the delivery, financing, and regulation of health care services.

Hodgson Russ has been awarded a prestigious “Best Law Firms” National Tier 2 ranking by *Best Lawyers/U.S. News & World Report* in the Health Care Law category.

Our Health Practice is recognized by *Chambers USA: America’s Leading Lawyers for Business*.

### **Audits, Investigations, and Appeals**

We represent health care providers in Medicare and Medicaid audits, investigations, and appeals, including Medicare appeals before the Provider Reimbursement Review Board. We also represent health care providers in government investigations and enforcement proceedings before the New York State Department of Health, Office of the Medicaid Inspector General, and Medicaid Fraud Control Unit; the Health and Human Services Office of Inspector General and Centers for Medicare and Medicaid Services; and the U.S. Department of Justice.

### **Health Care Litigation and Dispute Resolution**

Hodgson Russ represents health care providers in federal and state court litigation, administrative challenges to governmental action, and arbitration proceedings with managed care organizations.

### **Health Care Mergers, Acquisitions, and Joint Ventures**

We structure health care mergers, acquisitions, reorganizations, and joint ventures. We advise on the application of New York’s certificate of need requirements to proposed combinations. Our attorneys also provide guidance on antitrust, corporate, regulatory, and tax issues.

### **Contact**

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### **Professionals**

#### **Attorneys**

Christine Bonaguide  
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Joshua Feinstein  
Peter Godfrey  
Charles H. Kaplan  
Michelle Merola  
Matthew Scherer  
Gary Schober  
David Stark

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### **Health Care Transactions, Operations, and Contracts**

We advise health care providers on contracting and corporate structuring issues and assist providers with analyzing and negotiating managed care contracts and forming independent practice associations (IPAs). We counsel clients on issues related to fraud and abuse, including the physician self-referral law (Stark) and the anti-kickback statute.

### **Health Care Reform**

Hodgson Russ assists health care providers in responding to health care reform initiatives, such as the delivery system reform incentive payment (DSRIP) program, accountable care organizations (ACOs), and health homes. We also provide guidance on accessing reimbursement incentives (such as Medicaid Redesign Team (MRT) initiatives).

### **HIPAA and Privacy Issues**

Our attorneys advise and represent covered entities and business associates on privacy matters under the Health Insurance Portability and Accountability Act (HIPAA), the federal rules governing the confidentiality of substance abuse treatment services, and New York State confidentiality laws. We assist providers in negotiating contractual relationships and managing privacy breaches and breach notifications.

### **Licensure, Certification, and Surveys**

We represent skilled nursing facilities challenging survey deficiencies through the informal dispute resolution (IDR and independent IDR) processes and administrative appeals to the Departmental Appeals Board of the U.S. Department of Health and Human Services.

### **Medicare, Medicaid, and Other Reimbursement Issues**

We advise health care providers on Medicare and Medicaid billing and reimbursement issues and assist them in analyzing the reimbursement consequences of alternative business structures. We represent providers in Medicare and Medicaid audits and appeals, including Medicare appeals before the Provider Reimbursement Review Board.

### **Nonprofit Organization and Governance Issues**

We advise nonprofit health care boards on best practices in corporate governance and regulatory compliance. Our attorneys assist in the development of charters and bylaws and the formulation of compliance policies. We also assist in conducting internal investigations relating to potential compliance violations, including whistleblower allegations, and in responding to inquiries from governmental agencies.

### **Physicians, Licensed Professionals, and Group Practice Issues**

We negotiate the purchase and sale of physician practices and advise on physician recruitment issues. Our attorneys prepare contracts to comply with fraud and abuse, IRS, and other applicable guidelines. We advise facility administration, physicians, and other licensed professionals on contract negotiations, third-party payor reimbursement, purchases and sales of assets, and medical staff credentialing and disciplinary issues. We represent physicians and other licensed health care professionals in disciplinary proceedings before their respective licensing boards.

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### Regulatory Compliance

We counsel providers in the development, implementation, review, and revision of their compliance programs, which are mandatory in New York under Social Services Law § 363-d and 18 NYCRR Part 521. We provide guidance on internal audit and monitoring, risk assessment, and corrective measures, such as self-disclosure, employee discipline, and enhanced training. We advise clients on privacy matters under federal and New York State laws and on issues related to fraud and abuse, including the physician self-referral law (Stark) and the anti-kickback statute.

Some of the many services we offer to our health care clients include:

- Representation in Medicare and Medicaid audits, investigations, and appeals, including Medicare appeals before the Provider Reimbursement Review Board
- Representation in government investigations and enforcement proceedings before the New York State Department of Health, Office of the Medicaid Inspector General, and Medicaid Fraud Control Unit; the HHS Office of Inspector General and Centers for Medicare and Medicaid Services; and the U.S. Department of Justice
- Representation in federal and state court litigation, administrative challenges to governmental action, and arbitration proceedings with managed care organizations
- Assistance in structuring mergers, acquisitions, and joint ventures
- Advice on the application of New York's certificate of need requirements
- Advice on contracting and corporate structuring issues, including the physician self-referral law (Stark) and the anti-kickback statute
- Assistance with analyzing and negotiating managed care contracts
- Advice on responding to health care reform initiatives, such as the delivery system reform incentive payment (DSRIP) program and accountable care organizations (ACOs), and in accessing reimbursement incentives, such as Medicaid Redesign Team (MRT) initiatives
- Advice and representation of covered entities and business associates on privacy matters under the Health Insurance Portability and Accountability Act (HIPAA), the federal rules governing the confidentiality of substance abuse treatment services, and New York State confidentiality laws, including the negotiation of contractual relationships and management of privacy breaches and breach notifications
- Representation of skilled nursing facilities seeking to challenge survey deficiencies through the informal dispute resolution (IDR and independent IDR) processes and to pursue administrative appeals to the Departmental Appeals Board of the U.S. Department of Health and Human Services
- Advice on Medicare and Medicaid billing and reimbursement issues
- Advice to nonprofit health care boards on corporate governance and compliance best practices
- Assistance in developing corporate charters and bylaws, formulating compliance policies, and performing self-assessments
- Advice on the fiduciary obligations of directors and issues related to executive compensation

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- Assistance in conducting internal investigations relating to potential compliance violations, including whistleblower allegations, and responding to inquiries from governmental agencies
- Representation of physicians and other licensed health care professionals in disciplinary proceedings before state licensing boards
- Advice to facility administration, physicians, and other licensed professionals on contract negotiations, third-party payor reimbursement, purchases and sales of assets, and medical staff credentialing and disciplinary issues
- Guidance in the development, implementation, review, and revision of provider compliance programs, required under Social Services Law § 363-d and 18 NYCRR Part 521
- Guidance on internal audit and monitoring, risk assessment, and corrective measures, such as self-disclosure, employee discipline, and enhanced training

Our Healthcare Practice attorneys work together with attorneys in other key practice areas, including corporate, real estate, finance, tax, labor and employment, bankruptcy, immigration, intellectual property, and litigation, to offer health care providers the coordinated and informed counsel they need to meet their legal challenges.

### Experience

Jane Bello Burke and a team of Hodgson Russ attorneys obtained an important victory for a major New York health care system, after PHHPC (the Public Health and Health Planning Council) proposed to disapprove a CON (certificate of need) application to operate an ambulatory surgery center. Following an evidentiary hearing, the administrative law judge issued a strongly worded opinion rejecting a competing health care system's opposition, which he concluded was driven by self-interest, was exaggerated, and did not form a sound basis for decision. As a result of the successful challenge, the ambulatory surgery center is up and running, providing needed services to the community.

Our client, a skilled nursing facility, was the subject of a survey alleging deficient practices at the immediate jeopardy level. We assisted the client in evaluating the survey findings and filing an administrative appeal before the Departmental Appeals Board of the U.S. Department of Health and Human Services. Through the appeal, we convinced the Centers for Medicare and Medicaid Services to eliminate one of the immediate jeopardy deficiencies and to reduce the scope and/or severity of the other immediate jeopardy deficiencies. This significantly ameliorated the adverse effects of the survey findings and assisted the facility in restoring its good name in the community.

A team of Hodgson Russ attorneys achieved a speedy and successful resolution for a clinical laboratory with an Article 78 proceeding against DOH and OMIG, which had denied the laboratory's application to enroll as a Medicaid provider on the basis of an unpublished DOH laboratory density policy. Our client brought suit, and OMIG and DOH offered to settle the matter, on the strength of the submissions and without filing a response, by approving our client's application for enrollment in the Medicaid program. Due to the team's successful efforts, the client may now offer its important laboratory services to practitioners serving Medicaid recipients in New York.

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A health care client came to the firm after learning that its Medicare billing privileges had been permanently suspended for a five-month period for technical reporting errors unrelated to patient care quality. As a result, the client faced losing hundreds of thousands of dollars in reimbursements for health care services that it had already provided to patients. A team of Hodgson Russ attorneys, including Josh Feinstein, Roopa Chakkappan, and Kate Tiskus (and with guidance from Jane Bello Burke), rolled up their sleeves and dove into the highly technical and arcane rules governing Medicare reimbursement. Ultimately, they persuaded the Center for Medicare and Medicaid Services that its regulations were being misapplied. The agency therefore reconsidered the determination and ordered the client's billing privileges to be reinstated in full - resulting in one very relieved client.

Hodgson Russ represented a full-service hospital as a debtor in possession in Chapter 11 proceedings. Following numerous hearings before the bankruptcy court, Hodgson Russ succeeded in confirming a plan for reorganization that provided a substantial distribution to creditors.

Hodgson Russ is defending a large healthcare organization in a multi-million dollar ERISA class action related to administration of defined benefit plans and claims of excessive administration and investment fees. Our work includes defending the organization, the Board of Directors' and its committees' actions, decision-making, and execution of their fiduciary duties related to the plans' recordkeeping fees and investment fees.

Hodgson Russ oversaw the Department of Justice-mandated self-audits of inpatient claims under specific diagnosis related groups (DRGs) and negotiated with the government to favorably resolve the alleged overpayments. The overpayment analyses were governed by complicated reimbursement rules as well as government policies and practices related to settling false claims.

Represented a client in the acquisition, construction financing, development, and leasing of a medical office building.

Mr. Gilbride serves as counsel to Buffalo 2020 Development Corporation, a nonprofit joint venture between the University at Buffalo Foundation and the Research Foundation of the State University of the New York. This entity has been actively engaged in various capital projects in and around the Buffalo Niagara Medical Campus, including development of a \$300-million clinical translational research facility and biosciences incubator for University at Buffalo. Through the utilization of a unique public-private partnership condominium structure, Buffalo 2020 Development Corporation was able to develop this facility by co-location with a working hospital, thereby maximizing operational efficiencies and substantially reducing duplicate costs for both facilities.

Mr. Gilbride represented a nonprofit affiliate of the University at Buffalo in conjunction with land acquisition for the development of the new School of Medicine and Biomedical Sciences facility in downtown Buffalo. This \$450 million facility, which anchors the university's new downtown campus, represents the largest single construction project ever undertaken by the State University of New York and incorporates an operational subway station in the lobby. This feature necessitated negotiation of a first-of-its-kind long-term air rights lease agreement with the Niagara Frontier Transportation Authority.

Represented a continuing care retirement community client in the negotiation of design and construction manager as constructor contracts, cost plus with a GMP, for an approximately \$6,000,000 expansion of their health center and skilled nursing unit.

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Hodgson Russ attorneys are actively defending a pharmaceutical marketing company from claims of patent infringement. We initiated *inter partes* reexamination to invalidate the alleged patent. Based on our arguments, the U.S. Patent and Trademark Office held the alleged patent invalid. The USPTO decision is currently under appeal.

A Hodgson Russ team led by Jane Bello Burke and Michelle Merola obtained an important victory for a major New York health care system, after the PHHPC (the Public Health and Health Planning Council) proposed to disapprove a CON (certificate of need) to operate an ASC (ambulatory surgery center). A competing health care system vigorously opposed the application, arguing that there was no "public need" for the ASC - one of the statutory prerequisites for the issuance of a CON. Following a six-day hearing, the administrative law judge issued a strongly worded opinion rejecting the competing health care system's opposition, which he concluded was driven by self-interest, was exaggerated, and did not form a sound basis for decision, and recommending approval of the ASC. As a result of the successful challenge, the ambulatory center is up and running, providing needed services to the community.

Hodgson Russ has represented several Independent Practice Associations (IPAs) on numerous regulatory and contracting issues, including one with more than 700 physician members that desired to expand its current role to include care management, utilization review, and proactive quality assessment. Given the restrictions on an IPA's ability to conduct certain activities on behalf of its members, we evaluated and proposed alternate innovative structural and operational models to meet the clients' goals.

Hodgson Russ served as lead counsel for the consolidating parent entity in a multiparty hospital group merger. The merger combined three separate hospital chains in a multibillion-dollar transaction that transformed health care delivery in Western New York.

Hodgson Russ has represented counties and local industrial development agencies in the restructuring of the provision of public nursing home services. In several situations, the restructuring involved the transfer of the nursing home from the local county to a private owner and operator. In one situation, we formed a local development corporation controlled by the local county to operate the local nursing home.

Mr. Gilbride serves as real estate counsel to the Buffalo Niagara Medical Campus, a nonprofit corporation responsible for the development and operation of the Buffalo Medical corridor. This representation has included the acquisition and redevelopment of the former M. Wile and Trico industrial facilities located on the campus.

Hodgson Russ represents a group of more than 20 radiologists who had been competing with a major hospital system for many years. The hospital system approached the radiology group to restructure their relationship. We have advised the group in evaluating the legal issues related to multiple alternative structures and have extensively negotiated a complex services agreement as well as related space and equipment leases.

Represented a healthcare client in the \$16.2 million sale of a medical office park in suburban Buffalo, NY and the related 1031 exchange.

Hodgson Russ advised a large hospital system in New York State on structuring a joint venture with another company for the purpose of developing an innovative model of care delivery that would be attractive to patients and to payors. Under this model, certain patients are diverted from the hospital's emergency room and inpatient admission to alternate and more

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appropriate care levels and care settings. Novel legal issues involving licensure, telemedicine, and reimbursement were involved. Our role was to provide the legal advice required to structure the transaction and to form several legal entities and draft contracts required to implement the model.

Hodgson Russ served as lead counsel for the successful merger of five hospitals, four medical staffs, several nursing homes, five foundations and numerous nonprofit and for-profit subsidiaries. The merger involved many complex legal questions, including regulatory, corporate, antitrust, reimbursement, tax, and compliance issues.

### **In the News**

Gary Schober Gives Insight to Wegmans' Discontinuation of SCAN App  
*WGRZ*, September 15, 2022

Reetuparna Dutta Named to Class of 2022 "40 Under 40"  
*Buffalo Business First*, September 14, 2022

Coronavirus Resource Center

Thought Leaders: Long-term Care  
*Buffalo Business First*, January 29, 2021

What the Biden Administration Will Mean for Lawyers  
*NYSBA*, December 8, 2020

Information for Healthcare & Telehealth Providers  
April 23, 2020

Industry Roundtable: Health Care  
*Albany Business Review*, December 6, 2019

All the Scary Ways Health Apps Are Using Your Data  
*New York Post*, November 11, 2019

Albany Business Review- Industry roundtable: Medical Research  
*Albany Business Review*, June 15, 2018

Hodgson Russ Practice Teams Recognized In *America's Leading Lawyers For Business*  
June 3, 2016

### **Press Releases**

Hodgson Russ LLP Receives Multiple Top Marks from *Chambers USA Guide 2023*  
June 6, 2023

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Reetuparna Dutta Named to *Buffalo Business First* Class of 2022 “40 Under 40”  
September 16, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 19, 2022

Hodgson Russ Receives Top Marks for *Chambers USA 2022 Guide*  
*Hodgson Russ Press Release*, June 2, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings  
*Hodgson Russ Press Release*, November 15, 2021

Hodgson Russ Receives Top Marks for *Chambers USA 2021 Directory*  
*Hodgson Russ Press Release*, May 26, 2021

Hodgson Russ Receives Top Marks for *Chambers USA 2020 Directory*  
*Hodgson Russ Press Release*, April 24, 2020

Labor and Employment Attorney Charles H. Kaplan Joins Hodgson Russ  
*Hodgson Russ Press Release*, March 24, 2020

Hodgson Russ Receives Top Marks for *Chambers USA 2019 Directory*  
*Press Release*, May 1, 2019

Hodgson Russ Practice Teams Listed in 2017 *Chambers USA*  
*Press Release*, June 12, 2017

## Publications

The Final New York State Budget is Approved: Here are the Major Impacts for Hospitals, Nursing Facilities, and other Health Care Providers  
*Hodgson Russ Healthcare Alert*, May 14, 2024

New York State Department of Health Adopts Health Equity Impact Assessment Regulation Applicable To Facilities Including Clinics, Hospitals, and Skilled Nursing Facilities Submitting Applications through the State’s Certificate of Need (CON) Process  
*Hodgson Russ Healthcare Alert*, September 7, 2023

Final New York State Budget Imposes New Requirements for New York Home Care Providers and Significant Financial Investments for the Health Care Industry  
*Hodgson Russ Home Care and Healthcare Alert*, May 16, 2023

Medicaid Increases, CDPAP Premium Assistance Fund and Capital Projects for Hospitals and Other Providers Take Priority in Kathy Hochul’s FY 2024 Executive Budget Proposals for Healthcare Investments  
February 7, 2023



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OSHA Targets Healthcare Industry and Reopens Comment Period for COVID-19 Regulatory Standard

*Hodgson Russ OSHA and Healthcare Alert*, March 28, 2022

The New Year Rings in Stark Law Changes for Group Practice Compensation

*Hodgson Russ Healthcare Alert*, January 6, 2022

CMS Issues COVID-19 Vaccination Requirements for Medicare- and Medicaid-certified Providers and Suppliers

*Hodgson Russ Healthcare and Labor & Employment Alert*, November 5, 2021

Second Circuit Allows New York Mandatory Vaccination Rule to Stand

*Hodgson Russ Healthcare and Labor & Employment Alert*, November 2, 2021

Mandatory Vaccinations in New York: New York Federal Court Preliminarily Enjoins DOH from Enforcing Its COVID-19 Vaccination Mandate without a Religious Exemption

*Hodgson Russ Healthcare and Labor & Employment Alert*, October 13, 2021

Mandatory Vaccinations for Healthcare in New York: PHHPC Pitches a Curve Ball

*Coronavirus Guidance Update - Healthcare*, August 27, 2021

### **Presentations & Events**

HCP Management Conference & Exhibition

Long Island Marriott, October 26, 2023

Hodgson Russ Hosts WNY HCP Annual Chapter Legislative Breakfast

Hodgson Russ, 140 Pearl Street, Buffalo, NY 14202, September 22, 2023

What New York Healthcare Providers/Payers Need to Know About Health Equity

Hodgson Russ, 140 Pearl Street, Buffalo, NY 14202, June 29, 2023

New York State Health Facilities Association Fall Conference

Mariott Albany, Albany, New York, December 7, 2022

Closing a Medical Practice: Relevant Issues

November 11, 2022

Licensed Home Care Services Agency Application

September 8, 2022

Wage and Hour Update with the Department of Labor

October 29, 2020

Untapped Innovation: Using Telehealth to Improve Resident Care & Gain the Edge Over the Competition

June 19, 2020

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Untapped Innovation: Using Telehealth to Improve Resident Care & Gain the Edge Over the Competition

May 27, 2020

Hodgson Russ Webinar - Coronavirus: What Employers Need to Know Now

March 20, 2020

