



## JANE BELLO BURKE

Administrative and Regulatory Practice Group Leader

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Jane counsels hospitals, health systems, physician groups, skilled nursing facilities, assisted living facilities, home care agencies and other health care practitioners and providers on a broad range of regulatory, reimbursement, transactional, litigation and compliance matters. She helps providers navigate the complex network of health care laws and regulations so they can focus on what they do best: providing care and services to the individuals they serve.

Jane advises on hospital-physician affiliation and integration issues, including physician recruitment and joint ventures. She is at the forefront of the developing law of telehealth in New York. Jane provides guidance on the Stark Law, the Anti-Kickback Statute and the corporate practice of medicine doctrine. She represents providers in controversies before federal and state agencies, including the Centers for Medicare and Medicaid Services (CMS) and the New York State Department of Health (DOH), and in audits, investigations and appeals involving the New York State Office of the Medicaid Inspector General (OMIG).

Some recent examples of matters handled include:

- assisted a New York State-based academic hospital system client on a variety of reimbursement and compliance issues, including matters before the federal Provider Reimbursement Review Board (PRRB) and OMIG
- counseled a broad array of clients (including a health system, skilled nursing facilities, a school district and physicians) on the rapidly emerging law of telehealth
- advised health care provider clients in federal and state litigation, including Article 78 challenges to governmental authority
- counseled nursing home clients in overturning nursing home immediate jeopardy citations through administrative challenges before the Departmental Appeals Board (DAB) of the U.S. Department of Health and Human Services

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### Practices & Industries

Administrative & Regulatory  
Healthcare  
Home Care  
Blockchain & Cryptocurrency  
Business Litigation  
Cybersecurity & Privacy  
Life Sciences

### Admissions

New York  
U.S. Supreme Court  
U.S. Court of Appeals, Second  
Circuit  
U.S. District Court, Eastern District  
of New York  
U.S. District Court, Northern  
District of New York  
U.S. District Court, Southern

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- assisted a hospital system with its victorious challenge to the proposed disapproval by the New York Public Health and Health Planning Council (PHHPC) as it related to obtaining a certificate of need to establish an ambulatory surgery center
- provided regular counsel and advice to various health care clients on provider compliance program development and implementation

Jane is the Incoming Chair of the New York State Bar Association (NYSBA) Health Law Section, Chair of the Section's - Long Term Care Committee, Delegate to the NYSBA House of Delegates, and a Member-at-Large to the Sections Caucus of the NYSBA House of Delegates. She began her career as a litigation attorney at Skadden Arps in New York. Jane is also a frequent presenter at conferences and seminars.

## Honors

- Listed, *Best Lawyers in America* (Health Care Law) 2018 - 2024
- Listed, *Best Lawyers in America*, "Lawyer of the Year" Albany (Health Care Law) 2022
- Listed, *Chambers USA: America's Leading Lawyers for Business*, (Healthcare) 2016-2023

## Experience

Below are specific examples of some of the work Jane has performed for her clients:

Jane has assisted SNFs in their successful challenges to immediate jeopardy deficiencies relating to compliance with abuse reporting and prevention, accident prevention, infection control, and many other regulatory requirements. In these cases, Jane assists the client in evaluating survey findings, pursuing informal dispute resolution, and filing administrative appeals before the DAB (Departmental Appeals Board). Through these appeals, Jane has succeeded in convincing CMS to reduce the scope and severity of challenged deficiencies below the immediate jeopardy level in numerous cases, which has enabled the SNFs to restore their good names in the communities they serve.

Jane has worked with hospitals, nursing homes, assisted living programs, licensed home care services agencies and other Medicaid providers to challenge OMIG audits. In many cases, these challenges have led to substantial reductions in the amount of the claimed disallowances and, in some cases, the withdrawal of the audits in their entirety.

District of New York

U.S. District Court, Western District of New York

## Education

Georgetown University, B.S., magna cum laude

American University, Washington College of Law, J.D., cum laude

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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.

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.

Jane Bello Burke assisted three child care providers in their successful challenge to placement on the New York Central Register of Child Abuse and Maltreatment following a child's allergic reaction to an unknown causative agent at a day care center. The successful challenge enabled the child care providers to continue to pursue their chosen careers.

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.

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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.

## **In the News**

Thought Leaders: Long-term Care

*Buffalo Business First*, January 29, 2021

What the Biden Administration Will Mean for Lawyers

NYSBA, December 8, 2020

Area law practice helps revitalize buildings and grounds at Yaddo

*The Saratogian*, October 13, 2020

Law firm volunteers to spiff up Yaddo

*Times-Union*, October 9, 2020

Industry Roundtable: Health Care

*Albany Business Review*, December 6, 2019

Albany Business Review- Industry roundtable: Medical Research

*Albany Business Review*, June 15, 2018

Arbitration rule challenges WNY nursing homes

*Buffalo Law Journal & Business First*, December 19, 2016

Hodgson Russ Practice Teams Recognized In *America's Leading Lawyers For Business*

June 3, 2016

Nursing Home Arbitration Enforceable in NYS

*Buffalo Law Journal*, July 27, 2015

Jane Bello Burke Joins Health Law Practice Group

September 19, 2012

## **Press Releases**

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

June 6, 2023

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*

*Hodgson Russ Press Release*, August 19, 2022

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

55 Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 19, 2021

Jane Bello Burke Elected to New York State Bar Association House of Delegates  
*Hodgson Russ Press Release*, June 21, 2021

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

55 Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 20, 2020

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

52 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings  
*Hodgson Russ Press Release*, August 20, 2019

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

## **Publications**

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

New Year, New Home Care Laws: Medicaid-Funded Home Health Care Services Must Implement EVV by January 1, 2023  
*Hodgson Russ Home Care Alert*, December 20, 2022

The Wait is Over: New York State Department of Health Releases the Licensed Home Care Services Agency Licensure Application  
*Hodgson Russ Home Care Alert*, August 19, 2022

Heads-Up Home Care: DOH Extends Deadline for Wage Parity and Annual Compliance Certifications  
*Hodgson Russ Home Care Alert*, May 5, 2022

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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

U.S. Supreme Court Enjoins OSHA's Covid-19 Vaccine-Or-Test Regulation, But Allows CMS Vaccine Mandate to Proceed  
*Hodgson Russ OSHA and Labor & Employment Alert*, January 14, 2022

OSHA & CMS Vaccination Rules Move Forward As Supreme Court Mulls Arguments On Injunctive Relief  
*Hodgson Russ OSHA and Labor & Employment Alert*, January 12, 2022

The New Year Rings in Stark Law Changes for Group Practice Compensation  
*Hodgson Russ Healthcare Alert*, January 6, 2022

U.S. Supreme Court Agrees to Hear Arguments on Applications to Stay the OSHA and CMS COVID-19 Vaccine Mandates  
*Hodgson Russ OSHA and Labor & Employment Alert*, December 23, 2021

## **Presentations & Events**

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

Untapped Innovation: Using Telehealth to Improve Resident Care & Gain the Edge Over the Competition  
June 19, 2020

Untapped Innovation: Using Telehealth to Improve Resident Care & Gain the Edge Over the Competition  
May 27, 2020

The Winning IDR: Using IDR Effectively to Improve Nursing Home Quality Ratings  
May 24, 2019

New York State Health Facilities Association (NYSHFA) Annual Convention  
New York State Health Facilities Association, May 8, 2019

New York State Health Facilities Association, Telepsychiatry – Past the Tipping Point  
September 5, 2018

Greater New York Health Care Facilities Association, The Use of Electronic Medical Records in eDiscovery  
Uniondale, New York, June 21, 2018

LeadingAge NY: The Role of Telehealth in the Delivery of Long Term Care  
Saratoga Springs, NY, May 24, 2018

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NY Chapter of the American College of Health Care Administrators 49th Annual Convention: What's in Your EMR?  
Callicoon, NY, March 12, 2018

## **Blog Posts**

- New York Expands Healthcare Worker Whistleblower Protections

*The Whistleblower Blog*, June 25, 2020

## **Professional Affiliations**

- American Health Lawyers Association
- Incoming Chair, Health Law Section: New York State Bar Association
- Chair, Long-Term Care Committee, Health Law Section: New York State Bar Association
- Delegate to the New York State Bar Association House of Delegates
- Member-at-Large, Sections Caucus: New York State Bar Association House of Delegates