

## Regulatory Oversight Newsletter – April 2023

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## **REGULATORY OVERSIGHT BLOG**

Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

Regulatory Oversight provides in-depth analysis of regulatory actions by state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB), and the Federal Trade Commission (FTC). Contributors to the blog include attorneys with diverse experience, including regulatory enforcement, litigation, and compliance.

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## **FDA UPDATES**

### **NEW CONGRESSIONAL BILLS SEEK TO ADVANCE FDA CBD PRODUCT REGULATION**

By [Agustin Rodriguez](#) and Christina Sava

Under the sponsorship of Representatives Morgan Griffith (R-VA) and Angie Craig (D-MN), congressional lawmakers recently renewed their effort to force the Food and Drug Administration's (FDA) hand in regulating cannabidiol (CBD) products. The two proposed bills would require FDA to do what it [stated](#) in early 2023 it could not do: regulate CBD and other hemp-derived foods and dietary supplements under existing Food, Drug, and Cosmetic Act (FDCA) pathways.

[Read more](#)

### **INSIDE FDA'S RESPONSE TO REAGAN-UDALL FOUNDATION REPORT: SPOTLIGHT ON THE SCIENCE AND APPLICATION REVIEW TASK FORCE**

By [Michael Jordan](#), [Agustin Rodriguez](#), and [Bryan Haynes](#)

There is a common refrain that appears throughout the [Reagan-Udall Foundation report](#) on the Center for Tobacco Products (CTP) at the Food and Drug Administration (FDA) — *lack of transparency*. The report found that stakeholders generally perceived premarket tobacco product applications (PMTAs) — required for all electronic nicotine delivery systems (ENDS) on the market — as “ineffective and problematic” due in part to a “lack of adequate guidance and transparency regarding CTP expectations,” as well as a “lack of clarity regarding review standards.”

[Read more](#)

### **HIDDEN FDA REPORT RAISES QUESTIONS ABOUT ITS APPROACH TO PUBLIC RECORDS AND PREMARKET TOBACCO REVIEW**

By Robert Claiborne, [Bryan Haynes](#), and [Agustin Rodriguez](#)

*FDA's approach to a premarket tobacco product application (PMTA) raises new questions about whether its marketing denial order was arbitrary and capricious and whether the deliberative-process exemption justifies its withholding of related records. The Agency's approach is partially documented in a memorandum that FDA disclosed in response to a Freedom of Information Act request, and there is pending litigation over other records that FDA continues to withhold.*

May a federal agency that has issued its final determination on a PMTA set aside a portion of its written analysis and withhold those records under the deliberative-process exemption to the [Freedom of Information Act](#) (FOIA)? What if those records actually support the PMTA or undermine the purported bases for the agency's action? These are questions stemming from two pending cases involving FDA and JUUL Labs, Inc. (JLI). In No. 22-1123 (D.C. Cir.), JLI claims that FDA's [marketing denial order](#) (MDO) on its PMTAs was arbitrary and capricious in violation of the [Family Smoking Prevention and Tobacco Control Act](#) (TCA) and the [Administrative Procedure Act](#) (APA). In No. 1:22-cv-02853 (D.D.C.), JLI claims that FDA's withholding of these records is not supported by FOIA's deliberative-process exemption.

[Read more](#)

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## AG UPDATES

### COLORADO AG BACKS INCREASED CONSUMER PROTECTIONS FOR MEDICAL TRANSACTIONS

By [Troutman Pepper State Attorneys General Team](#)

Colorado Attorney General Phil Weiser recently released a [press release](#), supporting new [Senate Bill 23-093](#) called "Increase Consumer Protections Medical Transactions." Specifically, the bill would reduce medical debt for Colorado residents and make health care more affordable and accessible, protecting Coloradans from "high interest rates for medical debt and confusing debt collection practices that lead to long-lasting debt and financial instability."

[Read more](#)

### NEW YORK AG CRACKS DOWN ON NO-POACH AGREEMENTS

By [Troutman Pepper State Attorneys General Team](#)

New York Attorney General Letitia James recently reached a \$400,000 [settlement](#) with Affordable Senior Care of New York LLC (Affordable) for engaging in anticompetitive conduct in the homecare industry. New York-based Affordable acts as a "fiscal intermediary" registered with New York's Medicaid program's Consumer Directed Personal Assistance Program. Fiscal intermediaries like Affordable handle "timesheet processing, payments to a patient's caregivers, and other administrative jobs on behalf of patients." Patients can choose the caregiver of their choice, including a family member or a friend, and naturally, tend to pick the fiscal intermediary that pays a higher hourly wage.

[Read more](#)

### NEW YORK AG PROPOSES RULES TO STRENGTHEN PRICE GOUGING LAW

By [Troutman Pepper State Attorneys General Team](#)

New York Attorney General Letitia James recently [proposed](#) the [first-ever rules](#) to strengthen enforcement of the state's [price gouging law](#), which prohibits companies from exploiting market disruptions to increase their profits on essential goods and services. In response to the influx of pandemic-related price gouging complaints, the 2020-amended law gives the AG rulemaking authority, among other changes.

[Read more](#)

## **TWENTY-SEVEN AGS ASK CONGRESS TO PASS RIGHT-TO-REPAIR LEGISLATION**

By [Troutman Pepper State Attorneys General Team](#)

On March 24, a bipartisan group of 27 state attorneys general sent a [letter](#) to Congress, encouraging the passage of “right-to-repair” legislation to establish and secure a competitive marketplace for repairing vehicles, agricultural equipment, and electronics.

[Read more](#)

## **INDIANA AG SETTLES WITH COMPANY OVER ALLEGEDLY PROVIDING UNFAIR AND DECEPTIVE PERSONAL LOANS TO FINANCE AUTO PURCHASES**

By Alan D. Wingfield, [Stefanie Jackman](#), and [Troutman Pepper State Attorneys General Team](#)

Indiana Attorney General Todd Rokita and the Indiana Department of Financial Institutions [announced](#) a settlement in excess of \$250,000 with Integrity Acceptance Corp., affiliated companies, and their owners to resolve allegations that they originated personal loans without the required license, contracted for charges in excess of the maximum allowable rate, misrepresented finance charges, and failed to disclose prepaid finance charges in violation of the Indiana Uniform Consumer Credit Code and Indiana Deceptive Consumer Sales Act. As part of the settlement, the entities will forgive \$223,685 in loans, pay \$33,991 in restitution, and pay \$33,000 in civil penalties and costs to the state. The entities and their owners are also enjoined from engaging in similar conduct in the future.

[Read more](#)

## **NEW MEXICO ESTABLISHES STATE'S FIRST-EVER CIVIL RIGHTS DIVISION**

By [Troutman Pepper State Attorneys General Team](#)

On March 18, New Mexico Attorney General Raúl Torrez [announced](#) the state's first-ever Civil Rights Division inside the AG's office, broadly giving the AG investigative authority over state and local agencies to protect New Mexicans from civil rights inequities and injustices. With the passage of Senate Bill 426, New Mexico now joins other states nationwide already leveraging an active civil rights unit to safeguard their citizens' rights.

[Read more](#)

## NEW YORK AG SAYS CRYPTOCURRENCY EXCHANGES MUST REGISTER AS SECURITIES

By [Troutman Pepper State Attorneys General Team](#)

On March 9, New York Attorney General Letisha James [filed](#) a complaint against leading cryptocurrency exchange KuCoin, alleging violations of the Martin Act, which prevents security sales fraud. AG James claimed that Ethereum — the second-largest cryptocurrency by market capitalization — is a security in the first regulator-initiated court claim.

[Read more](#)

## COLORADO AG ENACTS LANDMARK STATE PRIVACY ACT RULES

By [Troutman Pepper State Attorneys General Team](#)

On March 15, Colorado Attorney General Phil Weiser [recorded](#) the final version of the [Colorado Privacy Act \(CPA\) Rules](#), granting Coloradans rights over their own personal data. Effective July 1, the CPA marks the third state to approve a general state privacy law, the second state to author related rules, and the nation's first state to regulate automatic decision-making (*i.e.*, profiling) and data protection assessments under a general state privacy law.

[Read more](#)

## MASSACHUSETTS AG SETTLES WITH HOME SECURITY COMPANY OVER ALLEGEDLY UNFAIR AUTOMATIC RENEWAL CONTRACTS, IMPROPER CHARGES, AND DEBT COLLECTION VIOLATIONS

By Jill Dolan, [Mark Furletti](#), and [Carlin McCrory](#)

In February, Massachusetts Attorney General Joy Campbell [announced](#) a \$6.5 million settlement with Safe Home Security, its CEO, and affiliated companies to resolve allegations that their practices violated state consumer protection laws by “trapping Massachusetts consumers in long-term auto renewal contracts” and engaging in illegal debt collection practices, among other activities.

[Read more](#)

## NEW YORK AG SETTLES FOURTH HOUSING DISCRIMINATION CLAIM

By [Troutman Pepper State Attorneys General Team](#)

On March 15, New York Attorney General Letitia James [announced](#) a [settlement with Coldwell Banker](#) for allegedly violating fair housing laws and discriminating against homebuyers of color. According to the settlement, Coldwell must pay \$20,000 in penalties and \$10,000 to Suffolk County to promote fair house enforcement and compliance. Coldwell also must provide fair housing training to its agents and install a form for discrimination complaints on its website.

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## **RELATED INDUSTRIES + PRACTICES**

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