

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

CARING PROFESSIONALS, INC.,

Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF HEALTH,
JAMES V. MCDONALD, in his official capacity as
Commissioner of the New York State Department of Health, and,
MICHAEL LEWANDOWSKI, in his official capacity as a
Representative of the New York State Department of Health's
Office of Health Insurance Programs, and
PUBLIC PARTNERSHIPS LLC,

Defendants.

**AFFIRMATION OF
MARIA PERRIN**

Index No: 601181/2025

MARIA PERRIN, pursuant to New York CPLR § 2106, hereby affirms under the penalties of perjury under the laws of New York, which may include a fine or imprisonment that the following is true, and I understand that this document may be filed in a proceeding in a court of law:

1. I am the President of Public Partnerships, LLC ("PPL"). I submit this Affirmation in opposition to Caring Professionals, Inc.'s request for a preliminary injunction in the above captioned case.

2. I am involved in managing the New York Consumer Directed Personal Assistant Program ("CDPAP") transition and implementation for PPL.

3. PPL is a national leader of fiscal intermediary and consumer directed programs. PPL began business operations in 1999. Today, PPL provides services in fifty (50) different programs across twenty (20) different states.

4. PPL's mission is to expand and improve access to consumer-directed home care. PPL employees regularly assist consumers with accessing the home care they require and know firsthand how essential these programs such as CDPAP services are.

5. On an annual basis, PPL answers over 2 million phone calls from consumers, workers and case managers and processes 11 million time entries from PAs each year.

6. Over seventy-three percent (73%) of the PPL workforce is female and seventy percent (70%) are people of color who identify with underrepresented groups.

7. PPL takes pride in the superior quality of services that it provides to state clients and is the nation's largest provider of Fiscal Intermediary ("FI") services.

8. PPL has fifteen (15) statewide contracts, which are as follows: Alabama (since 2020), Arkansas (since 2023), Arizona (since 2005), California (since 2012), Colorado (since 2009), Florida (since 2013), Indiana (since 2006), Maryland (since 2022), Michigan (since 2015), Minnesota (since 2024), New Jersey (since 2016), Ohio (since 2019), Oregon (since 2014), Pennsylvania (since 2012), and Virginia (since 2004).

9. PPL has a rich history of completing successful statewide implementations, including most recently in the states of Indiana and Arkansas.

10. This robust experience provides PPL with a vast portfolio and breadth of experience to ensure the success of New York's April 1, 2025 CDPAP transition to a statewide fiscal intermediary.

11. Currently there are over 600 fiscal intermediaries ("FIs") in the New York State marketplace that are operating within the CDPAP program under a structure that will end on March 31, 2025.

12. It is critical to understand that the outgoing FIs do not have contracts with the New York State Department of Health (“DOH”).

13. The outgoing FIs maintain contractual arrangements with Managed Care Organizations (“MCOs and PACE plans” or “health plans”).

14. In my review of the filings of this case, Plaintiff, Caring Professionals, Inc., has not disclosed a copy of its contract with any MCOs and PACE plans. In any event, Plaintiff’s contract with any applicable health plan will terminate as a matter of law on April 1, 2025.

15. Plaintiff’s contract with applicable MCO and PACE plan is an important piece of the puzzle for the Court to consider in making its determination on whether to issue this preliminary injunction.

16. It is my understanding that contracts between the outgoing FIs and MCO or PACE plan often contain Obligations Post Termination, obligations related to access books, records and other documents and the release of such information to DOH.

17. The DOH previously provided a draft model contract for outgoing FIs, which could have utilized. A true and accurate copy is attached as Exhibit “A”. See, Exhibit “A” at ¶ 12.

18. As part of the transition to a statewide FI, PPL is required to enter into contractual agreements with the MCOs and PACE plans.

19. This contracting process with PPL for CDPAP statewide fiscal intermediary services with the MCOs and PACE plans is proceeding as anticipated. As of February 18, 2025, PPL has entered into contracts with 30 of the 34 MCOs and PACE plans supporting CDPAP.

20. PPL is well positioned to begin CDPAP fiscal intermediary services on April 1, 2025, despite all the roadblocks that have been erected by the outgoing 600+ fiscal intermediaries.

21. Plaintiff's application for a preliminary injunction has three (3) separate requests. Plaintiff's first request is the broadest and seeks an injunction staying enforcement of all directives of the December 6, 2024 DOH Memorandum seeking to compel Plaintiff and the outgoing FI trade association members from conveying data, records or notifications during the pendency of this action. Plaintiff's second request seeks a stay of the data transfer until Defendants provide proof that the safeguards are in place to protect HIPAA related information. Plaintiff's third request for a preliminary injunction seeks a temporary restraining order staying DOH from imposing sanctions upon Plaintiff for its failure to comply. Dkt.38 at p.26 of 50.

22. Plaintiff's (3) separate preliminary injunction requests are all founded upon the erroneous legal theory that there is a concern related to Health Insurance Portability and Accountability Act ("HIPAA") and therefore it cannot comply with DOH's clear directives.

23. Plaintiff further alleges that PPL does not have proper safeguards in place to adequately regulate HIPAA protected information. See, Dkt. No. 38 at p.21 of 50.

24. Significantly, Plaintiff offers no proof and/or evidence to support such an allegation.

25. CDPAP is a Medicaid program that is regulated by DOH. The CDPAP transition to PPL as the statewide FI does not violate HIPAA. In fact, several other states and jurisdictions, such as Massachusetts, rely upon a single fiscal intermediary.

26. HIPAA-protected information can be disclosed to a health oversight agency, such as DOH, who is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance. 45 CFR 164.501; 45 CFR 164.512(d).

27. In addition, DOH's regulation and funding of the New York State Medicaid program also establishes that DOH is a covered entity pursuant to the definition provided for in 45 CFR 160.103.

28. HIPAA protected information can therefore be released by the outgoing FI to DOH both as a covered entity and as a health oversight agency.

29. Through the Medicaid program, DOH also maintains a direct relationship with the consumers who participate in CDPAP.

30. Therefore, the Plaintiff and the outgoing FIs will not be in violation of HIPAA when complying with the DOH December 6, 2024 Memorandum and with the January 29, 2025 Notification requirement pursuant to Social Services Law Section 365-f(4-d)(a)(i). See, Exhibit "B" and Exhibit "C" attached hereto.

31. Social Services Law §365-f(4-d)(a)(i) separately requires all outgoing FIs that must cease business operations on April 1, 2025 to deliver written notice at least 45 calendar days before discontinuing FI services to the affected consumer. This date was Friday, February 14, 2025 (emphasis added).

32. The outgoing FIs are required to provide DOH with the requested information because DOH is a covered entity and also a health oversight agency

33. Outgoing FIs are permitted to release HIPAA-protected information to a health oversight agency, such as DOH, who is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance. 45 CFR 164.501.

34. This clearly and unambiguously establishes that the DOH has a right to the data and information currently in possession of the current outgoing FIs, which many have refused to provide.

35. Yet, these outgoing FIs have done everything possible to avoid providing such information to DOH. These outgoing FI's are simply motivated by greed and have made significant profits due to the fraud, waste and abuse that existed within CDPAP prior to the statewide FI statutory reform.

36. PPL and DOH have also entered into a contract for PPL to provide the statewide FI services. The agreement between PPL and DOH contains sensitive proprietary information that could cause substantial injury to PPL's competitive position in the marketplace in the event it is fully disclosed.

37. PPL and DOH's contractual agreement contains Appendix H titled "Federal Health Insurance Portability and Accountability Act Business Associate Agreement" (referred to as Exhibit "H" herein). A true and accurate copy of Exhibit "H" of the agreement between DOH and PPL is attached hereto as Exhibit "D".

38. Exhibit "H" makes clear that PPL is a "Business Associate" of DOH as defined by HIPAA, while DOH is considered a covered entity under HIPAA.

39. Exhibit "H" mandates and requires certain obligations and activities of Business Associates as required by HIPAA. See, Exhibit "D" at ¶ II(A) – (I). Exhibit "H" further requires PPL, as the Business Associate, to abide by state privacy laws and ensures that PPL will not disclose protected health information other than that which is required by law or pursuant to the terms of the contract between PPL and DOH.

40. A Business Associate can be an individual or company that provides services to a HIPAA-covered entity which requires them to have access to, store, use, or transmit protected health information. The list of business associates is long, and the range of companies included under the definition of business associate is diverse.

41. Business Associates of HIPAA covered entities include third-party administrators, billing companies, transcriptionists, cloud service providers, data storage firms – electronic and physical records, EHR providers, consultants, attorneys, CPA firms, pharmacy benefits managers, claims processors, collections agencies, and medical device manufacturers.

42. Prior to a Business Associate being given any personal health information (“PHI”) by a covered entity, or being given access to systems containing PHI, they must enter into a HIPAA-compliant business associate agreement with the covered entity. A business associate agreement is a contract in which the responsibilities of the Business Associate with respect to HIPAA and PHI are clearly described.

43. Exhibit “H” duly complies with all requirements.

44. As a result, DOH is permitted under HIPAA law to release HIPAA protected information, provided by the outgoing FIs, with PPL through the Business Associate Agreement.

45. This clearly disproves Plaintiffs’ claims regarding any alleged violation of HIPAA laws due to the transfer of information and data to DOH and/or PPL.

46. In regard to Plaintiff’s allegations regarding PPL’s safeguards to ensure it can properly protect the information, PPL provides the following response.

47. PPL takes its obligation to safeguard Protected Health Information (“PHI”) and Personally Identifiable Information (“PII”) extremely serious and carries out its obligations with the utmost attention to detail and privacy.

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48. PPL currently operates in nearly two dozen other states and through its experience in fifty (50) different programs is intimately familiar with HIPAA requirements.

49. PPL has developed robust security measures and procedural safeguards. These measures are designed to protect confidentiality, secure proprietary data, and ensure compliance with HIPAA and New York General Business Law 3999-ddd, thereby alleviating any concerns regarding data protection of all data in PPL's possession.

50. Key elements of PPL's HIPAA procedural safeguards for PHI and PII include (i) Access Control, (ii) Data Encryption, (iii) Data Minimization and (iv) a Data Breach Response Plan.

51. PPL's Access Control safeguards include ensuring specific job titles and job roles are the only personal granted access to HIPAA protected information. This access is limited to specific credentialed PPL representatives.

52. Only after meeting these Access Control requirements, can a PPL representative then access HIPAA protected information through a user name and strong password. Such access is strictly based on specific job function and requirements. These requirements also provide the basis for PPL security clearance being granted the appropriate PPL representative.

53. All PPL users with access to HIPAA protected information is forbidden from sharing their credentials with any other individual.

54. PPL's significant investment into data privacy is also evident through its industry leading traceable user login credentials that is regularly monitored by PPL management to ensure access to HIPAA protected information is only done by those representative with the proper credentials and security clearance.

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55. PPL consistently conducts audit reviews on access permissions to reflect PPL representative and/or employee changes that occur within the organization.

56. PPL also has robust data encryption policies in place. This includes PPL ensuring encryption of any and all sensitive HIPAA protected data during transmission outside of PPL's firewall server. PPL encrypts all personally-identifiable CDPAP data and information even when at rest.

57. PPL utilizes password-protected zip files to protect files upon receipt, with passwords transmitted separately from all other file types to ensure a multi-fact authentication.

58. PPL ensures these safeguards are in place with each employee and/or representative at the onset. PPL provides comprehensive employee training which is mandatory for all PAs and PPL employees. This training covers in detail data privacy policies, including proper handling of HIPAA protected information upon hiring an employee and annually thereafter.

59. In addition, PPL provides regular training updates to address any and all new applicable healthcare related regulations and potential security threats.

60. PPL also maintains data minimization requirements. In this regard, PPL has policies in place to collect and store only the minimum necessary PHI and PII required for business operations.

61. PPL also regularly reviews and purges outdated or unnecessary data per established retention schedule and procedure.

62. PPL also has a detailed Data Breach Response Plan. This Plan includes an incident response plan to quickly identify, contain, and remediate data breaches.

63. The Data Breach Response Plan also includes specific procedures and policies in place for notifying affected individuals and regulatory bodies in case of a breach per the HIPAA

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breach notification rule, HHS, OCR, and the NYS Attorney General guidelines as defined by the Shield Act.

64. PPL also maintains compliance with NY-General Business Law §3999-ddd by maintaining confidentiality of social security account numbers under PPL control and possession.

65. PPL further ensures that no person, firm, partnership, association or corporation affiliated with PPL will do any of the following:

- a) Intentionally disclose or make an individual's social security account number available to the general public in any manner.
- b) Print an individual's social security account number on any card or tag required for accessing products, services or benefits provided by a person, firm, partnership, association or corporation.
- c) Require an individual to transmit their social security account number over the internet, unless the connection is secure, or the social security account number is encrypted.
- d) Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number, or other authentication device is also required for access.

66. PPL's procedural safeguards for HIPAA protected information conform with the statewide FI RFP requirements, which Plaintiff fails to reference to the Court. Section 4.9 of the RFP requires that:

The awarded Statewide FI will implement and maintain plans, procedures, policies, internal controls, and appropriate administrative, technical, and physical safeguards, consistent with applicable laws and rules to ensure the security, confidentiality, integrity, and availability of personal identifiable information and protected health information (collectively referred to herein as "Protected Information") created, collected, used, transferred, and/or disclosed by the awarded Statewide FI. At a minimum, such plans, procedures, policies, internal controls, and appropriate administrative, technical, and physical safeguards shall address:

- The secure and confidential storage of hard copy and electronically stored information;
- Protected information is only used by or disclosed to those authorized to receive or view it;

- Protected information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;
- Protected information is protected against any reasonably anticipated uses or disclosures of such Information that are not permitted or required by law; and
- Protected information is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules.

67. Plaintiff's Complaint and application for (3) separate preliminary injunctions requests all fail to recognize that the RFP requirements were applicable to all bidders including PPL, as the eventual contract awardee.

68. The DOH has contracted with PPL to serve as the statewide FI as of April 1, 2025.

69. Despite this, over the past several months, the outgoing FIs who must cease CDPAP operations by April 1, 2025, have engaged in an expansive and well-organized campaign in an attempt to sabotage the transition and cause a false alarm about PPL's role in CDPAP.

70. These business interests have spent millions of dollars on advertising campaigns extensively defaming and denigrating PPL.

71. For example, the Alliance to Protect Home Care has called PPL "disastrous," and alleged a "failing track record," "labor disputes" "poor oversight" and "repeated failures." See, www.protecthomecare.org. All of these statements are false.

72. The public relations campaign has specifically used inflammatory rhetoric to stoke fear and distrust against PPL in the following aspects:

- (i) Making unfounded claims that the transition to PPL will cause "Elderly & disabled NYers [to] lose access to trusted, affordable home care workers who speak their language, leaving them no other option than being forced into costly hospitals or nursing homes."
- (ii) Utilizing a digital display truck with a billboard to circle courthouses and the State Capitol with a large and illuminated sign that states "Save my life. Stop PPL".

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- (iii) Hiring an expensive airplane to fly over Albany, courthouses and the State Capitol with a banner that reads: "SOS: Save CDPAP. Stop PPL." See, <https://www.crainsnewyork.com/health-pulse/alliance-protect-home-care-protests-cdpap-cuts-airplane-ad>

73. Another facet of the outgoing FIs scorched earth campaign is the filing of over 16 separate lawsuits all over New York State against DOH, and now, increasingly, against PPL.

74. These lawsuits have forced PPL to spend time and resources defending itself. The time and resources could be better spent on implementing the transition.

75. The most recent facet of the campaign is the FIs refusal to provide data to DOH to facilitate the transition to PPL as the statewide FI beginning April 1, 2025.

76. By spreading lies about PPL, refusing to send data to DOH, and naming PPL in lawsuits, these outgoing FIs appear to be intentionally trying to create the very thing they are warning people against, which is a failed transition.

77. Regardless of the expansive and expensive negative attack campaigns, PPL remains confident and certain that it can successfully manage this transition, despite all the obstacles that the outgoing FIs have erected.

78. PPL is fully committed to becoming the statewide fiscal intermediary on April 1, 2025, and has all necessary resources in place to meet the deadline.

79. PPL is an innocent actor and has done nothing to warrant the scorched earth smear campaign the existing FI's have launched.

80. PPL is simply trying to do the job that New York State hired it to perform

WHEREFORE, Deponent respectfully prays that the relief requested in the Verified Complaint be denied and no preliminary injunction be ordered by the Court.

Dated: February 18, 2025



Maria Perrin