

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

CARING PROFESSIONALS, INC. and CONSUMER  
DIRECTED PERSONAL ASSISTANCE  
ASSOCIATION OF NEW YORK STATE,

*Plaintiffs,*

v.

NEW YORK STATE DEPARTMENT OF HEALTH,  
JAMES V. MCDONALD, in his official capacity as  
Commissioner of the New York State Department of Health,  
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.*

Index No. 601181/2025

Motion Sequence 1

Hon. Jerome C. Murphy, J.S.C.

**AMIR BASSIRI**, hereby affirms under the penalties of perjury, that the following is true, and I state the following:

1. I am familiar with the facts and circumstances of this case based on personal knowledge and expertise, and review of the records of the New York State Department of Health. I submit this affirmation in opposition to Plaintiffs' motion for a preliminary injunction regarding the data transfers and notifications required for the Department's implementation of legislative amendments to part of the state's Medicaid program.

2. I am the Deputy Commissioner of the Office of Health Insurance Programs ("OHIP") at the New York State Department Health (the "Department" or "DOH") and I have been the New York State Medicaid Director since April 2022. In these roles, I am responsible for the policy direction, day-to-day strategy, operations, and management for all public health insurance programs, including the Medicaid and Child Health Plus programs, that cover nearly nine million New Yorkers, including individuals enrolled in the Consumer Directed Personal

Assistance Program (“CDPAP”). I joined the Department in 2019 as Chief of Staff to the Medicaid Director, and immediately prior to becoming the Director, I served as the Deputy Medicaid Director and Deputy Commissioner of the Office of Health Insurance Programs, overseeing the operation and performance of nine Medicaid Divisions. Prior to working with the Department, I worked as Senior Policy Advisor for Health in the Governor’s Office under the Deputy Secretary of Health and Human Services.

### **THE MEDICAID PROGRAM**

3. The Medicaid program was established pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, *et seq.* It was designed as a joint state and federal program to provide medical care to those who would be otherwise unable to afford such care. Under the terms of the Medicaid program the federal government contributes a percentage of the funding, referred to as federal financial participation. In New York State, responsibility for the remaining monies is divided between the State and local governments.

4. DOH is the single state agency in New York State (“New York” or the “State”) responsible for the administration of the New York Medicaid Program (“NYS Medicaid Program”). *See* Social Services Law (“SSL”) § 363-a. The primary purpose of the NYS Medicaid Program is to make medically necessary covered health and medical services available to eligible individuals. *See* SSL § 363; 42 U.S.C. § 1396. The Department may promulgate all necessary regulations and guidelines for administration of the NYS Medicaid Program. *See* SSL § 363-a(2).

## **NEW YORK CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM**

5. CDPAP<sup>1</sup> is a NYS Medicaid program intended “to permit chronically ill and/or physically disabled individuals [referred to as “consumers”] receiving home care services greater flexibility and freedom of choice in obtaining such services.” SSL § 365-f(1); 18 NYCRR § 505.28(a). The consumer may select and retain personal care aides (referred to as a “personal assistant” or “PA”) to assist with their home care needs.

6. Based on the most recent information available to the Department, CDPAP is estimated to serve approximately 280,000 consumers.

7. To participate in CDPAP, each consumer is required to assume numerous responsibilities, including but not limited to recruiting, hiring, training, scheduling, and supervising their PAs. *See* SSL § 365-f(3). In the fulfillment of these responsibilities, the consumer works with a Fiscal Intermediary (“FI”), an entity that performs administrative functions such as wage and benefit processing for PAs, processing all income tax and other required wage withholdings, and maintaining employment records on behalf of the consumer. *See* SSL § 365-f(4-a)(a)(i)-(ii); 18 NYCRR 505.28(b)(8) and (j).

8. DOH estimates that more than 600 FIs are currently operating in the State. Plaintiff Caring Professionals is one of those 600 FIs, and the members of Plaintiff Consumer Directed Personal Assistant Association of New York State (“CDPAANYS”) are also FIs.<sup>2</sup>

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<sup>1</sup> The CDPAP acronym is specific to New York but will be used throughout to describe programs in other states that are similar in nature and serve the same underlying purpose.

<sup>2</sup> Plaintiffs have yet to disclose the FIs that are the members of CDPAANYS.

9. New York's current FI model is an extreme outlier compared with the rest of the nation. Most states that offer CDPAP have fewer than three FIs statewide, and many states have just one FI.

10. The large number of FIs operating in the State has not created efficient competition. Instead, it has hindered program monitoring and program integrity efforts.

11. For example, false and misleading marketing and solicitation of consumers to the program remains problematic because consumers receive inconsistent messaging. This leaves consumers confused about the process and criteria necessary to qualify for benefits—which are overseen by Managed Care Organizations (“MCOs”) and local departments of social services (“LDSS”), not FIs.

12. There are also significant disparities among the hundreds of operating FIs, such as different wage and benefit packages for PAs, inconsistent messaging and application of overtime policies, and inconsistent compliance with requirements for maintaining accurate records. Finally, consumers are limited by their region in their choices of FIs with cultural or linguistic experience.

13. With more FIs than all of the other states in the country combined, New York pays an excessively high administrative rate to FIs, resulting in CDPAP becoming prohibitively expensive. The State's administrative rate is more than double the average rate paid by other state Medicaid agencies in states with similar programs and costs of living, such as Massachusetts. Historically, the rates have been calculated based on MCO and FI cost reporting. In the current inefficient system, the Medicaid program is paying for the overhead costs of hundreds of FIs, rather than the overhead of one contracted FI and its subsidiaries.

14. In the current CDPAP model, in which hundreds of FIs provide fiscal services to consumers, FIs contract directly with MCOs and LDSS to act as administrative agents. FIs were not required to be licensed or to register with the State or DOH. As a result of this decentralized approach, under the current CDPAP statute, DOH has no ability to effectively regulate FIs through customary governmental mechanisms, such as the levying of penalties and sanctions, pulling registration or licenses, or otherwise removing bad actors from the marketplace. Additionally, this decentralized approach has negative fiscal consequences for CDPAP because DOH cannot control the number of FIs in the market, anticipate rising CDPAP costs, or explain CDPAP's rapid expansion in recent years.

### **THE CDPAP AMENDMENTS**

15. DOH has engaged in extensive conversations with representatives of the Centers for Medicare and Medicaid Services (“CMS”), stakeholders, and representatives of other state Medicaid programs to discuss the challenges and mistakes other states have faced when enacting similar changes to their CDPAP programs. In response to the challenges posed by New York’s CDPAP model, and to maintain the fiscal viability of this important program, there have been several legislative attempts since 2017 to bring the FI market into some format that is amenable to regulation.

16. Earlier amendments to SSL § 365-f included attempts to regulate CDPAP by promulgating various Requests for Proposals (RFPs) aimed at consolidating the FIs providing services and reducing administrative service costs. *See, e.g.*, L2017, ch. 57, pt. E § 1; L2018, ch. 41 § 1; L2019, ch. 57, pt. G; L2021, ch. 57, pt. LL; L2022, ch. 57, pt. PP. Such prior attempts at improving CDPAP by consolidating or reducing the number of FIs either were met with

resistance or failed to fix the problems described above. CDPAP has been the subject of much legislative debate.

17. Then, on April 20, 2024, the New York State Legislature passed an amendment to CDPAP's governing statute (hereinafter "the CDPAP Amendment"), Social Services Law § 365-f, to address the above concerns, amongst others. That Amendment borrows and builds on existing CDPAP models in other states, wherein a state's Medicaid program contracts with a single statewide FI ("Statewide FI"), which performs the requisite administrative functions for the entire CDPAP, thereby reducing administrative cost growth and strengthening oversight over the services provided and overall program integrity.

18. The goals of the 2024 CDPAP Amendment include significant cost savings and improved efficiency. Although transferring New York's system over to a single Statewide FI is an enormous undertaking, Respondent DOH has accomplished transitions like this in the past, and is fully capable of accomplishing this transition without interruptions in Medicaid services.

#### A. Cost Savings

19. Under the current system, over \$9 billion<sup>3</sup> of NYS Medicaid funding is anticipated to flow through the disparate network of largely unregulated New York FIs in fiscal year ("FY") 2024, which runs from April 1, 2023, to March 31, 2024.

20. Instead of those billions of taxpayer dollars paying for health services delivered to chronically ill and physically disabled New Yorkers, a substantial portion of CDPAP funding under the current system is going to pay the excessive administrative fees of an antiquated, inefficient, and bloated FI system.

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<sup>3</sup> This figure is based on the trended view of CDPAP cost report submissions.

21. Money spent on unnecessary administrative costs diverts crucial funds away from actual healthcare services like personal care services, safety net hospitals, physician salaries, and group homes that care for people with intellectual and developmental disabilities. For example, funding for FI services (which includes direct care payment to personal assistants and home care workers) exceeds the entirety of NYS Medicaid payments to nursing facilities, which, unlike FIs, are subject to rigorous licensure, regulation, and other standards to promote consumer protections and quality of care. This decentralized approach has negative fiscal consequences for CDPAP because DOH cannot oversee or even accurately track the number of FIs in the market.

22. The CDPAP Amendment is projected to save the NYS Medicaid Program up to \$500 million annually. *See* 2025 NYS Enacted Budget Financial Plan, at 35. Excerpts of the Budget document are annexed hereto as **Exhibit 1.**<sup>4</sup>

## B. Improved Efficiency

23. Through discussions with over a dozen other states' Medicaid agencies, it is unequivocally clear that New York is an extreme outlier, as compared with other states. With at least 600 FIs currently operating in CDPAP, the State is relying on an inefficient system of CDPAP administration. A single Statewide FI that directly contracts with the State will provide efficient mechanisms to allow oversight of compliance, marketing, and potential waste. It will also streamline and equalize access to care statewide so consumers can access administrative services that fit their needs regardless of where they live.

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<sup>4</sup> The entire document can be accessed at <https://www.budget.ny.gov/pubs/archive/fy25/en/fy25fp-en.pdf>.

24. With one Statewide FI, DOH will have better oversight of the practices of both the Statewide FI, subcontractors, and CDPAP generally. As a result, the State will be able to monitor compliance with state and federal rules more effectively.

25. Under the CDPAP Amendment, DOH will have a greater ability to track Medicaid payments through one Statewide FI to PAs and analyze data to ensure compliance with all state and federal requirements. This change will also allow the Office of the Medicaid Inspector General to conduct auditing and oversight of the Statewide FI more quickly and comprehensively.

26. A single Statewide FI with a limited number of subcontractors will also simplify the CDPAP process for consumers. Consumers will no longer have to hunt around for an FI willing to work with them, or for an FI who has the linguistic and cultural competency that meets their needs. Under the CDPAP Amendment beginning April 1, 2025, once a consumer is approved for CDPAP through their LDSS or MCO, and selects their preferred PA(s), they will immediately begin working with the Statewide FI. The Statewide FI and its subcontractors will have the ability to meet the individual linguistic and cultural needs of every consumer in the State and assist them with all the necessary administrative requirements. In doing so, the Statewide FI will help the consumer obtain care from their chosen PA(s) through CDPAP. The Statewide FI will standardize policies, reporting, and guidelines to make the process of retaining an FI and hiring a PA easier for consumers. The shift to a Statewide FI will enable consumers to quickly retain the FI to begin providing administrative services.<sup>5</sup>

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<sup>5</sup> It is a requirement of Social Services Law § 365-f and RFP #20524 that the awarded Statewide FI has demonstrated “cultural and language competency specific to the population of consumers” in New York. See SSL § 365-f (4-a)(a)(ii-b). Further, the regional FI subcontractors are similarly required to provide “services with cultural and linguistic competency specific to the population of consumers” and

27. Additionally, because the Statewide FI and its subcontractors will be required to ensure the provision of CDPAP in a culturally and linguistically competent manner, consumers throughout the state will not be limited regionally in their access to care and administrative services.

### **TRANSITION TO STATEWIDE FI**

28. To effectuate the CDPAP amendments, in June 2024, DOH issued Request for Proposal (“RFP”) #20524, setting forth the bidding requirements for entities interested in serving as New York’s Statewide FI. Prior to issuing the RFP, DOH conversed with CMS and representatives of other states’ Medicaid programs to explore the challenges other states have faced when making CDPDP program changes. The RFP’s criteria reflected aspects of a would-be statewide entity’s structure and operation that the DOH considered important for appropriate administration of FI services statewide. The criteria included, *inter alia*, a requirement that the Statewide FI subcontract with at least four regional FIs, one in each of New York’s four Medicaid rate-setting regions. The subcontracting requirement ensures that at least some existing FI entities remain in place to assist the Statewide FI in assuming statewide oversight.

29. By the bid deadline of August 21, 2024, the Department had received 136 bids in response to the RFP. After the bidding process was complete, Public Partnerships, LLC (“PPL”) was selected as New York’s first Statewide FI for a five-year term. The CDPAP Amendment, RFP #20524, and its amendments provide the framework for DOH and PPL to collaborate on a transition plan and contain essential items that must be included in the transition plan so as to facilitate a smooth transition to a single Statewide FI. Accordingly, following the bid award on

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workforce they serve. See Exhibit 7, RFP 20524 Amend 3.

September 27, 2024, DOH has worked and will continue to work with PPL to implement an entire transition by April 1, 2025.

30. Amendment #3 to RFP #20524 outlines Initial Transition Requirements and Initial Transition Costs. For the Initial Transition requirements, Section 4.10 of Amendment #3 clarifies that Initial Transition Activities are limited to:

- Executing agreements with subcontractors and managed care plans;
- Contacting every managed care plan and Local Department of Social Services to determine the consumers that need to be transitioned and the fiscal intermediaries they currently work with;
- Contacting each consumer to educate them about the transition; assisting consumers with educating their personal assistants about the transition;
- Hosting in-person or virtual informational sessions to provide information about the transition in a culturally competent manner;
- Onboarding personal assistants including enrolling in direct deposit and transferring documentation from the current fiscal intermediary;
- Specialized assistance for vulnerable subpopulations, e.g., people with disabilities, children, and limited English proficiency; and
- Developing and disseminating of any other public information relevant to the consumer, personal assistants, managed care plans and Local Departments of Social Services.” *Id.*

31. PPL will establish headquarters in New York, and its creation of at least 1,200 new jobs for New Yorkers will ensure it has a robust local presence and appropriate staff levels. PPL is in process of this relocation and has signed the necessary leases.

32. In order to fully realize PPL’s unique capabilities, DOH is working with PPL to refine and implement the transition plan and timeline to ensure a seamless transition.

33. Communications from DOH and PPL have been consistent with the transition plan as necessitated by statute. The SSL requires current FIs, including all Plaintiffs herein, to send notice 45 days in advance of ceasing operations for CDPAP. *See SSL § 365-f(4-d).* Therefore, DOH issued guidance to assist FIs with their obligations in this regard. The transition

process involves giving notice to consumers and PAs regarding the transfer of consumer contact information. The requested information is necessary to ensure continuity of care, consumer safety, and timely payment to CDPAP workers. However, although it is in the best interest of CDPAP consumers to initiate the administrative transition of consumer and PA information well before March of 2025, PPL will not begin fiscal intermediary services to those consumers before March 1, 2025, and consumers will have the choice to begin receiving services through PPL on March 1 or April 1, 2025. Therefore, current FIs will receive payment for their services through March 2025.

34. Sample notices were made available to FIs, including Plaintiffs, to assist with the notification requirements. *See Exhibit 2.* This communication coming directly from existing FIs is the most effective way to ensure against consumer or PA confusion. Due to the exigencies surrounding the fast-approaching change in law, on January 22, 2025, revised sample notices omitting any references to PPL's willingness or ability to help with registration were posted on the DOH website, which FIs are welcome to use instead. *See Exhibit 3.* DOH offers this alternative version without making any admissions or adopting Plaintiffs' interpretation of the original template notices.

35. As part of the transition to a new Statewide FI, all current FIs, including Plaintiffs, are required by law to provide specific assistance. SSL § 365-f (4-d) requires that FIs ceasing operations, such as Plaintiffs herein, must "not take any action that would prevent a personal assistant from moving to a new fiscal intermediary." Plaintiffs' requested injunction would allow them to do just that by preventing DOH from receiving the data and records needed to transition the personal assistants employed by the Plaintiffs.

36. The CDPAP Amendment bars Plaintiffs from participating in the program as of April 1, 2025, when it is required to cease CDPAP operations. Plaintiffs and other FIs can still be chosen as subcontractors to the Statewide FI, although DOH is unaware of the subcontractor status of any Plaintiff in this matter, especially because CDPAANYS has denied a request by counsel to disclose their membership to DOH. In addition, nothing prevents Plaintiffs from acting as an FI in the other various state and federally funded programs that utilize FIs or acting as a vendor for employers in other similar industries, such as payroll or health insurance processing.

**ANY DELAY OF THE TRANSITION AND IMPLEMENTATION OF THE CDPAP AMENDMENT WILL CAUSE IMMEDIATE HARM TO NEW YORK'S MEDICAID RECIPIENTS**

37. Plaintiffs' requested injunctive relief would inhibit DOH from complying with the statutory requirements of amended SSL § 365-f (*i.e.*, the CDPAP Amendment), leading to potential disruptions for consumers and PAs, and a devastating material financial impact on the State's projected annual savings to NYS Medicaid. DOH is currently working in conjunction with PPL to ensure that the transition will take place by the statutory deadline of April 1, 2025.

*Disruptions for Consumers*

38. The contract with PPL was signed on December 20, 2024 and approved by DOH on December 24, 2024.

39. At this moment, various bureaus at DOH are working to: (a) finalize the transition specifics between PPL and DOH; (b) review and vet PPL's proposed four regional home care providers and the partnership alliance of subcontractors; and (c) coordinate with stakeholders to

notify consumers and PAs of the administrative programmatic changes, to ensure a smooth transition.

40. Preventing DOH from moving forward with the transition to a Statewide FI, even for a week or two, will disrupt these processes and inhibit DOH from continuing the transition process and from meeting its statutory obligations. As a result, consumers may not get the necessary outreach prior to the transition, which could jeopardize their access to health care and payment to PAs could be delayed.

41. The transition to a Statewide FI by April 1, 2025 is required by law, and Plaintiffs herein do *not* challenge that underlying law. Thus, Plaintiffs' request to enjoin DOH's collection of contact data, and the notification of CDPAP consumers and PAs, will only create a situation where Plaintiffs' CDPAP consumers could potentially have a disruption in their health care because they did not receive proper notice of this administrative transition. In short, Plaintiffs are jeopardizing the well-being of their own CDPAP consumers, whom they have a duty to serve.

42. Indeed, the CDPAP Amendment, which Plaintiffs do not challenge, specifically disallows all other FIs, except the selected Statewide FI and its subcontractors, from operating within the CDPAP program in the State as of April 1, 2025. *See SSL § 365-f(4-a-1)(a).* Any delay in transitioning consumers and PAs to PPL will create a situation where PAs cannot be paid their wages. Should this occur, PAs would either go unpaid or refuse to work without pay, at which point CDPAP consumers would then be compelled to transition out of CDPAP to another New York Medicaid homecare program with less flexibility to select their caregiver.

43. To avoid that scenario, DOH and PPL have already begun the transition in a manner designed not to cause immediate harm to the FIs currently operating in New York, since

the FIs remain the FI of record through at least March 1, 2025. Additionally, current FIs will continue to be reimbursed for direct care costs and administrative costs in most cases until the end of March 2025. The FIs' role in this, however, is to assist with the data transfer and issue notices to avoid the catastrophic situation described above. *Plaintiffs are required by law to turn over the requested information.*

44. DOH has the legal authority to request data from FIs at any time. SSL § 363-c provides:

Notwithstanding any laws or regulations to the contrary, all . . . recipients of medical assistance program funds [which include FIs] **shall** make available to the commissioner... in a prompt fashion all . . . underlying books, records, documentation and reports, which may be requested by the commissioner . . . as may be determined necessary to manage and oversee the Medicaid program.

SSL § 363-c(4) (emphasis added). Plaintiffs are FIs and are required to comply with SSL § 363-c.

45. Furthermore, SSL § 365-f (4-d)(a)(i) specifically provides that, "Where [an FI] is ceasing operation or will no longer serve the consumer's area," that FI shall "[d]eliver written notice forty-five calendar days in advance to the affected consumers, consumer representatives, [and] personal assistants, the department, and any local social services districts or managed care plans with which the [FI] contracts." The minimum 45 days' notice prompted by the change in law requiring the transition by April 1, 2025, requires FIs to send the notices out by February 14, 2025.

46. SSL § 365-f(4-d)(c), which contains an exception wherein DOH would be required to provide the aforementioned written notice, does not exempt Plaintiffs from sending the required notices, because that exception does not apply to Plaintiffs. That subsection applies

only: (1) where an FI “is suspending or ceasing operation pursuant to an order under subdivision four-b . . . [2] or has failed to submit an offer for a contract, or [3] has been denied a contract under this section,” none of which applies here. Plaintiffs will be ceasing operations not because they were found to be in violation or because they failed to bid or failed to comply with the provisions of Social Services Law or regulations under Section 4-b, or were denied a contract; instead, Plaintiffs will be ceasing operations as mandated by law under the CDPAP Amendment.

47. To assist with the transition, DOH issued a guidance memorandum, dated December 6, 2024 to FIs, setting forth the data FIs were required to turn over. DOH requires the full names of CDPAP consumers, their Client Identification Number (a unique number assigned to Medicaid recipients), designated representative if any, contact information, preferred language, and PA name and contact information and wage information for those PAs. *See Exhibit 4.* Included in this notice is a link to a spreadsheet containing a list of the specific data information required, including consumers’ home address and mobile phone number. On January 16, DOH updated this spreadsheet to clarify which fields are not required, for example, social security numbers and dates of birth.

48. On December 23, 2024, DOH sent another notice to Plaintiffs and other FIs addressing privacy concerns and explaining that the HIPAA law allows current FIs to transfer the requested data to Medicare Managed Care Plans (“MMCPs”) and DOH without the need to receive consent from the consumer or PA prior to the data transfer. *See Exhibit 5.*

49. On January 29, 2025, DOH also sent a reminder to current FIs of their obligation to comply with the notification requirement in SSL § 365-f(4-d)(a)(i). A copy of this notice is annexed as **Exhibit 6**.

50. Despite these obligations, Plaintiffs seek to prohibit DOH from accessing this information that is essential to the transition. By seeking to avoid having to provide notice to consumers and PAs of their need to transition FI services to PPL by April 1, 2025, and by refusing to provide consumer and PA data, Plaintiffs seek to cause a disruption of services to the consumer, payments to the PA, or both. Because of the medical needs of CDPAP chronically ill and/or physically disabled consumers, it is especially important that their services not be disrupted.

*Confidentiality of Records.*

51. The transition, including DOH's data transfer requirements and notices, do not violate the Health Insurance Portability and Accountability Act ("HIPAA").

52. DOH has a relationship with the consumer because DOH is the single state agency charged with the administration of the Medicaid program in New York State. The consumers are Medicaid recipients. CDPAP is a service offered through Medicaid. DOH must oversee the operation of the program and ensure that the CDPAP service authorized for each consumer continues and that there are no administrative disruptions in the service as of April 1, 2025.

53. DOH is a covered entity, as defined by HIPAA. See 45 C.F.R. § 160.103. The HIPAA law permits a covered entity to disclose protected health information ("PHI") to another covered entity for health care operations activities of the entity receiving the information. 45 C.F.R. § 164.506(c). Care coordination, an essential function performed by DOH, is among the activities listed under health care operations 45 C.F.R. § 164.501. In compliance with DOH's December 6, 2024 memo, Plaintiffs would be disclosing the data to DOH, a covered entity that

has a relationship with the consumers, for purposes of health care operations. This is expressly permitted under HIPAA.

54. Plaintiffs may also disclose requested data to DOH because DOH is also considered a health oversight agency under HIPAA that is “authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance.” 45 C.F.R. § 164.501. A covered entity can disclose protected health information to a health oversight agency for oversight activities for appropriate oversight of the health care system. 45 C.F.R. § 164.512(d).<sup>6</sup>

55. Plaintiffs may also disclose the data to DOH because they are required to by law under SSL § 363-c. Under the Medicaid management provision, SSL § 363-c, all “recipients of medical assistance program funds shall make available to the commissioner... in a prompt fashion all underlying books, records, documentation and reports, which may be requested by the commissioner... as may be determined necessary to manage and oversee the Medicaid program.” HIPAA permits disclosures as required by law, including state law. HIPAA permits sharing between covered entities, including DOH in its administration of the Medicaid program, and consumers/PAs who are part of the program. In addition, 45 C.F.R. §§ 164.506, 164.501, and 164.512(d) authorize the transfer of information to ensure continuity of care and payment.

56. Pursuant to SSL § 363-c, DOH is also required to protect any information disclosed by FIs. SSL § 363-c(4) provides that “Any personally identifying information obtained

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<sup>6</sup> See 45 C.F.R. § 164.506. For basic background information on the HIPAA Privacy Rule, please see the U.S. Health Department of Health and Human Services website at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>.

pursuant to this subdivision shall remain confidential and shall be used solely for the purposes of this subdivision.” As the administrator of Medicaid, DOH must ensure that there are no lapses in homecare to Medicaid participants. In its guidance on December 6, 2024 and December 23, 2024, DOH directed that FIs should share consumer and PA contact and wage information with DOH and the MMCPs that contract with DOH on DOH’s HIPAA-compliant and secure platform. In turn, DOH has entered into a contract with PPL whereby PPL must comply with DOH’s strict Privacy, Security, and Confidentiality Requirements, which include that “[t]he awarded Statewide FI will comply fully with all current and future NYS privacy, confidentiality, and security policies and standards, as well as with all applicable State and federal requirements, in performance of this contract.” *See Exhibit 7* (RFP) at § 4.9. DOH has made every effort to safeguard and ensure the confidential handling of HIPAA-protected information.

*The Process for a smooth transition is well underway*

57. The process for a smooth transition has already begun. On December 6, 2024, the Department issued to MMCPs the CDPAP Statewide Fiscal Intermediary Transition Policy for Medicaid Managed Care Plans. A copy of this notice is annexed as **Exhibit 8**. Within this policy, the Department directed MMCPs to send the CDPAP Statewide FI Transition Policy for Current FIs, to the FIs with which they have existing contracts and to monitor compliance with the transition requirements. MMCPs were also instructed to facilitate the transfer of data from the current FIs they contract with to the Department. Existing FIs were given until January 15, 2025 to send this data back to the MMCPs with the expectation that MMCPs would provide this information back to the Department no later than January 22. The Department encouraged

MMCPs to support this transition by educating their Care Managers on the transition and through direct communications with members including call campaigns and additional outreach efforts.

58. Transition notification to some consumers has already occurred. On November 25, 2024, the Department sent MMCPs a member notification template with targeted mailing dates by county. The Department instructed the MMCPs to follow the below mailing schedule: November 25, 2024 to consumers in Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware counties; January 6, 2025 to consumers in Essex, Franklin, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Oneida, Ontario, Oswego, Otsego, St. Lawrence, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Yates counties; January 20, 2025 to consumers in Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster counties; on February 3, 2025 to consumers in Albany, Erie, Fulton, Genesee, Madison, Monroe, Montgomery, Niagara counties; on February 10, 2025, to consumers in Bronx, Kings (Brooklyn), Nassau, New York (Manhattan), Queens, Richmond, (Staten Island), Suffolk, Westchester, Onondaga, Orleans, Rensselaer, Saratoga, Schenectady, Warren, Washington, and Wyoming counties. Therefore, Plaintiffs' deadline to notify consumers located in Nassau County has already passed.

59. Also, as part of this large-scale and ongoing effort, data transfer of records is already occurring. Consumer identifiable information has been transferred to the contracted Statewide FI, PPL, including the names and contact information of consumers and PAs where available. The information from the MMCPs has been shared securely with the Department through the State's Health Commerce System ("HCS") and has been an ongoing process beginning in late November. The HCS is a secure, closed system used and operated by DOH for

data sharing with health providers who have applied to DOH and been granted proper clearance to access the system.

*Positive financial Impact on the State*

60. Beginning April 1, 2025, the state anticipates that the switch to a single Statewide FI will achieve \$500 million in savings annually.

61. If the Court were to grant Plaintiffs' preliminary injunctive relief, it would push the transition timeline back further, meaning that the State will not see the maximum potential savings. If the motion were granted, it would threaten the \$500 million the State stands to gain annually by switching to a Statewide FI.

62. If the CDPAP Amendment's savings as contemplated in State's budget were not to be realized, the State would then need to look elsewhere to achieve up to \$500 million in State savings annually for the Medicaid program. To achieve this, the State would be required to exercise its statutory authority within the Global Cap to issue a Medicaid Savings Allocation plan to generate up to \$500 million in savings annually through actions that include, but are not limited to, across the board rate cuts. These cuts would reduce Medicaid payments to nearly every healthcare provider in the State and eliminate any discretionary payment subject to administrative authority, such as quality incentives or quality improvement plans.

63. In sum, if the costs of CDPAP are not contained through administrative efficiencies, DOH would have to limit direct CDPAP services to consumers. Thus, Plaintiffs' lawsuit would have created the very situation it purports to seek to remedy.

64. Maintaining the financial health of the NYS Medicaid Program involves a series of challenging decisions. At this time, DOH is faced with the decision of how to effectuate

savings of \$500 million annually through the improved efficiency gained by using one contracted Statewide FI. DOH and the Legislature opted to attempt to fiscally shore up CDPAP via changes to programmatic administration, rather than make drastic cuts to direct-care services provided to these chronically ill and/or physically disabled individual consumers. The refusal of Plaintiffs to cooperate with the statutorily mandated transition threatens to upend a seamless transition to the new Statewide FI, to the detriment of CDPAP, consumers, and PAs.

**WHEREFORE**, it is respectfully requested that the Court deny Plaintiffs' motion for a preliminary injunction.

I affirm this        day of February, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law

Dated: February 14, 2025

  
AMIR BASSIRI