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Via NYSCEF January 23, 2025

Hon. Sharon Gianelli
Nassau County Supreme Court
100 Supreme Court Drive
Mineola, New York 11501

RE: *Caring Professionals, Inc. et al. v. New York State Department of Health et al.*
Index No. 601181- 2025

Your Honor:

This office represents Public Partnerships LLC ("PPL") in the above referenced matter. PPL opposes any temporary restraining order in this matter. Given the pending Order to Show Cause, PPL did not have the luxury of time to fully brief the TRO request and instead respectfully submits this letter correspondence as a brief outline of our position.

The CDPAP program is currently transitioning to a single statewide fiscal intermediary ("FI") based on a statutory mandate by the New York State Legislature designed to benefit New York State taxpayers and Medicare consumers alike. Public Partnerships LLC has been selected by the New York State Department of Health ("DOH") to begin providing services on April 1, 2025. PPL is currently in the middle of the transition to the statewide FI, and is in need of the information from the existing FI's which are not cooperating with DOH requests.

To date, PPL is aware of at least twelve (12) separate proceedings in courts across New York seeking to disrupt the implementation of the program all filed by unsuccessful applicants from the DOH procurement. All existing FI's were directed by DOH to turn over their client data to PPL by January 15, 2025 to allow PPL and DOH to rapidly facilitate the transition in time for the April 1, 2025 statutory deadline to implement the new CDPAP framework as mandated by law.

To date, no court has given any Petitioner / Plaintiff any relief. In *Corning Council for Assistance v. NYSDOH* (Index No.: 908147-24), a related Article 78 proceeding in Albany County Supreme Court involving the CDPAP transition, the Court denied Petitioner's request for a preliminary injunction on September 30, 2024. The Preliminary Injunction Decision and Order held that "the submission do[es] not demonstrate that petitioners are likely to be successful on the merits of these claims." The Third Department further denied Petitioner's request for a preliminary Injunction on November 21, 2024. Another case in the Eastern District of New York, *Jeanette*, similarly denied Petitioner's request for a preliminary injunction.

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Recently, in *Glidedowan LLC D/B/A All-American Homecare Agency, Inc. v. NYSDOH* (Index No.: 000009-2025), another disgruntled FI filed a Petition in Livingston County Supreme Court. Petitioner specifically challenged the turnover of client data to PPL and DOH, as seen in this proceeding. In *Glidowan*, the Court briefly granted an *ex parte* temporary restraining order on January 8, 2025, which ordered that ***that single Petitioner alone*** was not required to turn over client data until a scheduled hearing took place. After this hearing took place, the Court issued a Superseding Order to Show Cause on January 15, 2025, whereby the Court removed the temporary restraining order. Accordingly, even that single Petitioner would not escape the requirement to turn over client data by the January 15, 2025 deadline.

Importantly, the original temporary restraining order in *Glidowan* only applied to one single FI, not a broad, sweeping injunction applying to the turnover of ***all*** FI's client data as is requested by Plaintiff in this proceeding. Furthermore, the Court's decision to withdraw the temporary restraining order in a case which is largely analogous to the present matter, after hearing oral argument, is telling for both the lack of merit and great harm which would stem from issuing a temporary restraining order and/or preliminary injunction to delay the turnover of client data. The Court acted properly and wisely to withdraw this temporary restraining order which would disrupt the transition.

In addition to the recent case law precedent, Plaintiff is not entitled to a temporary restraining order and/or preliminary injunction in this matter because they are unable to meet any of the three prongs for issuing such order. A preliminary injunction requires the Court to analyze three (3) factors: "(1) the likelihood of [the plaintiff's] ultimate success on the merits, (2) irreparable injury to the [Plaintiff] absent granting of a preliminary injunction, and (3) a balancing of the equities". *Melvin v. Union Coll.*, 195 AD2d 447,448 (2d Dept 1993); *see also Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 (2005). While PPL looks forward to outlining its position more fully through formal pleadings and motion practice, in short PPL believes that Plaintiff falls far short of demonstrating the three (3) factors listed above required to warrant issuance of a temporary restraining order and preliminary injunction.

First, Plaintiff is highly unlikely to be successful on the merits. Thus far, similarly situated FI's have not been successful in their desperate efforts to obstruct the implementation of the statewide CDPAP transition, as outlined above. Plaintiff in this instance is simply the next unsuccessful FI in line in its attempt to delay and disrupt the implementation of the statewide transition to a single FI by April 1, 2025, as is required by law.

As to the second prong, Plaintiff cannot demonstrate irreparable injury, as any damages they allege could be very easily calculated. When a Petitioner fails to allege damages of a noneconomic nature, they thereby fail to demonstrate irreparable harm in the absence of a preliminary injunction. *Automated Waste Disposal, Inc. v. Mid–Hudson Waste, Inc.*, 50 A.D.3d 1072, 1073 (2008); *Dana Distribs. v. Crown Imports, LLC*, 48 A.D.3d 613 (2008). Any proprietary interest which Plaintiff alleges they are being unlawfully deprived of are damages of an economic nature and thus not suitable for demonstrating irreparable injury which would warrant a temporary restraining order.

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Lastly, the balance of equities tip firmly in favor of Defendants given the extremely tight deadline for transition to the single FI framework, set at April 1, 2025 by the New York State Legislature. PPL is working diligently at an unprecedented scale to implement this program by April 1 to ensure that there will be no disruption in servicing consumers' critical care needs on which their lives depend. There are currently approximately 250,000 New Yorkers who would suffer gravely should the transition not proceed smoothly. Any delay would be detrimental to the 250,000 New Yorkers who rely on CDPAP and would harm New York State's ability to achieve $500 million in Medicare savings which was the intent of the recent statutory change by the Legislature. *See*, Chapter 57, Part HH of the Laws of 2024.

Additionally, PPL has contracted with DOH to serve as the sole statewide FI and is contractually required to implement the statewide program by April 1, 2025. In implementing this program, PPL has in no way tortuously interfered with Plaintiff's clients, but rather has diligently worked to fulfill their contractual and statutory obligations to provide the required services to consumers in New York State.

For the reasons outlined above, we would ask the Court not to issue a temporary restraining order in this matter and to schedule a conference with all parties present prior to granting any relief requested by Plaintiff in its papers.

Very truly yours,

Featherstonhaugh, Clyne & McCardle, LLP

Jonathan S. McCardle

JSM:cc

cc: Edward C. Wipper (*via NYSCEF*)
Helena Lynch, Assistant Attorney General (*via NYSCEF)*

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