EXHIBIT A

(Ct. App. Dkt. No. 29.1)

S.D.N.Y. – N.Y.C.
24-cv-7071
Garnett, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of March, two thousand twenty-five.

Present:
José A. Cabranes,
Gerard E. Lynch,
Raymond J. Lohier, Jr.,
Circuit Judges.

Principle Homecare, LLC, Marton Care Inc., Prompt Home Care LLC, Care Connect CDPAP, Inc.,

Plaintiffs-Appellants,

v. 25-466

James V. McDonald, in his official capacity as Commissioner of the New York State Department of Health,

Defendant-Appellee.

The Appellants move for an injunction pending appeal, and to expedite the appeal. Upon due consideration, it is hereby ORDERED that the motion for an injunction pending appeal is DENIED. Appellants have not met the requisite standard for an injunction pending appeal. *See Agudath Isr. of Am. v. Cuomo*, 980 F.3d 222, 225–26 (2d Cir. 2020) (per curiam). It is further ORDERED that the request to expedite the appeal is DENIED as moot. The appeal has already been placed on the Court's Expedited Calendar pursuant to Local Rule 31.2(b). 2d Cir. 25-466, doc. 22.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

CERTIFIED COPY ISSUED ON 3/25/2025

EXHIBIT B

(Dist Ct. Dkt. No. 54)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/27/2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCIPLE HOMECARE, LLC, et al.,

Plaintiffs,

-against-

JAMES V. MCDONALD, in His Official Capacity as Commissioner of the New York State Department of Health,

Defendant.

24-CV-07071 (MMG)

ORDER

MARGARET M. GARNETT, United States District Judge:

Before the Court is Plaintiffs' emergency letter motion seeking a stay of the Court's order dismissing this case (Dkt. No. 50), pending appeal of that order to the Second Circuit. Dkt. No. 52. Defendant opposes the request for a stay.

Under Rule 62(d) of the Federal Rules of Civil Procedure, "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(d). Courts consider four factors in determining whether to grant a stay or injunction pending appeal: "(1) whether the movant will suffer irreparable injury absent the injunction, (2) whether a party will suffer substantial injury if the injunction is issued, (3) whether the movant has demonstrated a substantial possibility, although less than a likelihood, of success on appeal, and (4) the public interests that may be affected." *1199SEIU United Healthcare Workers East v. PSC Cmty. Servs.*, 597 F. Supp. 3d 557, 570 (S.D.N.Y. 2022); *see Delux Pub. Charter, LLC v. Cnty. of Westchester*, No. 22-CV-01930 (PMH), 2024 WL 3744167, at *1 (S.D.N.Y. July 25, 2024); *Marshak v. Reed*, 199 F.R.D. 110, 110 (E.D.N.Y. 2001). A balancing of these factors is required. "[T]he degree to which a factor must be present varies with the strength of the other factors, meaning that more of one factor excuses less of the other." *Loc. 1303-362 of Council 4 v. KGI Bridgeport Co.*, No. 12-CV-01785 (NG) (MLO), 2014 WL 555355, at *2 (D. Conn. Feb. 10, 2014). But irreparable harm and probability of success are "the two most critical factors." *Delux Pub. Charter, LLC*, 2024 WL 3744167, at *1; *Up State Tower Co., LLC v. Town of Kiantone, New York*, No. 16-CV-00069 (FPG), 2020 WL 1909981, at *2 (W.D.N.Y. Apr. 20, 2020).

A stay pending appeal "is not a matter of right, even if irreparable injury might otherwise result." *Frey v. Nigrelli*, No. 21-CV-05334 (NSR), 2023 WL 2929389, at *2 (S.D.N.Y. Apr. 13, 2023). "Granting injunctive relief is an extraordinary remedy" and the "burden to demonstrate all four factors is on Plaintiffs as the moving parties." *IMS Health Inc. v. Sorrell*, 631 F. Supp. 2d 429, 431 (D. Vt. 2009). The burden to show that an injunction is justified under the circumstances is a heavy one. *See id.* ("Their burden is high because they seek an extraordinary

remedy to prevent enforcement of a statute this Court has previously upheld and is presumed valid."); *see also Brown v. Gilmore*, 553 U.S. 1301, 1303 (2001) (refusing to issue an injunction pending certiorari where applicants sought injunction against enforcement of a "presumptively valid state statute").

The Court begins with the "success on the merits" factor, because under the circumstances of this case, where Plaintiffs' are seeking to halt a duly-enacted state statute, the strength and weight of the other factors is intertwined with the factor requiring a showing of a substantial possibility of success on appeal. *See Turley v. Giuliani*, 86 F. Supp. 2d 291, 295 (S.D.N.Y. 2000) ("Because the violation of a constitutional right is the irreparable harm asserted here, the two prongs of the preliminary injunction threshold merge into one: in order to show irreparable injury, plaintiff[s] must show a likelihood of success on the merits."). And for all of the reasons stated in the Court's order granting the motion to dismiss, the Court concludes that Plaintiffs have not demonstrated a substantial possibility of success on the merits on appeal.

Plaintiffs' claimed irreparable harm is thus undermined by the fact that the Court has held that Plaintiffs have failed to state a claim under any of the constitutional theories set forth in their Complaint. But even if the Court considered irreparable harm without reference to the substantive merits of the claims, a favorable finding on this factor would not be guaranteed. Plaintiffs assert that their businesses will have no choice but to close once they begin transferring their patients to the Statewide FI on March 1, 2025, and in any event by no later than April 1, 2025, because they have no current line of business other than serving as an authorized CDPAP FI. *See* Dkt. No. 33 ("PI Br.") at 23–24. While it is well-settled in this Circuit that the total loss of a business will almost always constitute irreparable harm, the argument is less persuasive here because the Plaintiffs' businesses operate in an entirely state-created market where the State is the only payor. Accordingly, unlike a business operating in a free and entirely private market, here Plaintiffs (and the courts) would have an array of options to direct the State to restore Plaintiffs to something approaching their current status, should Plaintiffs ultimately be successful on their claims. Plaintiffs' other ground for asserting irreparable harm is that an asserted deprivation of a constitutional right (here, under the Contracts Clause, Takings Clause, Equal Protection, and Due Process) is *per se* irreparable harm under Second Circuit precedent. *See* PI Br. at 22–23. It is far from clear that the cases cited by the Plaintiffs for this proposition go as far as a rule that *any* allegation of a constitutional deprivation amounts to *per se* irreparable harm, particularly under the facts of this case. *See, e.g.*, *Donohue v. Mangano*, 886 F. Supp. 2d 126, 150 (E.D.N.Y. 2012) (An allegation of a constitutional violation "is insufficient to automatically trigger a finding of irreparable harm.").

But even if the Court assumes for purposes of this emergency motion that Plaintiffs have established irreparable injury, the State has also established that it will suffer injury and the public interest of Medicaid patients enrolled in CDPAP will be harmed if the final implementation of the CDPAP Amendment is halted or enjoined at this late date when the transition from the prior system to the new Statewide FI is underway. *See* Dkt. No. 40 at 26.; *see also Save Our Consumer Directed Home Care, Inc. v. New York State Department of Health, et al.*, Index No. 907872/2024, NYSCEF Doc. No. 67 at 28 (Sup. Ct. Albany Cnty. Feb. 7, 2025) ("In light of the public interest in regulating the FI industry, reducing administrative costs, and using those savings to benefit Medicaid consumers, the Court finds that petitioner's claims of

financial injury do not establish the requisite irreparable harm that would warrant the issuance of a preliminary injunction in its favor. Likewise, the Court finds that the balance of the equities weighs in favor of denying petitioner's application for a preliminary injunction . . . If the preliminary injunction were granted the State would be required to find $200 million dollars—the amount of savings to the CDPAP Program through the statutory amendments—to fund the CDPAP Program this year. Thus, the Court concludes that the balancing of the equities weighs in respondents' favor.").

Taking all of the factors into account, the Court finds that Plaintiffs have not met their burden. Accordingly, the motion for a stay pending appeal is DENIED. The Clerk of Court is respectfully directed to terminate Dkt. No. 52.

Plaintiffs are free, of course, to seek a stay from the Second Circuit under F.R.C.P. 62(g) or the Federal Rules of Appellate Procedure.

Dated: February 27, 2025
New York, New York

SO ORDERED.

MARGARET M. GARNETT
United States District Judge

EXHIBIT C

(Dist Ct. Dkt. No. 51)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PRINCIPLE HOMECARE, LLC, et al.,

Plaintiffs,

-against-

24 **CIVIL** 7071 (MMG)

JUDGMENT

JAMES V. MCDONALD, in His Official Capacity as Commissioner of the New York State Department of Health,

Defendant.

---X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion & Order dated February 26, 2025, that Defendant's motion to dismiss is GRANTED and Plaintiffs' preliminary injunction motion is DENIED.

Dated: New York, New York
February 26, 2025

TAMMI M. HELLWIG
Clerk of Court

BY: ______________________
Deputy Clerk

EXHIBIT D

(Dist Ct. Dkt. No. 50)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/26/2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCIPLE HOMECARE, LLC, et al.,

Plaintiffs,

-against-

JAMES V. MCDONALD, in His Official Capacity as Commissioner of the New York State Department of Health,

Defendant.

24-CV-07071 (MMG)

OPINION & ORDER

MARGARET M. GARNETT, United States District Judge:

Plaintiffs Principle Homecare, LLC; Marton Care Inc.; Prompt Home Care LLC; and Care Connect CDPAP, Inc. (collectively, "Plaintiffs") are four small Fiscal Intermediaries ("FIs") that have brought this action against James McDonald, in his official capacity as Commissioner of the New York State Department of Health ("Defendant" or the "State"), challenging the constitutionality of a statutory amendment to New York State's Consumer Directed Personal Assistance Program ("CDPAP").

CDPAP is a Medicaid program which allows patients who receive home care services to, in certain circumstances, hire family members or friends as their caregivers, with their wages fully paid by Medicaid. Under the program, patients directly employ their caregivers. FIs, such as Plaintiffs, are private entities authorized by the State to assist patients with a range of administrative, financial, and compliance services associated with employing their caregivers under CDPAP. Today, an estimated 280,000 Medicaid beneficiaries in New York receive CDPAP services, and approximately 600 Fiscal Intermediaries assist these consumers. The entire CDPAP program, and indeed the existence of FIs, is a State creation wholly funded by the government through Medicaid.

The contested amendment (the "CDPAP Amendment") is a law incorporated into New York's budget for Fiscal Year 2024-2025, effective as of April 20, 2024, that would replace existing FIs with a single Statewide FI (the "Statewide FI") by April 1, 2025.

Defendant has moved to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs are seeking a preliminary injunction enjoining the implementation and enforcement of the CDPAP Amendment, pending the resolution of this action.

The Court is sympathetic to the personal hardship worked on the Plaintiffs by the effects of the CDPAP Amendment. Nonetheless, after careful consideration of the pleadings, briefs, and the oral arguments, and for the reasons stated herein, the Court has concluded that Plaintiffs have failed to state a claim under any of their constitutional theories. Accordingly, Defendant's motion to dismiss is GRANTED and Plaintiffs' preliminary injunction motion is DENIED as moot.

FACTUAL BACKGROUND[1]

I. PRE-AMENDMENT STATUTORY AND REGULATORY BACKGROUND

Medicaid is a federal program that subsidizes the provision of medical care to vulnerable populations. Compl. ¶ 22. Each state participating in Medicaid operates a state-specific Medicaid program for their citizens that is regulated, overseen, and partially funded by the federal government. Compl. ¶¶ 22–23.

In 1995, New York established CDPAP, a Medicaid-funded program pursuant to which patients (referred to as "consumers" in the statute) directly hire their care providers (referred to as "personal assistants" in the statute) to provide home care services. Compl. ¶¶ 21, 25. The

[1] Unless otherwise indicated, the facts that follow are drawn from Plaintiffs' Complaint and are taken as true for purposes of deciding the motion to dismiss.

purpose of CDPAP is "to permit chronically ill and/or physically disabled individuals receiving home care services . . . greater flexibility and freedom of choice in obtaining such services." N.Y. Soc. Serv. Law § 365-f(1); Compl. ¶¶ 2, 26. Under CDPAP, vulnerable individuals are afforded the opportunity to receive necessary care, such as help with intimate daily activities like toileting and bathing, in the comfort of their homes from people they already know and trust. Compl. ¶¶ 27, 33. In contrast to licensed home care agencies, under CDPAP, friends, non-spousal family members, and trusted confidants are allowed to be caregivers. Compl. ¶ 27. Currently, there are an estimated 280,000 Medicaid beneficiaries in New York who receive CDPAP services. Compl. ¶ 31.

While CDPAP empowers consumers to manage their home care needs, consumers are also responsible for managing the administrative, financial, and compliance tasks associated with receiving home care under the program and thus having a household employee. Compl. ¶ 36. For example, the consumer is responsible for recruiting, hiring, and supervising his or her personal assistant, as well as setting up and agreeing upon the terms of employment. Compl. ¶¶ 32, 34. CDPAP facilitates the compensation of personal assistants by providing consumers individual budgets, funded by Medicaid, to hire and pay the assistant. Compl. ¶¶ 2, 26–27.

To assist consumers in managing these responsibilities, the law establishing CDPAP authorized Fiscal Intermediaries, such as Plaintiffs, who are defined as "entit[ies] that provide[] fiscal intermediary services and ha[ve] contract[s] for providing such services with the [D]epartment of [H]ealth and [are] selected through the procurement process described [in this section]." N.Y. Soc. Serv. Law § 365-f(4-a)(i); Compl. ¶ 37. Fiscal intermediary services are statutorily enumerated services "performed on behalf of the consumer," which involve the back-end administration of employing personal assistants, including processing wages and benefits;

calculating taxes and wage withholding; ensuring compliance with worker's compensation, disability, and unemployment insurance requirements; and maintaining personnel records. N.Y. Soc. Serv. Law. § 365-f(4-a)(a)(ii); Compl. ¶ 38. In addition to these payroll-processing duties, FIs are also responsible for "establishing the amount of each [personal] assistant's wages," 18 N.Y.C.R.R. § 505.28(j)(1)(i); screening potential personal assistants before they provide care services to ensure they comply with certain state health requirements, N.Y. Soc. Serv. Law. § 365-f(4-a)(a)(ii)(E); and monitoring the consumer's ability to continue fulfilling his or her responsibilities under the program. 18 N.Y.C.R.R. § 505.28(j)(1)(v); Compl. ¶ 46.

FIs are paid in one of two ways, depending on whether the consumer is enrolled in Medicaid Managed Care ("MMC") or Fee-For-Service ("FFS") Medicaid. Under MMC Medicaid, FIs are paid by Medicaid managed care organizations ("MMCOs"), which are companies that contract with states to provide healthcare services to consumers. Compl. ¶ 49. Under FFS Medicaid, FIs contract with local social services districts and are paid directly by the Department of Health ("DOH"). Compl. ¶¶ 51–52. Under both MMC and FFS Medicaid, FIs are ultimately reimbursed for the direct costs of care and administrative costs by DOH with Medicaid funds at different rates set by DOH. Compl. ¶¶ 49–51. The contracts that each of the four Plaintiffs in this case have are all with private MMCOs.

The contracts FIs enter into with MMCOs and local social services districts are "generally based on the same standard or template and, as relevant here, contain the same material terms." Compl. ¶ 52. The contracts have one-year terms that automatically renew absent termination, which has the practical effect of keeping the contracts in effect for extended periods of time. Compl. ¶ 53; *see generally* Preis MTD Decl. Exs. 2–5. The contracts are terminable by either party without cause upon a certain notice period, and terminate

automatically if either party is "excluded, suspended, or barred from participating in any government health care program." Compl. ¶¶ 53–54; *see generally* Preis MTD Decl. Exs. 2–5. DOH is also statutorily permitted to terminate FI contracts or suspend or limit an FI's rights and privileges under the contract, if an FI "failed to comply with the provisions of [the CDPAP statute] or regulations." Compl. ¶ 54; *see also* N.Y. Soc. Serv. Law § 365-f(4-b)(a).

II. THE CDPAP AMENDMENT

On April 20, 2024, the Governor approved the New York State Budget for FY 2024–25, which included the CDPAP Amendment. Compl. ¶ 59. The CDPAP Amendment changed the definition of "Fiscal intermediary" to "Statewide fiscal intermediary," N.Y. Soc. Serv. Law § 365-f(4-a)(i), and added a new provision, N.Y. Soc. Serv. Law § 365-f(4-a-1)(a), pursuant to which, as of April 1, 2025, "no entity shall provide, directly or through contract, fiscal intermediary services" as part of the program, "[e]xcept for the [Statewide FI] and its subcontractors." Compl. ¶ 61. Essentially, the CDPAP Amendment provides for the creation of a single Statewide FI to administer FI services for all consumers in CDPAP, thereby replacing all other FIs currently operating in the state.

The procurement process for appointing the Statewide FI involved soliciting bids from entities which, in order to be eligible, must "at a minimum . . . [be] capable of performing statewide fiscal intermediary services with demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce, ha[ve] experience serving individuals with disabilities, and as of April [1, 2024] [are] providing services as a fiscal intermediary on a statewide basis with at least one other state." N.Y. Soc. Serv. Law § 365-f(4-a)(b)(i)(B). The CDPAP Amendment requires that the entity ultimately appointed as the Statewide FI not only meet the aforementioned criteria, but also "offer[] the best value for providing the services required pursuant to this section and the needs of consumers." N.Y. Soc.

Serv. Law § 365-f(4-a)(b)(iii). None of the Plaintiffs satisfied all of these criteria and thus were not eligible to apply to be the Statewide FI.

The Statewide FI is required to subcontract with at least four other pre-existing FIs that meet specified criteria to administer FI services. N.Y. Soc. Serv. Law § 365-f(4-a)(a)(ii-b) ("The [Statewide FI] shall further subcontract to facilitate the delivery of [FI] services with at least one entity per rate-setting region that has a proven record of delivering services to individuals with disabilities and the senior population, and has been providing [FI] services since January [1, 2012]; provided that such subcontractor shall be required to provide any delegated fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the available workforce, and shall comply with the requirements for registration as a fiscal intermediary set forth in . . . this section."). At oral argument, the State represented that the Statewide FI is also allowed to contract with additional subcontractors, which need not meet the specified criteria for the aforementioned four FIs. Tr. 14–15.[2] Any FI that does not receive a subcontract must cease operations on or before April 1, 2025, and must provide at least 45 days' advance notice to the affected consumers. *See* N.Y. Soc. Serv. Law § 365-f(4-d). None of the Plaintiffs were selected as subcontractors by the Statewide FI.

On June 17, 2024, DOH issued Request for Proposals #20524 (the "RFP") to start the procurement process to select the Statewide FI. Compl. ¶ 90. On August 7, 2024, DOH issued an amended RFP. Compl. ¶ 91. On September 30, 2024, DOH announced that it had selected Public Partnerships LLC to be the Statewide FI. *See* N.Y. GOVERNOR'S OFF., *Governor Hochul Announces Next Steps in Plans to Strengthen Home Care Services for New Yorkers* (Sept. 30,

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[2] Citations to the transcript of the February 20, 2025 oral argument shall take the form of "Tr. at [pincite]."

2024), https://www.governor.ny.gov/news/governor-hochul-announces-next-steps-plans-strengthen-home-care-services-new-yorkers.

III. THE PLAINTIFFS

Plaintiffs are four small FI businesses who have provided FI services in New York State. Compl. ¶ 12. All the Plaintiffs have "longstanding" existing contracts with private MMCOs that, absent the CDPAP Amendment, would have remained in effect beyond April 1, 2025. Compl. ¶¶ 111 (identifying a contract between Principle Homecare and Elderplan Inc. that has been in effect since 2017); 121 (identifying a contract between Marton Care and Centers Plan for Healthy Living, LLC that has been in effect since 2017); 131 (identifying a contract between Prompt Home Care and contract with Centers Plan for Healthy Living, LLC that has been in effect since approximately late 2017); 142 (identifying a contract between Care Connect and Centers Plan for Healthy Living, LLC that has been in effect since 2018). Additionally, none of the Plaintiffs have any non-CDPAP operations, or any operations outside of New York State. Compl. ¶¶ 65, 114, 124, 135, 145.

Founded in 2015, Principle Homecare, LLC ("Principle Homecare") is a minority-owned business that serves over 200 CDPAP consumers—who speak a variety of non-English languages, including Chinese, Haitian-Creole, Korean, and Spanish—throughout New York City and the surrounding counties. Compl. ¶¶ 15, 105–06. Principle Homecare monitors and prevents potential fraud by undertaking several measures, including conducting home visits, conducting daily rollcalls to ensure the consumer and personal assistant are in the same location, clocking personal assistants in and out, and reporting instances of noncompliance. Compl. ¶ 110. Under the expectation that it would continue to perform FI services "for many years to come," Principle Homecare has "spent significant sums" building and investing in its business,

including investing tens of thousands of dollars in software and technology to service its consumers. Compl. ¶¶ 109, 112.

Founded in 2017 by a former CDPAP personal assistant, Marton Care Inc. ("Marton Care") serves approximately 120 CDPAP consumers in all five boroughs of New York City and the surrounding counties, as well as Albany, Broome, Cattaraugus, Erie, Lewis, Monroe, Niagara, Oneida, Schoharie, and Washington Counties. Compl. ¶¶ 14, 115–17. Marton Care monitors the locations from which personal assistants clock in and out and has immediately reported instances of potential fraud. Compl. ¶ 120. Under the expectation that it would continue to perform FI services "for many years to come," Marton Care has spent "significant sums" building and investing in its business, including investing tens of thousands of dollars to open a new office in Amherst, New York. Compl. ¶¶ 119, 122.

Formed in 2017, Prompt Home Care LLC ("Prompt Home Care") serves over 700 CDPAP consumers across New York City and the surrounding counties, with a focus on the Dominican community in the Bronx. Compl. ¶¶ 15, 125–27. Nearly all of Prompt Home Care's employees speak Spanish, and virtually all of them are from the Dominican community. Compl. ¶ 127. Prompt Home Care has a full-time employee dedicated to guarding against potential fraud by verifying clock-ins, reviewing and cross-checking time sheets, and raising any discrepancies to compliance. Compl. ¶ 130. Under the expectation that it would continue to perform FI services "for many years to come," Prompt Home Care has spent "significant sums" building and investing in its business, including investing hundreds of thousands of dollars to open a second storefront location in the Bronx. Compl. ¶¶ 129, 132.

Care Connect CDPAP, Inc. ("Care Connect") was founded in 2016 by two Ukrainian immigrants and serves approximately 500 consumers across all five boroughs of New York City,

the surrounding counties, as well as Albany, Erie, and Niagara Counties. Compl. ¶¶ 16, 136–38. Care Connect has competencies in a variety of languages, including Albanian, Chinese, Hindu, Punjabi, Russian, Spanish, and Ukrainian. Compl. ¶ 138. Care Connect monitors potential fraud by monitoring clock-ins and clock-outs, and one of its owners verifies timesheets. Compl. ¶ 141. Under the expectation that it would continue to perform FI services "for many years to come," Care Connect has spent "significant sums" building and investing in its business, including investing approximately $100,000 to customize its client-facing software. Compl. ¶¶ 140, 143.

PROCEDURAL HISTORY

On September 18, 2024, Plaintiffs filed their Complaint. Dkt. No. 1 ("Compl."). In the Complaint, Plaintiffs assert that the CDPAP Amendment (1) violates the Contracts Clause, Compl. ¶¶ 146–61; (2) violates the Takings Clause, Compl. ¶¶ 162–81; (3) violates the Equal Protection Clause, Compl. ¶¶ 182–92; and (4) violates rights protected by substantive due process under the Fourteenth Amendment, Compl. ¶¶ 193–203. Plaintiffs' challenges to the CDPAP Amendment are both facial and as applied.

On November 1, 2024, the State moved to dismiss the complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. No. 17.[3] On January 3, 2025, Plaintiffs moved for a preliminary injunction. Dkt. No. 32.[4] On February 13, 2025,

[3] Defendant's opening brief is Dkt. No. 18 ("MTD Br."). In support of its motion to dismiss, Defendant submitted a declaration from Jessica Preis ("Preis MTD Decl."). The Court will refer to exhibits as they are referenced in the Preis Declaration, *e.g.*, "Ex. 1." Plaintiffs' opposition brief is Dkt. No. 26 ("MTD Opp."), and Defendant's reply brief is Dkt. No. 31 ("MTD Reply").

[4] Plaintiffs' opening brief is Dkt. No. 33 ("PI Br."). In support of their motion for a preliminary injunction, Plaintiffs submitted declarations from Akiva Shapiro ("Shapiro Decl."), Sasha Guillaume ("Guillaume Decl."), Gershon Marton ("Marton Decl."), Eli Rosenthal ("Rosenthal Decl."), and Diana Yakhnis ("Yakhnis Decl."). Defendant's opposition is Dkt. No. 40 ("PI Opp."). In support of its opposition brief, Defendant submitted a declaration from Jessica Preis ("Preis PI Decl."). Plaintiffs' reply brief is Dkt. No. 42 ("PI Reply"). In further support of its motion, Plaintiffs submitted a supplemental declaration from Akiva Shapiro ("Shapiro Supp. Decl.").

Defendant filed a notice of supplemental authority, attaching a recent state court decision denying the petitioner's application for a preliminary injunction which sought to enjoin DOH and Commissioner McDonald from implementing the CDPAP Amendment, in further support of its motion to dismiss and its opposition to Plaintiffs' motion for a preliminary injunction. Dkt. No. 48 (*Save Our Consumer Directed Home Care, Inc. v. N.Y. Dep't of Health*, Index No. 907872/2024, NYSCEF Doc. No. 67 (Sup. Ct. Albany Cnty. Feb. 7, 2025)). On February 18, 2025, Plaintiffs filed a letter-response regarding the persuasive weight of the *Save Our Consumer* decision. Dkt. No. 49.

On February 20, 2025, the Court held oral argument on both motions.

MOTION TO DISMISS

I. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient factual allegations in the complaint that, accepted as true, "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Courts are not required to accept as true legal conclusions, and "[t]hreadbare recitals of the elements of a cause of action, supported by merely conclusory statements, do not suffice." *Ashcroft*, 556 U.S. at 678. A plaintiff is not required to provide "detailed factual allegations" in the complaint, but must assert "more than labels and conclusions [ ] and a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. Ultimately, the facts pleaded in the complaint "must be enough to raise a right to relief above the speculative level." *Id.* The court must accept the allegations in the pleadings as true and draw all reasonable inferences in favor of the plaintiff. *See ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007).

On a Rule 12(b)(6) motion, the court may consider only the complaint, documents attached to the complaint, matters of which a court can take judicial notice, or documents properly considered "integral" to or incorporated by the complaint, *i.e.*, documents as to which the complaint "relies heavily upon [their] terms and effect." *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

II. DISCUSSION

A. Contracts Clause

The Contracts Clause states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. While the language of the Contracts Clause appears absolute, the constitutional protections of the Contracts Clause are balanced against the State's police powers: "[The Contracts Clause] does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power . . . is paramount to any rights under the contracts between individuals." *Manigault v. Springs*, 199 U.S. 473, 480 (1905); *see also Home Bldg. & Loan Ass'n v. Blaisdell (Blaisdell*), 290 U.S. 398, 437 (1934); *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983); *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 992–93 (2d Cir. 1997).

In assessing the constitutionality of a state law under the Contracts Clause, courts assess whether the challenged state law (1) substantially impairs an existing contractual obligation; (2) advances a significant and legitimate public purpose; and (3) is drawn in an appropriate and reasonable manner.[5] *See Melendez v. City of New York*, 16 F.4th 992, 1031 (2d Cir. 2021);

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[5] As observed by the Second Circuit in *Melendez*, the Supreme Court has articulated this test as a three-step and a two-step test. *See Melendez v. City of New York*, 16 F.4th 992, 1031 (2d Cir. 2021)

Buffalo Tchrs. Fed'n v. Tobe, 464 F.3d 362, 367 (2d Cir. 2006); *see also Donohue v. Cuomo*, 980 F.3d 53, 78 (2d Cir. 2020) ("Plaintiffs must establish: (1) the existence of the alleged contractual obligation; (2) the State's impairment of that obligation; (3) the substantiality of that impairment; and (4) that the impairment was not a reasonable and necessary means of effectuating a legitimate public purpose."). In other words, in order to state a Contracts Clause claim, Plaintiffs must plausibly allege that the CDPAP Amendment substantially impairs their existing contractual obligations, and that the CDPAP Amendment was not a reasonable and appropriate means of advancing a legitimate public purpose. With respect to their facial challenge, Plaintiffs must also plausibly allege that the CDPAP Amendment is unconstitutional in all applications.

For the reasons stated herein, even when viewing the factual allegations and drawing all reasonable inferences in favor of Plaintiffs, the Court finds that Plaintiffs fail to state facial and as-applied Contracts Clause claims.

1. There is No "Impairment" Within the Meaning of the Contracts Clause

The primary purpose of the Contracts Clause was to protect bargained-for economic agreements of private parties against state interference that undermined those rights and responsibilities, particularly where that interference privileges one party over the other or unilaterally releases one party from its obligations without the compensation that contractual rights would otherwise provide. The inclusion of the Contracts Clause in the Constitution "was prompted, in large part, by a post-Revolutionary War economic crisis," in which states sought to

(comparing *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400 (1983) (identifying a three-step test) with *Sveen v. Melin*, 584 U.S. 811 (2018) (identifying a two-step test)). Whether the test is three or two steps is of no import as "[t]he substance of the inquiry has remained the same." *Melendez*, 16 F.4th at 1031.

cancel pre-existing debt obligations to assist "beleaguered small debtors . . . thereby bringing credit markets to the brink of collapse." *Melendez*, 16 F.4th at 1017. In the view of Chief Justice Marshall, the Clause "established a great principle, that contracts should be inviolable." *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 206 (1819); *see also Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978) ("The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under law, and the parties are entitled to rely on them.").

Here, Plaintiffs cannot identify a single provision, right, or obligation under their contracts with MMCOs that has been altered or extinguished by the CDPAP Amendment. Indeed, the MMCO contracts contain an express term that they will terminate if either party is "excluded, suspended, or barred" from participation in the Medicaid program or from receiving Medicaid funds.[6] This is hardly surprising, as the entire existence of the FIs is a creation of New York's Medicaid-funded CDPAP program, and the entire economic relationship between FIs and MMCOs, and FIs and consumers, depends upon the flow of Medicaid reimbursement dollars from the State.

Plaintiffs have tried to argue that this express contractual term only applies to bars, exclusions, or suspensions that derive from misconduct, MTD Opp. at 6, but cannot point to any language in the contracts that limits the term's effects to misconduct or wrongdoing. And even if

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[6] In addition, the State points to the contractual provisions that require compliance with state law and regulations, and therefore contemplate compliance with any changes in state law and the Medicaid program, including those that curtail FIs' participation in CDPAP. The Court need not address these provisions in any depth because of the clarity of the contractual provision discussed above.

a reasonable interpretation of "barred" or "suspended" in these circumstances *could* suggest a limitation to misconduct (and at the pleading stage the Court should accept a reasonable reading that favors the Plaintiffs), the plain meaning of the contractual term taken as a whole ("excluded, suspended, or barred") simply does not support a reading that limits its application to findings of misconduct. Plaintiffs' subjective belief that only misconduct was likely to trigger the application of that term cannot be given any weight where the contractual language is not ambiguous. *See, e.g., Flynn v. McGraw Hill LLC*, 120 F.4th 1157, 1164–66 (2d Cir. 2024) (under New York law, "[t]he court is to determine an unambiguous contract's meaning without considering 'extrinsic evidence of the parties' intent, such as their course of dealing" (citing *LaSalle Bank Nat'l Ass'n v. Nomura Asset Cap. Corp.*, 424 F.3d 195, 207 (2d Cir. 2005)). Nor would Plaintiffs' suggested limitation make any sense in light of the contracts' purpose to facilitate the provision and reimbursement of FI services. As noted above, the contractual relationship between FIs and MMCOs or CDPAP consumers has no meaning or existence in the absence of Medicaid funds. It makes perfect sense that if either party was deemed ineligible to receive Medicaid funds, for any reason at all, the counterparty would have no right to enforce performance of actions for which no payment would be forthcoming. Plaintiffs thus bargained for and expressly agreed to the termination of their contracts if they, or their counterparties, could no longer participate in the Medicaid program and receive Medicaid funds.[7]

[7] The contracts at issue are largely form or template contracts supplied by the State available on the DOH's website. *See* Administrative Agreement for the Provision of Fiscal Intermediary Services for the Consumer Directed Personal Assistance Program, *available at* https://www.health.ny.gov/health_care/medicaid/redesign/docs/cdpas_fi_plan_final_model_agreement.pdf. However, the fact that Plaintiffs did not bargain over specific terms does not change the Contracts Clause analysis. If anything, it highlights that the contracts were intended to be closely tied to, and serve the purpose of, the CDPAP regulations, rather than any private economic bargain that existed outside of a State-created and State-funded program.

In other words, it is the operation of the contracts themselves, on their express terms, that has brought about the circumstance Plaintiffs complain of—the impending end of their contractual relationships with MMCOs and consumers. Plaintiffs' failure to identify any contractual provision that is altered or nullified by the CDPAP Amendment is fatal to their Contract Clause claim. *Cf. Melendez*, 16 F.4th at 1034 (City law cancelled personal guaranty provisions of commercial leases, leaving landlords without the benefit of the bargain that had induced the lease agreement and the amount of rent charged); *DoorDash*, 692 F. Supp. 3d at 290(City law capped fees that restaurants paid for delivery services, even where existing contracts contained higher fees); *Allied Structural Steel*, 438 U.S. at 246 (state law imposed retroactive immediate pension funding charges, modifying vesting requirements). Plaintiffs attempt to argue that the CDPAP Amendment also violates the Contract Clause because it eliminates their contractual relationships with MMCOs or renders those business relationships valueless. But not every statute or state action "which affects the value of a contract impair[s] its obligation." *Curtis v. Whitney*, 80 U.S. (13 Wall.) 68, 70 (1871); *see also Donohue*, 980 F.3d at 80–81. Here, Plaintiffs' real complaint is that the State triggered an existing contract provision, by changing the FI program and, as a result, excluding them from receiving Medicaid funds effective April 1, 2025. Plaintiffs may seek to advance other arguments about the propriety of their exclusion from the FI program, *see infra* Sections II(B)–(D), but that exclusion cannot support a Contracts Clause claim because no contractual provision or right has been "impaired," any more than a restaurant that has lost its liquor license could bring a Contracts Clause claim based on their inability to continue doing business with their liquor wholesalers.

2. Even if There is "Substantial Impairment," the Legislation is Reasonable and Appropriate to Serve a Significant and Legitimate Government Purpose

Even if Plaintiffs had plausibly alleged that the CDPAP Amendment is a "substantial impairment" to their contracts, the Court finds that the CDPAP Amendment is a reasonable and appropriate means to carry out a significant and legitimate government purpose, even considering the standards to be applied at the pleading stage.[8]

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[8] Although the Court has already found that Plaintiffs have not plausibly alleged "impairment" within the meaning of the Contracts Clause, for purposes of analyzing the second and third steps the Court assumes *arguendo* that if there were "impairment" it would be "substantial" under the caselaw.

The Second Circuit treats the aggrieved party's reasonable expectations as the touchstone of the analysis: "Impairment is greatest where the challenged government legislation was wholly unexpected." *Sanitation*, 107 F.3d at 993. One of the expectations factors courts consider is whether the aggrieved party operates in a "heavily regulated industry." *Sullivan v. Nassau Cnty. Interim Finance Auth.*, 959 F.3d 54, 64 (2d Cir. 2020). For those who contract and do business in heavily regulated industries, "the expected costs of foreseeable future regulation are already presumed to be priced into the contracts formed under the prior regulation." *All. of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32, 55 (D. Conn. 2013); *see also Elmsford Apartment Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148, 169 (S.D.N.Y. 2020). The State argues here that, given the heavily regulated nature of Medicaid and government healthcare programs generally, Plaintiffs could not reasonably expect that their contracts would renew indefinitely or that future regulatory changes to CDPAP would not bar or exclude them from the program. This regulatory history includes specific events that have limited FIs' participation in CDPAP, including a January 2018 amendment, which required FIs to apply for permission to continue operating within CDPAP, and several amendments from 2020 to 2022 impacting the eligibility of FIs to contract or register with DOH.

In contrast, Plaintiffs argue that their contracted-for expectations were that their business relationships with MMCOs would persist until the parties decided otherwise or a specified termination condition occurred. Plaintiffs further argue that the prior regulations cited by the State are inapposite because (1) these regulations were not in effect at the time that they entered their contracts, and (2) these regulations do not have clear continuity with the CDPAP Amendment. At oral argument, Plaintiffs focused primarily on the 2020 amendment as the only amendment with any "colorable" relationship with the CDPAP Amendment. Tr. 28–29. Under the 2020 amendment, the State established a procurement process whereby an entity could only operate as an FI if it was awarded a contract with DOH. Following the bidding process, only 68 entities were selected in February 2021. *See* MTD Br. at 15 n.8. Indeed, two of these very Plaintiffs were *not* selected in this process and, at least for a time, would not have been eligible to serve as FIs and receive Medicaid funds. MTD Reply at 9.

The proper inquiry is thus whether, given the nature and extent of the regulatory scheme of CDPAP, any given Plaintiff was effectively on notice of the possibility of state action that would render them ineligible to serve as an FI and receive Medicaid funding, as the CDPAP Amendment did, such that the CDPAP Amendment is "presumed to be priced into the contracts formed under the prior regulation." *See All. of Auto. Mfrs., Inc.*, 984 F. Supp. 2d at 55. Again, at this stage, all reasonable inferences regarding Plaintiffs' expectations under their contracts must be drawn in favor of Plaintiffs. Although the

As a threshold matter, the Court must resolve the level of deference it should accord to the State's judgments underlying the enactment of the CDPAP Amendment. The level of deference accorded to legislative judgments regarding the need for and the reasonableness of social and economic legislation varies depending on the nature of the impaired contracts. *See Melendez*, 16 F.4th at 1027. Public contracts, where there is a risk of a state using its police power to engage in self-dealing or unfairly advantage itself as a market participant, must receive a higher level of scrutiny as to the claimed government purpose and the reasonableness of the means employed. *See, e.g., U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 25–26 (1977) ("complete deference to a legislative assessment of reasonableness and necessity [was] not appropriate because the State's self interest [was] at stake."); *Buffalo Tchrs. Fed'n*, 464 F.3d at 369 ("public contracts are examined through a more discerning lens"); *Ass'n of Surrogates and Sup. Ct. Reporters v. New York Surrogates*, 940 F.2d 766, 773 (2d Cir. 1991) (lag payroll scheme for judicial employees "smacks of the political expediency that *U.S. Trust Co.* warned of").

However, despite the reference to some public contracts within the FI scheme, *see* Compl. ¶ 149, Plaintiffs here concede that all of their contracts are private contracts with MMCOs, and acknowledged at oral argument that they were aware of the distinction in the standard of review between public and private contracts and were not asserting that the higher standard applied in this case. *See* Tr. 60–61 ("[W]e didn't take the position that these are public

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Court views the Plaintiffs' expectations argument as quite thin, especially given the undisputed fact that two of the four Plaintiffs have already experienced exclusion from the FI program due to a prior regulatory change and the CDPAP Amendment incorporate a nearly year-long notice during which period all of the Plaintiffs' contracts were up for renewal, *see* Tr. 11–12, 54; *Sanitation,* 107 F.3d at 993, under the lenient standard at the pleadings stage the State has not established that Plaintiffs' alleged expectations are unreasonable as a matter of law.

contracts."). When the challenged law only impairs private contracts, courts "must accord substantial deference to the [State's] conclusion that its approach reasonably promotes the public purposes for which [it] was enacted." *Sal Tinnerello & Sons, Inc. v. Town of Stonington*, 141 F.3d 46, 54 (2d Cir. 1998) (citing *Energy Rsrvs. Grp., Inc.*, 459 U.S. at 412–13 (1983)). The Constitution affords states a wide berth to infringe upon private contractual rights when they do so in the public interest, as a legitimate exercise of their traditional police powers, rather than self-interest. *See U.S. Trust Co.*, 431 U.S. at 16. Accordingly, even though the Court must view the factual allegations and draw inferences in the light most favorable to Plaintiffs at this stage of the litigation, the Court must also substantially defer to the State's conclusion that the CDPAP Amendment reasonably promotes the public purposes for which it was enacted. As explained further below, in addition to their failure to demonstrate impairment, Plaintiffs have not plausibly surmounted either the second or third step of the Contracts Clause analysis.

i. Significant and Legitimate Government Purpose

A legitimate public purpose is one "aimed at remedying an important general social or economic problem rather than providing a benefit to special interests." *Sanitation*, 107 F.3d at 993. "[T]he purpose may not be simply the financial benefit of the sovereign." *Buffalo Tchrs. Fed'n*, 464 F.3d at 368. However, "courts have often held that the legislative interest in addressing a fiscal emergency is a legitimate public interest." *Id.* at 369; *see, e.g.*, *Blaisdell*, 290 U.S. at 444–48 (involving Depression era exigencies); *In re Subway-Surface Supervisors Ass'n v. New York City Transit Auth.*, 44 N.Y.2d 101, 112–14 (1978) (involving a fiscal emergency in New York City). And courts have frequently held that a state's interest in regulating payments, rates, and costs under Medicaid is a legitimate exercise of the state's traditional police power to provide for the health and welfare of its citizens, and is designed to benefit taxpayers and the public fisc as a whole, rather than the state as a market participant or economic actor. *See, e.g.,*

Medical Soc. of State of New York v. Cuomo, 976 F.2d 812, 816 (2d Cir. 1992) (in the context of preemption, "[t]he regulation of public health and the cost of medical care are virtual paradigms of matters traditionally within the police powers of the state."); *Home for Aged of Little Sisters of the Poor v. McDonald*, 711 F. Supp. 3d 81, 106 (N.D.N.Y. 2024) (in the context of a Takings claim, "[t]he historic police powers of the State include the regulation of matters of health and safety" (citing *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 506 n.8 (2d Cir. 2014)).

Here, the State's proffered purpose behind the CDPAP Amendment is to reduce waste, fraud, and abuse in the program. *See* Compl. ¶¶ 66, 68–69. In its opening brief, the State primarily argues that "the purpose of the amendment was to save on administrative costs and improve efficiency," by addressing the overhead costs of 600 providers versus 1 provider and a small number of subcontractors and easing the oversight burden on DOH to supervise FIs. MTD Br. at 18. Plaintiffs contend this is a pivot by the State, *post hoc*, arguing that the State did not conduct any economic impact study prior to passing the CDPAP Amendment through the legislative budget process.[9] MTD Opp. at 16.

Before analyzing the significance and legitimacy of the State purpose, the Court must resolve whether the State's FY 2025 Enacted Budget Financial Plan (the "FY 2025 Budget Plan"), drafted by the State's Division of the Budget ("DOB") and issued on behalf of the Governor, as well as any public statements by the legislature or the Governor, may be considered in resolving the motion to dismiss. *See* Preis MTD Decl. Ex. 6; *see also* N.Y. DIV. OF BUDGET, FY2025 ENACTED BUDGET FINANCIAL PLAN at 1 (2024), *available at* https://publications.budget

[9] The Court construes anticipated savings on administrative costs as falling under the State's previously announced purpose to reduce "waste," but, even if the State had offered different justifications for the CDPAP Amendment, the statute must be upheld so long as the State has proffered a valid "significant and legitimate" public purpose. *See, e.g.*, *Preseault v. I.C.C.*, 494 U.S. 1, 18 (1990) (in the context of a due process claim, "[t]here is no requirement that a law serve more than one legitimate purpose.").

.ny.gov/pubs/archive/fy25/en/fy25fp-en.pdf (last visited Feb. 24, 2025) ("Introduction: The Financial Plan for Fiscal Year (FY) 2025 . . . summarizes the State of New York . . . official projections for FY 2025 through FY 2028 based on the FY 2025 Enacted Budget."). Plaintiffs argue that the FY 2025 Budget Plan is not properly before the Court but, to the extent the Court takes judicial notice of it, the Court may not rely on it for the truth of the matters asserted therein. MTD Opp. at 18 (citing *United States v. Strock*, 982 F.3d 51, 63 (2d Cir. 2020)). The State does not address this in its reply. *See* MTD Reply at 7–8. At oral argument, the State asserted the Court could take judicial notice of the FY 2025 Budget Plan, but it was of no moment that the Court could not rely on it for the truth of the matters asserted therein, given the level of deference owed to the judgment of the State, particularly as expressed through its public statements. *See* Tr. 18.

In resolving a motion to dismiss, the Court may consider documents attached to the complaint, integral to it, or incorporated in it by reference; or materials in the public record that are subject to judicial notice. *See Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2009); *see, e.g.*, *United States ex rel. Feldman v. City of New York*, 808 F. Supp. 2d 641, 655 (S.D.N.Y. 2011) (referencing DOB's 2010-11 Enacted Budget Financial Plan). Because the FY 2025 Budget Plan is a document in the public record, the Court takes judicial notice of it as the State's announced justification for the CDPAP Amendment's purpose, but does not rely on it for the truth of the underlying factual claims or assertions therein. *See, e.g.*, *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991). The FY 2025 Budget Plan states that "Medicaid spending in the General Fund is projected to increase due to medical cost increases; enrollment remaining elevated above pre-COVID-19 pandemic levels; expansion of benefits; increases to reimbursement rates; and growing aging and high utilization populations. . . . [So,] [t]o control

rising Medicaid costs, the Enacted Budget includes . . . [s]avings actions total[ing] $768 million in FY 2025[,] and include[s] the transition to a single Statewide Fiscal Intermediary for the CDPAP."). Preis MTD Decl. Ex. 6 at 23. The FY 2025 Budget Plan further explains that the transition to a Statewide FI will allow the State "to more cost effectively administer the program," estimating that the State will save about $200 million in the 2025 fiscal year and $504 million in the 2026, 2027, and 2028 fiscal years. *Id.* at 25, 113.

Although the statements in the FY 2025 Budget Plan regarding the transition to the Statewide FI do not alone dictate the Court's determination as to whether the CDPAP Amendment is reasonably drawn and necessary to advance a significant and legitimate government purpose, nonetheless the Court finds that there is a record basis for the State's plausible assertion that "[the] reduction in costs [effected by the transition to the Statewide FI] will help the long-term viability of CDPAP" and "will allow for greater fiscal accountability, while maintaining the eligibility and care provided to participating consumers." *See* MTD Br. at 18. Even when viewing the pleadings record in the light most favorable to Plaintiffs, Plaintiffs have not sufficiently undermined the legitimacy of the State's proffered purpose.

Absent any allegations that the State was acting in bad faith or duplicitously, Plaintiffs have not demonstrated that further development of the factual record is necessary with respect to this issue. This case is not similar to *DoorDash*, on which Plaintiffs heavily rely in their opposition. In *DoorDash*, Judge Woods reasoned that the plaintiffs had plausibly alleged that "the motivations of [the] [d]efendant were not in furtherance of a legitimate public purpose," specifically finding the legislative history revealed "a certain hostility" to the plaintiffs and "sympathy for small business owners" who were the plaintiffs' contract counterparties. *DoorDash, Inc. v. City of New York*, 692 F. Supp. 3d 268, 292 (S.D.N.Y. 2023).

In the Complaint, Plaintiffs allege the Governor has claimed that the CDPAP Amendment would "save us $500 million every single year, and allow us to start putting controls and guardrails in place for what has historically been a very under regulated program." Compl. ¶ 68. Additionally, during the legislative debate over the CDPAP Amendment, Assemblywoman Weinstein claimed that the CDPAP Amendment would reduce administrative costs associated with the program. Assembly Bill A08807, Chamber Tr. at 85 (N.Y. Apr. 19, 2024). However, Plaintiffs further allege that the Governor's remarks were part of "a full-throated campaign against Fiscal Intermediaries and the CDPAP program, lobbing a series of unsubstantiated claims of fraud, waste, and abuse in the process that appear designed to create and prop up an (unsubstantiated and counterfactual) justification for destroying the existing Fiscal Intermediary industry and replacing it with a State-created monopolist." Compl. ¶ 66. Plaintiffs primarily contest the fraud aspect of the State's proffered purpose—Plaintiffs allege that any claims of fraud within CDPAP are "unfounded," specifically alleging that the CDPAP Amendment "weakens fraud protections by excluding the selection of the Statewide [FI] from State Comptroller review and oversight" and that costs may increase in the transition to the Statewide FI. Compl. ¶¶ 67, 69, 71. Plaintiffs do not, however, explain how the lack of Comptroller involvement in the selection of the Statewide FI, as opposed to the role of the Comptroller in auditing performance under contracts once issued (which appears to be intact), has anything to do with fraud prevention in the operation of CDPAP. Plaintiffs also cite to a 2022 audit by the Office of Medicaid Inspector General which revealed a 99% accuracy in submitted claims as proving that the existing regulatory scheme already has sufficient protections against fraud. Compl. ¶ 70. Once again, Plaintiffs do not explain how a finding of accuracy in submitted

claims in any way undermines the State's proffered purpose of reducing overhead costs and improving DOH's ability to monitor the FI industry by reducing the number of providers.

To the extent Plaintiffs argue that the State's proffered purpose is pretextual, the argument is unsupported, particularly given that a number of Plaintiffs' arguments appear to have been raised on the legislative floor and rejected. *See* Compl. ¶¶ 72–76. At the pleadings stage, the burden is on Plaintiffs to allege sufficient facts to support a reasonable inference that the State did *not* enact the CDPAP Amendment for a significant and legitimate government purpose. Despite efforts to shift that burden to the State, Plaintiffs cannot legitimately claim that the pleadings and public record lacks any support for the State's proffered purpose. And Plaintiffs have not plausibly alleged that the State's asserted purpose for the CDPAP Amendment is illegitimate, insignificant, or otherwise pretextual.

Further, the CDPAP Amendment is not so irrational such that it offends the Constitution, even if, in Plaintiffs' view, it is ill-advised legislation or unwise policy. As Plaintiffs conceded at oral argument, it is not the role of this Court to act as a super-legislature to second-guess the policy judgments of the State. Tr. 38. The lack of fit between a challenged law and the State's purpose could support an argument that the legislation was motivated by an improper purpose. But here, Plaintiffs have offered nothing to support that the State was motivated by an improper purpose. Plaintiffs generally reference the fact that DOH has "virtually unfettered discretion" to appoint the Statewide FI, "for whatever irrational or politically motivated reason it sees fit to do so," and that there is "no conceivable basis for treating similarly situated business different based on [the] arbitrary characteristic [requiring out-of-state statewide experience]." *See* Compl. ¶¶ 85–86, 95. But, even viewing the pleadings record in the light most favorable to Plaintiffs, these generalized allegations are entirely speculative and reflect a policy disagreement with the

State's choices, rather than facts that evidence pretext, malfeasance, or other improper purpose. And while the State's alleged failure to conduct any economic impact studies or the like, Compl. ¶ 7, could tend to show that the CDPAP Amendment was not implemented for a proper public purpose, that alone is insufficient to support Plaintiffs' Contracts Clause claim. In *DoorDash*, New York City's failure to engage in a meaningful study of the economic effect of the contested legislation "enhance[d]" the plausibility of the plaintiff's contention that the legislation was not implemented for a proper public purpose, but the pleadings record was replete with other indicators that the legislation was motivated by an improper purpose, in contrast with the record here. *See* 692 F. Supp. 3d at 292–93 (the legislative history indicated hostility to the plaintiffs and sympathy for small business owners who would benefit; timing of statements also directly contradicted claim that legislation was designed to address effects of COVID pandemic).

Thus, the Court finds Plaintiffs have not plausibly alleged that the State was motivated by an improper purpose. *See Ashcroft*, 556 U.S. at 678 ("The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully" (quoting *Bell Atl. Corp.*, 550 U.S. at 556)). To the contrary, the State has asserted a significant public purpose underlying the CDPAP Amendment that is legitimate based on permissible records at the pleadings stage.

ii. Reasonable and Appropriate Means

At the third and final step in the analysis, the Court must assess whether Plaintiffs have plausibly alleged that the CDPAP Amendment is not reasonably and appropriately drawn in relation to the State's significant and legitimate public purpose.[10] As previously discussed, the

[10] The Second Circuit has, at times, described this third step as an inquiry into appropriateness and necessity. *Compare Melendez*, 16 F.4th at 1038 (treating the inquiry as into the appropriateness of the contested law) *with Buffalo Tchrs. Fed'n*, 464 F.3d at 369 (treating the inquiry as into the necessity of

Court must substantially defer to the State's judgment regarding the reasonableness and necessity of the CDPAP Amendment. *See Buffalo Tchrs. Fed'n*, 464 F.3d at 369 ("Unless the state itself is a party to the contract, courts usually defer to a legislature's determination as to whether a particular law was reasonable and necessary.").

Courts consider factors such as the "extent of impairment," the "record basis" that "link[s] purpose and means," and "tailoring" to determine whether the contested law is drawn in an appropriate and reasonable way to advance the State's purpose—the Court's analysis is not strictly formulaic, but is instead inherently fact-intensive and case-specific. *See, e.g.*, *Melendez*, 16 F.4th at 1038–46. In *Melendez*, based on the totality of five features of the contested law, the Second Circuit held that the plaintiffs had plausibly alleged that the law was not drawn in an appropriate and reasonable way. *See id.* The five factors were as follows: (1) the challenged law was not a "temporary" or "limited" impairment of contract; (2) the pleadings record did not dictate, as a matter of law, that the law was an appropriate means for achieving the City's purpose; (3) a discrete group of private persons bore the "allocation of [the law's] economic burden"; (4) the law's "relief [was] not conditioned on need," and (5) the law did not compensate the aggrieved parties "for damages or losses sustained as a result of their [contracts'] impairment." *See id.*

While the *Melendez* factors do not squarely or neatly fit the facts of this case, guided by the principles behind the *Melendez* Court's searching inquiry, the Court finds Plaintiffs have not plausibly alleged that the CDPAP Amendment is unreasonable and inappropriate when considering the totality of and principles behind these factors.

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the contested law). Whether cast as an inquiry into appropriateness or necessity, the analysis required is a "careful examination." *See Melendez*, 16 F.4th at 1029.

First, although the Court has already determined that the CDPAP Amendment is not an "impairment" of the Plaintiffs' contracts, if it does "impair" for purposes of this analysis, the effect is to "work[s] a severe, permanent, and immediate change" in Plaintiffs' business relationship to MMCOs as well as with the State, by excluding Plaintiffs from continuing to act as FIs. *See Allied Structural Steel*, 438 U.S. at 250; *Melendez*, 16 F.4th at 1038–39. Thus, assuming *arguendo* impairment, the first factor weighs in favor of Plaintiffs.

Second, the pleadings record is consistent with a view that the CDPAP Amendment is an appropriate way to reduce waste and administrative costs in the program.[11] *See* MTD Br. at 20; MTD Reply at 7–8. The State estimates significant cost savings, and points to the common-sense observation that over 600 individual businesses (each with their own bookkeeper, office manager, printer contract, etc.) are reasonably likely to, in combination, have higher overhead costs than a single business that can more easily economize on such expenses. *See* MTD Reply at 7 ("The transition [to the Statewide FI] will also reduce the high administrative costs associated with having so many FIs, which have made CDPAP 'prohibitively expensive'—a measure consistent with Medicaid's purpose of providing medical services to the needy." (citing *Corning Council*, Index No. 908147-24, NYSECF No. 59 at 8 (Sup. Ct. Albany Cnty. Sept. 30, 2024))).[12]

In response, Plaintiffs, again, argue that the State's sole basis for its argument is the FY 2025 Budget Plan, which the Court takes judicial notice of but does not rely on for the truth of

[11] In its opening brief, the State exclusively focuses its arguments on the reduction in administrative costs effected by the CDPAP Amendment and does not address how the CDPAP Amendment is designed to reduce abuse or fraud. *See* MTD Br. at 19–21.

[12] In *Corning Council*, the state court denied a motion for preliminary injunction, permanent injunction, and an order declaring that the CDPAP Amendment is unconstitutional, facially and as applied, under New York law.

the assertions therein. MTD Opp. at 18. Plaintiffs further argue that they have alleged in detail how the CDPAP Amendment will, in fact, undermine the State's professed goals—Plaintiffs allege that "eliminating open competition among Fiscal Intermediaries, adding additional layers of bureaucracy, and arbitrarily limiting the role of [the] Statewide [FI] to a single monopolist without prior experience with New York's CDPAP program, and without close connections to the communities it will be serving, the CDPAP Amendment will, in the long-term, increase costs and reduce efficiency, while also reducing the quality of care consumers receive." MTD Opp. at 18; *see* Compl. ¶¶ 71, 82–83, 85–86, 154. In making these arguments, Plaintiffs fail to wrestle with the economic realities of CDPAP, in which there is only one payor (the State) and FIs do not compete on costs. *See* Compl. ¶¶ 49–51 (FIs are reimbursed by DOH at set rates for the direct cost of care and administrative costs). Thus the "monopolist" arguments are unavailing, as are the similarly unsupported claims about the CDPAP Amendment increasing costs or reducing efficiency. In addition, there is no support for Plaintiffs' claim that the procurement process of appointing the Statewide FI is patently arbitrary. An entity's prior statewide experience is logically and rationally related to that entity's ability to scale up statewide FI services in New York. Such statewide experience necessarily must be out-of-state, as New York has never had a statewide FI provider. Additionally, the competitive bidding and procurement process required DOH to "optimize quality, cost, and efficiency among responsive and responsible bidders." *See* MTD Reply at 8 (citing the RFP ¶ 8.1). In short, Plaintiffs' arguments amount to speculative disputes with the policy judgment of the State, which does not support a conclusion that the CDPAP Amendment is unconstitutionally drawn in an unreasonable and inappropriate manner.

Plaintiffs may well be correct that the State's plan will reduce personalization and perhaps even quality of customer service for patients enrolled in the program. *But see* N.Y. Soc.

Serv. Law § 365 f(4-a)(a)(ii-b) (The Statewide FI "must subcontract to facilitate the delivery of fiscal intermediary services with at least one entity per rate setting region with a proven record of delivering services to individuals with disabilities and the senior population."; subcontractors "must have been providing fiscal intermediary services since January 1, 2012, and must provide any delegated fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the available workforce."). But FIs do not provide "care" to Medicaid patients in any reasonable sense of that term—within the design of CDPAP, they provide back-office administrative services that make it easier for consumers to have a household employee (regardless of the "extra" services that the Plaintiffs assert they provide). It is a reasonable judgment of the State that some loss of personalized service or closeness to the community is a fair tradeoff to substantially reduce administrative costs (which savings can be redirected to patient care) and ease the supervisory burden on DOH employees. Whether these predictions are in fact realized under the new statutory scheme is not a basis to second guess the State's policy judgment in enacting the CDPAP Amendment.

Accordingly, even viewing the pleadings record and drawing all reasonable inferences in favor of Plaintiffs, the Court finds that the second factor weighs in favor of the State. Unlike the record in *Melendez* and *DoorDash*, Plaintiffs' allegations do not plausibly raise substantial questions regarding whether the CDPAP Amendment is an appropriate means to reduce costs and waste in the program.

Third, and finally, the Court finds that (1) the third and fourth *Melendez* factors are functionally inapplicable here, and therefore do not weigh in favor of either Plaintiffs or the State; and (2) although the fifth factor weighs in favor of Plaintiffs, that, in conjunction with the first factor, does not sufficiently undermine the reasonableness and appropriateness of the

CDPAP Amendment to achieve the goal of reducing the cost inefficiency and waste in the program. While Plaintiffs claim that the rising costs of CDPAP are not solely attributable to the number of FI operating in the program, Plaintiffs concede that the State is not required to prove that the CDPAP Amendment is the best possible option for addressing the high costs of administering the program or that the State explored every possible option for reducing costs. Tr. 65. The State has a sufficient logical basis for the CDPAP Amendment, specifically that high administrative costs are generated by the 600 FIs that exist under the current scheme, all of whom DOH must reimburse and oversee. *See* Compl. ¶¶ 48–51. The burden of any contractual impairment is tailored to the entities, Plaintiffs and other FIs, who are causing the public harm that the State is seeking to mitigate.[13] Indeed, as the State represented at oral argument, New York State is an outlier compared to other states, such as California, Massachusetts, and New Jersey, who operate programs similar to CDPAP and contract with one or two FI-type entities instead of overseeing hundreds. Tr. 5–6.

Accordingly, the Court finds that Plaintiffs have not plausibly pled their Contracts Clause claims, whether facially or as-applied, and the motion to dismiss those claims is granted.

[13] Courts have rejected Contracts Clause challenges, even where the contractual impairment at issue is permanent and the State does not provide compensation. *See, e.g.*, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 504–06 (1987) (rejecting Contracts Clause challenge to a state law overriding damages waivers in mining contracts; although the contract impairment was substantial, it was justified by the state's strong public interest in both deterrence and restoration of the environment); *Sanitation*, 107 F.3d at 994 (pervasive influence of organized crime in commercial carting justified termination of pre-existing contracts). Plaintiffs' attempt to distinguish this case from *Keystone* is unavailing because, for the foregoing reasons, the pleadings record here does show a link between the CDPAP Amendment's purpose and means, which is tailored to the costliness of administering the program under the current regime.

B. Takings Clause

The Takings Clause of the Fifth Amendment provides that no "private property shall be taken for public use, without just compensation." U.S. Const. amend. V. The Takings Clause is incorporated to the states through the Fourteenth Amendment. *See Kelo v. New London*, 545 U.S. 469 (2005).

The law recognizes two kinds of takings: categorical takings and regulatory takings. A classical categorical taking occurs when the government physically takes possession of an interest in property for some public purpose, thereby directly appropriating private property for its own use. *Tahoe–Sierra Pres. Council v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 321 (2002). A regulatory taking occurs when a government regulation "goes too far" and in essence "effects a taking." *See Buffalo Tchrs. Fed'n*, 464 F.3d at 374 (citing *Meriden Trust & Safe Deposit Co.*, 62 F.3d at 454).

For any Takings Clause claim, the Court must determine whether Plaintiffs have plausibly alleged a protectable property interest. The State argues that Plaintiffs have failed to allege a protected property interest "in future Medicaid payments or in continued participation as FIs in the Medicaid program," and cites a litany of cases in support. MTD Br. at 21–22. In response, Plaintiffs argue that the proper inquiry is, instead, whether property rights exist in their private contracts with MMCOs. MTD Opp. at 21 (citing *Lynch v. United States*, 292 U.S. 571, 579 (1934) and a litany of cases for the principle that "[v]alid contracts are property"). Plaintiffs, again, cite *DoorDash* as a recent example of a Takings claim based on private contracts which survived a motion to dismiss. 692 F. Supp. 3d at 287.

However, as discussed *supra* Section II(A)(1), Plaintiffs and FIs' existence—indeed CDPAP itself—is entirely a State creation. *See* N.Y. Soc. Serv. Law § 365-f. As alleged in the Complaint, Plaintiffs (and all FIs) provide services which are statutorily enumerated, and they

are ultimately compensated for their services with Medicaid funds from DOH at rates set by DOH. *See* Compl. ¶¶ 37–39, 48–51. Under FFS Medicaid, DOH directly reimburses FIs. *See* Compl. ¶ 51. And under MMC Medicaid, DOH indirectly reimburses FIs by way of the MMCOs with which Plaintiffs contract. *See* Compl. ¶ 49. Plaintiffs make much of the fact that their contracts with MMCOs are private in nature, emphasizing that the MMCOs themselves are private companies, but Plaintiffs do not, and indeed cannot, contest that they are compensated entirely via Medicaid funds from the State and their businesses exist only because of a program created by the State. *See* Compl. ¶ 49. So, too, these contracts with MMCOs depend, by their express terms, on Plaintiffs' continued participation in Medicaid and authorization from the State to receive Medicaid funds.

As the State sets forth, it is well settled that there is no valid property interest in future Medicaid payments or in continued participation as FIs in the Medicaid program. *See, e.g.*, *Concerned Home Care Providers, Inc. v. Cuomo*, 783 F.3d 77, 91–92 (2d Cir. 2015) (holding plaintiff-agencies did not have a cognizable property right in future Medicaid reimbursements for home care services to support a due process claim under the Fourteenth Amendment); *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 176 (2d Cir. 1991) (holding a provider of Medicaid-sponsored home care services did not have a cognizable property right in its contract with a social services district or the right to continued and uninterrupted participation in the Medicaid program); *Grossman v. Axelrod*, 646 F.2d 768, 770–71 (2d Cir. 1981) (holding a nursing home did not have a cognizable property right in prospective Medicaid reimbursements to support alleged due process and Takings claims).

Plaintiffs' assertion that courts have previously held that valid contracts are property sidesteps the fatal fact that these contracts expressly incorporate the statutory scheme established

by CDPAP, a Medicaid program, which provides for Plaintiffs' existence as FIs and for Plaintiffs' compensation by way of reimbursements using Medicaid funds. The fact that the CDPAP Amendment will, by its terms, cause the termination of Plaintiffs' existing contracts does not necessitate a finding that the CDPAP Amendment is an unconstitutional taking. Plaintiffs entered into the contracts with knowledge that they were contingent on continued participation in Medicaid, on behalf of both parties. As discussed further *supra* Section II(A)(1), the essence of Plaintiffs' complaint is their objection to the termination of their status as authorized FIs under Medicaid. The loss of that status is not an unconstitutional taking.

Accordingly, the Court finds that Plaintiffs have not plausibly pled their Takings claims and the motion to dismiss those claims is granted.

C. Equal Protection

The Equal Protection Clause of the Fourteenth Amendment "embodies the general rule that States must treat like cases alike, but may treat unlike cases accordingly." *Winston v. City of Syracuse*, 887 F.3d 553, 560 (2d Cir. 2018) (quoting *Vacco v. Quill*, 521 U.S. 793, 799 (1997)). "If a law neither burdens a fundamental right nor targets a suspect class, [courts] will uphold the legislative classification so long as it bears a rational relation to some legitimate end." *Romer v. Evans*, 517 U.S. 620, 631 (1996). For the reasons discussed, *supra* Sections II(A)(2)(ii) and II(B), the Court finds that Plaintiffs have not plausibly pled their Equal Protection claims, as the CDPAP Amendment easily passes rational-basis review.

In the Complaint, Plaintiffs allege that "out-of-state experience [is not] any more probative than in-state experience in ensuring that a potential bidder is prepared to operate on the scale required to perform statewide [FI] services in New York." Compl. ¶ 86. Plaintiffs argue that New York's program, with an estimated 280,000 participants, is "more than ten times larger than similar programs in other states." MTD Opp. at 27 (emphasis removed) (citing Compl. ¶¶

77, 86, 99. The mere fact that CDPAP is larger than other states' similar programs does not render the prior-statewide-experience requirement wholly irrational. As the State notes, the prior-statewide-experience requirement is rationally designed to ensure that the appointed Statewide FI has the requisite experience to operate a similar statewide program in New York, including experience working directly with state agencies and regulators. And such experience must, necessarily, be out-of-state because New York has never had a statewide FI provider for CDPAP. *See* Compl. ¶ 87. Plaintiffs have not plausibly pled that the CDPAP Amendment's prior-statewide-experience requirement discriminates against FIs, such as themselves, who have only ever operated within New York, without any rational justification.

Accordingly, the Court finds that Plaintiffs have not plausibly pled their equal protection claims, and the motion to dismiss those claims is granted.

D. Substantive Due Process

"The doctrine of substantive due process protects the individual against certain government actions regardless of the fairness of the procedures used to implement them." *McClary v. O'Hare*, 786 F.2d 83, 88 (2d Cir. 1986) (internal marks omitted). To establish a substantive due process violation, a plaintiff must show both (1) it has an interest protected by the Fourteenth Amendment; and (2) the contested legislation is not rationally related to a legitimate government interest. *See Winston*, 887 F.3d at 566. Where the plaintiffs contend that a state actor infringed on their property rights; to establish a substantive due process violation they must show (1) a valid property interest and (2) that Defendant "infringed on the property right in an arbitrary or irrational manner." *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d 494, 503 (2d Cir. 2001). The contested state action must be "arbitrary, conscience-shocking, or oppressive in the constitutional sense, not merely incorrect or ill-advised." *Ferran v. Town of Nassau*, 471 F.3d 363, 370 (2d Cir. 2006) (internal references omitted); *see also Natale v. Town*

of Ridgefield, 170 F.3d 258, 263 (2d Cir. 1999) ("Substantive due process standards are violated only by conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority.").

Another district court in this Circuit recently dismissed procedural due process claims asserted by FIs, who are not Plaintiffs in this action but who similarly sought declaratory and injunctive relief to prevent the implementation of the CDPAP Amendment. *See Jeannot v. New York State*, Case No. 24-cv-05896 (HG), 2025 WL 80689 (E.D.N.Y. Jan. 13, 2025). Although the analysis of a procedural due process claim is different than that of a substantive due process claim, both kinds of due process claims, as relevant here, require a deprivation of property. As Judge Gonzalez recognized in *Jeannot*, "a Medicaid provider has no property right to continued enrollment as a qualified provider." *Id.* at *14 (citing *Necula v. Conroy*, 13 F. App'x 24, 26 (2d Cir. 2001)). Judge Gonzalez reasoned that the FI plaintiffs, who "have an even more attenuated relationship to the Medicaid Act than providers of medical assistance," had failed to state a procedural due process claim because "if even entities that provide medical assistance under the Medicaid Act do not have such a property right, it is not apparent to the Court how FIs, which do not provide medical assistance, could possess such a right." *Id.* at *14–15.

So, too, here, the same reasoning applies in full force with respect to Plaintiffs' substantive due process claim. For all the reasons discussed at length above, Plaintiffs have not identified—and indeed cannot plausibly allege—a cognizable property interest in continuing to participate as FIs in CDPAP and receive Medicaid funds, whether expressed in their contracts with MMCOs or otherwise, and so they fail to state a substantive due process claim as a matter of law. The motion to dismiss the substantive due process claims is granted.

PRELIMINARY INJUNCTION

Having dismissed the entirety of Plaintiffs' complaint for failure to state a claim, the Court finds Plaintiffs' motion seeking a preliminary injunction must be denied as moot. Indeed, it is not possible for Plaintiffs to establish the likelihood of success on the merits necessary to grant a preliminary injunction where the Court has granted Defendant's motion to dismiss. *See Jeannot*, 2025 WL 80689, at *15 (collecting cases).

CONCLUSION

For the foregoing reasons, it is hereby ORDERED that Defendant's motion to dismiss is GRANTED and Plaintiffs' preliminary injunction motion is DENIED.

Dated: February 26, 2025
New York, New York

SO ORDERED.

MARGARET M. GARNETT
United States District Judge

EXHIBIT E

(Dist. Ct. Dkt. No. 34-1)

Exhibit 1

McKinney's Consolidated Laws of New York Annotated
Social Services Law (Refs & Annos)
Chapter 55. Of the Consolidated Laws
Article 5. Assistance and Care
Title 11. Medical Assistance for Needy Persons (Refs & Annos)

McKinney's Social Services Law § 365-f

§ 365-f. Consumer directed personal assistance program

Effective: April 1, 2024
Currentness

1. Purpose and intent. The consumer directed personal assistance program is intended to permit chronically ill and/or physically disabled individuals receiving home care services under the medical assistance program greater flexibility and freedom of choice in obtaining such services. The department shall regularly monitor district participation in the program by reviewing the implementation plans submitted pursuant to this section. The department shall provide guidance to the districts to improve compliance with implementation plans and promote consistency among counties regarding approved service levels based on the assessments required by this section. In addition, the department shall provide technical assistance and such other assistance as may be necessary to assist such districts in assuring access to the program for eligible individuals.

2. Eligibility. All eligible individuals receiving home care shall have the opportunity to apply for participation in the program no less than annually. Each social services district shall file an implementation plan with the commissioner of the department of health, which shall be updated annually. Such updates shall be submitted no later than November thirtieth of each year. Beginning on June thirtieth, two thousand nine, the plans and updates submitted by districts shall require the approval of the department. Implementation plans shall include district enrollment targets, describe methods for the provision of notice and assistance to interested individuals eligible for enrollment in the program, and shall contain such other information as shall be required by the department. An "eligible individual", for purposes of this section is a person who:

(a) is eligible for long term care and services provided by a certified home health agency, long term home health care program or AIDS home care program authorized pursuant to article thirty-six of the public health law, or is eligible for personal care services provided pursuant to this article, and who with the provision of such services is capable of safely remaining in the community in accordance with the standards set forth in Olmstead v. LC by Zimring, 527 US 581 (1999) and consider whether an individual is capable of safely remaining in the community;

(b) is eligible for medical assistance;

(c) has been determined by the social services district, pursuant to an assessment of the person's appropriateness for the program, conducted with an appropriate long term home health care program, a certified home health agency, or an AIDS home care program or pursuant to the personal care program, as being in need of home care services or private duty nursing and as needing at least limited assistance with physical maneuvering with more than two activities of daily living, or for persons with a dementia or Alzheimer's diagnosis, as needing at least supervision with more than one activity of daily living, provided that the provisions related to activities of daily living in this paragraph shall only apply to persons who initially seek eligibility for the program on or after October first, two thousand twenty, and who is able and willing or has a designated representative, including a legal

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guardian able and willing to make informed choices, or a designated relative or other adult who is able and willing to assist in making informed choices, as to the type and quality of services, including but not limited to such services as nursing care, personal care, transportation and respite services; and

(d) meets such other criteria, as may be established by the commissioner, which are necessary to effectively implement the objectives of this section.

3. Division of responsibilities. Eligible individuals who elect to participate in the program assume the responsibility for services under such program as mutually agreed to by the eligible individual and provider and as documented in the eligible individual's record, including, but not limited to, recruiting, hiring and supervising their personal assistants. For the purposes of this section, personal assistant shall mean an adult who has obtained an individual unique identifier from the state by or before a date determined by the commissioner of health in consultation with the Medicaid inspector general, and provides services under this section to the eligible individual under the eligible individual's instruction, supervision and direction or under the instruction, supervision and direction of the eligible individual's designated representative, provided that a person legally responsible for an eligible individual's care and support, an eligible individual's spouse or designated representative may not be the personal assistant for the eligible individual; however, a personal assistant may include any other adult relative of the eligible individual, provided, however, that the program determines that the services provided by such relative are consistent with an individual's plan of care and that the aggregate cost for such services does not exceed the aggregate costs for equivalent services provided by a non-relative personal assistant. Any personal information submitted to obtain such unique identifier shall be maintained as confidential pursuant to article six-A of the public officers law ("New York state privacy protection law"). Such individuals shall be assisted as appropriate with service coverage, supervision, advocacy and management. Providers shall not be liable for fulfillment of responsibilities agreed to be undertaken by the eligible individual. This subdivision, however, shall not diminish the participating provider's liability for failure to exercise reasonable care in properly carrying out its responsibilities under this program, which shall include monitoring such individual's continuing ability to fulfill those responsibilities documented in his or her records. Failure of the individual to carry out his or her agreed to responsibilities may be considered in determining such individual's continued appropriateness for the program.

4. Repealed by L.2022, c. 57, pt. PP, § 1, eff. April 9, 2022.

4-a. Fiscal intermediary services. (a) For the purposes of this section:

(i) "Statewide fiscal intermediary" means an entity that provides fiscal intermediary services and has a contract for providing such services with the department of health and is selected through the procurement process described in paragraph (b) of this subdivision.

(ii) Fiscal intermediary services shall include the following services, performed on behalf of the consumer to facilitate the consumer's role as the employer:

(A) wage and benefit processing for consumer directed personal assistants;

(B) processing all income tax and other required wage withholdings;

(C) complying with workers' compensation, disability and unemployment requirements;

(D) maintaining personnel records for each consumer directed personal assistant, including time records and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to regulations established by the commissioner;

(E) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to regulations issued by the commissioner;

(F) maintaining records of service authorizations or reauthorizations;

(G) monitoring the consumer's or, if applicable, the designated representative's continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the authorizing entity of any circumstance that may affect the consumer's or, if applicable, the designated representative's ability to fulfill such responsibilities;

(H) complying with regulations established by the commissioner specifying the responsibilities of fiscal intermediaries providing services under this title;

(I) entering into a department approved memorandum of understanding with the consumer that describes the parties' responsibilities under this program; and

(J) other related responsibilities which may include, as determined by the commissioner, assisting consumers to perform the consumers' responsibilities under this section and department regulations in a manner that does not infringe upon the consumer's responsibilities and self-direction.

(ii-a) The commissioner shall require any managed care plans, managed long-term care plans, local social service districts, and other appropriate long-term service programs offering consumer directed personal assistance services to contract with the statewide fiscal intermediary set forth in subparagraph (i) of this paragraph to provide all fiscal intermediary services to consumers.

(ii-b) The statewide fiscal intermediary shall subcontract to facilitate the delivery of fiscal intermediary services to an entity that is a service center for independent living under section one thousand one hundred twenty-one of the education law that has been providing fiscal intermediary services since January first, two thousand twenty-four or earlier. The statewide fiscal intermediary shall further subcontract to facilitate the delivery of fiscal intermediary services with at least one entity per rate setting region that has a proven record of delivering services to individuals with disabilities and the senior population, and has been providing fiscal intermediary services since January first, two thousand twelve; provided that such subcontractor shall be required to provide any delegated fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the available workforce, and shall comply with the requirements for registration as a fiscal intermediary set forth in subdivision four-a-one of this section. For purposes of this section, "delegated fiscal intermediary services" are defined as fiscal intermediary services as set forth in subparagraph (ii) of paragraph (a) of this subdivision that the statewide fiscal intermediary includes in a subcontract and which shall include services designed to meet the needs of consumers of the program, which may include assisting consumers with navigation of the program by providing individual consumer assistance and support as needed, consumer peer support, and education and training to consumers on their duties under the program.

(ii-c) The statewide fiscal intermediary shall be responsible for payment to subcontractors for delegated fiscal intermediary services. The payment shall not require a certification by the commissioner if payments are reasonably related to the costs of efficient delivery of such services.

(iii) Fiscal intermediaries are not responsible for, and fiscal intermediary services shall not include, fulfillment of the responsibilities of the consumer or, if applicable, the consumer's designated representative as established by the commissioner. A fiscal intermediary's responsibilities shall not include, and a fiscal intermediary shall not engage in: managing the plan of care including recruiting and hiring a sufficient number of individuals who meet the definition of consumer directed personal assistant, as such term is defined by the commissioner, to provide authorized services that are included on the consumer's plan of care; training, supervising and scheduling each consumer directed personal assistant; terminating the consumer directed personal assistant's employment; or assuring that each consumer directed personal assistant competently and safely performs the personal care services, home health aide services and skilled nursing tasks that are included on the consumer's plan of care. A fiscal intermediary shall exercise reasonable care in properly carrying out its responsibilities under the program.

(b) Notwithstanding section one hundred sixty-three of the state finance law, section one hundred twelve of the state finance law, or section one hundred forty-two of the economic development law the commissioner shall enter into a contract under this subdivision with an eligible contractor that submits an offer for a contract, provided, however, that:

(i) the department shall post on its website:

(A) a description of the proposed statewide fiscal intermediary services to be provided pursuant to a contract in accordance with this subdivision;

(B) the criteria for selection of the statewide fiscal intermediary, which shall include at a minimum that the eligible contractor is capable of performing statewide fiscal intermediary services with demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce, has experience serving individuals with disabilities, and as of April first, two thousand twenty-four is providing services as a fiscal intermediary on a statewide basis with at least one other state;

(C) the manner by which prospective contractors may seek such selection, which may include submission by electronic means;

(ii) all offers that are received from prospective contractors in a timely fashion and that meet the criteria set forth in clause (B) of subparagraph (i) of this paragraph shall be reviewed by the commissioner; and

(iii) the commissioner shall award such contract to the contractor that meets the criteria for selection and offers the best value for providing the services required pursuant to this section and the needs of consumers.

(b-1) to (b-3) Repealed by L.2024, c. 57, pt. HH, § 4, eff. April 20, 2024, deemed eff. April 1, 2024.

(c)(i) The commissioner shall require a fiscal intermediary to report annually on the direct care and administrative costs of personal assistance services as accounted for by the fiscal intermediary. The department shall specify the format of such reports,

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determine the type and amount of information to be submitted, and require the submission of supporting documentation, provided, however, that the department shall provide no less than ninety calendar days' notice before such reports are due.

(ii) If the department determines that the cost report submitted by a provider is inaccurate or incomplete, the department shall notify the provider in writing and advise the provider of the correction or additional information that the provider must submit. The provider must submit the corrected or additional information within thirty calendar days from the date the provider receives the notice.

(iii) The department shall grant a provider an additional thirty calendar days to submit the original, corrected or additional cost report when the provider, prior to the date the report is due, submits a written request to the department for an extension and establishes to the department's satisfaction that the provider cannot submit the report by the date due for reasons beyond the provider's control.

(iv) All reports shall be certified by the owner, administrator, chief executive officer, or public official responsible for the operation of the provider. The cost report form shall include a certification form, which shall specify who must certify the report.

(d) to (h) Repealed by L.2019, c. 57, pt. G, § 2, eff. Apr. 12, 2019, deemed eff. Apr. 1, 2019.

(i) Redesignated as (c) by L.2019, c. 57, pt. G, § 2, eff. Apr. 12, 2019, deemed eff. Apr. 1, 2019.

4-a-1. (a) Fiscal intermediary registration. Except for the statewide fiscal intermediary and its subcontractors, as of April first, two thousand twenty-five, no entity shall provide, directly or through contract, fiscal intermediary services. All subcontractors of the statewide fiscal intermediary, shall register with the department within thirty days of being selected as a subcontractor.

(b) In selecting its subcontractors, the statewide fiscal intermediary shall consider demonstrated compliance with all applicable federal and state laws and regulations, including but not limited to, marketing and labor practices, cost reporting, and electronic visit verification requirements.

4-b. Actions involving the registration of a fiscal intermediary.

(a) A fiscal intermediary's registration may be revoked, suspended, limited, or annulled by the commissioner upon thirty days' written notice to the fiscal intermediary, if the commissioner finds that the fiscal intermediary has failed to comply with the provisions of this section or regulations promulgated hereunder.

(b) The commissioner may issue orders and take other actions as necessary and appropriate to prohibit and prevent the provision of fiscal intermediary services by an unregistered entity.

(c) All orders or determinations under this subdivision shall be subject to review as provided in article seventy-eight of the civil practice law and rules.

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4-c. The commissioner shall convene and chair a stakeholder workgroup pertaining to fiscal intermediary services and the needs of consumers. The workgroup shall consist of, at a minimum, representatives of service centers for independent living; statewide associations of fiscal intermediaries; representatives of managed care entities under article forty-four of the public health law and local social service districts; consumers; and representatives of advocacy groups representing consumers of services under this section. The workgroup shall be established no later than May fifteenth, two thousand nineteen. The workgroup shall identify and develop best practices pertaining to the delivery of fiscal intermediary services; inform the criteria for use by the department for the selection of entities under subdivision four-a of this section; identify whether services differ for certain consumers and under what circumstances; inform criteria in relation to the development of quality reporting requirements; and work with the department to develop transition plans for consumers that may need to transition to another fiscal intermediary.

4-d. Fiscal intermediaries ceasing operation. (a) Where a fiscal intermediary is ceasing operation or will no longer serve the consumer's area, the fiscal intermediary shall:

(i) deliver written notice forty-five calendar days in advance to the affected consumers, consumer representatives, personal assistants, the department, and any local social services districts or managed care plans with which the fiscal intermediary contracts. Within five business days of receipt of the notice, the local social services district or managed care plan shall acknowledge the notice and provide the affected consumers with a list of other fiscal intermediaries operating in the same county or managed care plan network as appropriate;

(ii) not take any action that would prevent a personal assistant from moving to a new fiscal intermediary of the consumer's choice, nor require the consumer or the personal assistant to switch to a personal care or home health care program not under this section; and

(iii) upon request and consent, promptly transfer all records relating to the individual's health and care authorizations, and personnel documents to the fiscal intermediary or personal care or home health care provider chosen by the consumer and assume all liability for omissions or errors in such records.

(b) Where a consumer is electing to transfer his or her services to a new fiscal intermediary or a personal care or home health care provider by the consumer's independent choice, the fiscal intermediary being discontinued shall comply with subparagraphs (ii) and (iii) of paragraph (a) of this subdivision.

(c) Where a fiscal intermediary is suspending or ceasing operation pursuant to an order under subdivision four-b of this section, or has failed to submit an offer for a contract, or has been denied a contract under this section, all the provisions of this subdivision shall apply except subparagraph (i) of paragraph (a) of this subdivision, notice of which to all parties shall be provided by the department as appropriate.

(d) Repealed by L.2024, c. 57, pt. HH, § 6, eff. April 20, 2024, deemed eff. April 1, 2024.

(e) The local social services district or managed care plan, as appropriate, shall supervise the transition of services and transfer of records and maintain provision of services by the personal assistant(s) chosen by the individual.

(f) Any transfer under this subdivision shall not diminish any of an individual's rights relating to continuity of care, utilization review or fair hearing appeals and aid continuing.

5. Waivers, regulation and effectiveness.

(a) The commissioner may, subject to the approval of the director of the budget, file for such federal waivers as may be needed for the implementation of the program.

(b) Notwithstanding any other provision of law, the commissioner is authorized to waive any provision of section three hundred sixty-seven-b of this title related to payment and may promulgate regulations necessary to carry out the objectives of the program including minimum safety, and health and immunization criteria and training requirements for personal assistants, and which describe the responsibilities of the eligible individuals in arranging and paying for services and the protections assured such individuals if they are unable or no longer desire to continue in the program, the fiscal intermediary registration process, standards, and time frames, and those regulations necessary to ensure adequate access to services.

6. Notwithstanding any inconsistent provision of this section or any other contrary provision of law, managed care programs established pursuant to section three hundred sixty-four-j of this title and managed long term care plans and other care coordination models established pursuant to section four thousand four hundred three-f of the public health law shall offer consumer directed personal assistance programs to enrollees.

7. This section shall be effective if, to the extent that, and as long as, federal financial participation is available for expenditures incurred under this section.

8. Subject to the availability of federal financial participation, the provisions of this section governing consumer directed personal assistance services shall also apply to such services when offered under the home and community-based attendant services and supports state plan option (Community First Choice) pursuant to 42 U.S.C. § 1396n(k).

9. Notwithstanding any contrary provision of law and subject to the availability of federal financial participation, for periods on and after April first, two thousand fourteen, the commissioner is authorized to make temporary periodic lump-sum Medicaid payments to fiscal intermediaries principally engaged in providing consumer directed personal assistance services to Medicaid patients, in accordance with the following:

(a) eligible fiscal intermediaries shall include:

(i) providers undergoing closure or substantial reduction in the volume of care;

(ii) providers impacted by the closure of other health care providers;

(iii) providers subject to mergers, acquisitions, consolidations or restructuring;

(iv) providers impacted by the merger, acquisition, consolidation or restructuring of other health care providers;

(v) providers seeking to ensure that access to care is maintained or increased; or

(vi) on or after January first, two thousand fifteen, providers impacted by changes to the Fair Labor Standards Act requiring overtime pay for personal assistants working in excess of forty hours per week.

(b) providers seeking Medicaid payments under this subdivision shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by such Medicaid payments will achieve one or more of the following:

(i) protect or enhance access to care;

(ii) protect or enhance quality of care;

(iii) improve the cost effectiveness of the delivery of health care services; or

(iv) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(c)(i) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested commencement of such Medicaid payments and shall include a proposed budget to achieve the goals of the proposal. Any Medicaid payments issued pursuant to this subdivision shall be made over a specified period of time, as determined by the commissioner, of up to three years. At the end of the specified timeframe such payments shall cease. The commissioner may establish, as a condition of receiving such Medicaid payments, benchmarks and goals to be achieved in conformity with the provider's written proposal as approved by the commissioner and may also require that the provider submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the provider's Medicaid payments prior to the end of the specified timeframe.

(ii) The commissioner may require that applications submitted pursuant to this subdivision be submitted in response to and in accordance with a request for applications or a request for proposals issued by the commissioner.

Credits

(Added L.1995, c. 81, § 77. Amended L.1996, c. 474, § 229; L.2009, c. 58, pt. D, § 38, eff. April 1, 2009; L.2012, c. 56, pt. D, § 50, eff. March 30, 2012, deemed eff. April 1, 2012; L.2014, c. 60, pt. C, §§ 24, 27-b, eff. March 31, 2014, deemed eff. April 1, 2014; L.2015, c. 511, §§ 1, 2, eff. April 1, 2016; L.2017, c. 57, pt. E, § 1, eff. Jan. 1, 2018; L.2018, c. 57, pt. B, § 9-f, pt. K, § 1-a, eff. April 12, 2018; L.2019, c. 57, pt. G, §§ 2, 6, eff. April 12, 2019, deemed eff. April 1, 2019; L.2019, c. 57, pt. G, §§ 3 to 5, 7, 8, eff. Jan. 1, 2020; L.2020, c. 56, pt. MM, §§ 2-b, 3, eff. Oct. 1, 2020; L.2020, c. 56, pt. MM, § 17, pt. QQ, § 9, eff. April 3, 2020, deemed eff. April 1, 2020; L.2021, c. 57, pt. LL, §§ 1 to 3, eff. April 19, 2021; L.2022, c. 57, pt. PP, §§ 1 to 4, eff. April 9, 2022; L.2024, c. 57, pt. HH, §§ 1 to 7, eff. April 20, 2024, deemed eff. April 1, 2024.)

McKinney's Social Services Law § 365-f, NY SOC SERV § 365-f

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Current through L.2024, chapters 1 to 204. Some statute sections may be more current, see credits for details.

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EXHIBIT F

(Dist. Ct. Dkt. No. 35)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCIPLE HOMECARE, LLC, MARTON CARE INC., PROMPT HOME CARE LLC, and CARE CONNECT CDPAP, INC.,

Plaintiffs,

v.

JAMES V. MCDONALD, in his official capacity as Commissioner of the New York State Department of Health,

Defendant.

No. 1:24-cv-7071 (MMG)

DECLARATION OF SASHA GUILLAUME IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Sasha Guillaume, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and state as follows:

1. I am the Chief Executive Officer of Principle Homecare LLC ("Principle Homecare"), which is a fiscal intermediary with its principal place of business in the Bronx, New York.

2. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction to provide an overview of Principle Homecare's fiscal intermediary business under the Consumer Directed Personal Assistance Program ("CDPAP"), and to explain the devastating and irreparable impact that the impending implementation of the State's amendment to the CDPAP statute (the "CDPAP Amendment") will have on Principle Homecare's business, employees, and consumers.

Background

3. I founded Principle Homecare in 2015, with the goal of providing a helping hand to consumers who want to take control of their healthcare decisions. I was also driven by the belief that business owners should be representative of the consumers and personal assistants they serve and that it was important to have fiscal intermediaries that were minority owned and operated.

4. Today, Principle Homecare serves over 200 CDPAP consumers across New York State, including in Manhattan, the Bronx, Brooklyn, and Queens, as well as Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester Counties. It has never served consumers outside the State of New York.

5. Principle Homecare makes money through its contracts with Medicaid managed care organizations ("MMCOs"), which allow it to deliver fiscal intermediary services to consumers. For example, Principle Homecare has a contract with Elderplan Inc. that has been in effect since January 1, 2017, and that has automatically renewed annually since it was formed. At the time the contract was formed, I expected it to remain in effect indefinitely. My understanding was that Principle Homecare's contracts would terminate only if the MMCOs terminated them, or if Principle Homecare was "excluded, suspended, or barred" as a result of misconduct. I had no reason to think that any of the MMCOs that Principle Homecare works with would terminate its contracts, nor did Principle Homecare engage in any misconduct that could lead to termination.

6. Since opening Principle Homecare, the business has spent thousands of dollars on software and technology investments to streamline the CDPAP experience for its consumers. Furthermore, getting this business up and running was no easy feat. As a minority business owner, I had trouble securing financing from banks and other financial institutions. Despite these hurdles, Principle Homecare was able to steadily grow into the solid business it is today.

7. Principle Homecare has five employees who are trained and have the skills necessary to serve its diverse community of consumers, which includes individuals who speak no English but only Chinese, Haitian-Creole, Korean, or Spanish.

8. Principle Homecare's work goes far beyond the minimum requirements of the CDPAP statute. In addition to providing standard fiscal intermediary services, Principle Homecare sponsors community events and food banks, and it assists consumers with Medicaid enrollment and setting up trusts, among other things.

9. Principle Homecare has also worked hard to create a sustainable and long-lasting business. Part of this effort includes devoting significant resources to combating fraud. Principle Homecare conducts home visits to connect a voice with a face, does daily rollcalls to make sure the consumer and the personal assistant are in the same place, utilizes electronic and telephonic systems to clock personal assistants in and out, and reports any instances of noncompliance. Acting with honesty and integrity is foundational to Principle Homecare.

The CDPAP Amendment

10. On April 20, 2024, New York Governor Kathy Hochul signed into law the New York State Budget for State Fiscal Year 2024-25, which included an Amendment to CDPAP that will replace the more than 600 fiscal intermediaries with a single, private company (the "Statewide Fiscal Intermediary"). On April 1, 2025, the CDPAP Amendment will nullify the contracts of every fiscal intermediary currently operating in New York by forbidding existing fiscal intermediaries from providing fiscal intermediary services in the State as of that date. The full value of those contracts will be transferred to the Statewide Fiscal Intermediary, which will have full monopoly power over the entire fiscal intermediary industry.

11. The Statewide Fiscal Intermediary was chosen through a procurement process that conditioned eligibility on a bidder having served as a fiscal intermediary on a statewide basis in a

state other than the State of New York (among other requirements). Because Principle Homecare does not have this out-of-state experience, it was prohibited from serving as the Statewide Fiscal Intermediary.

12. I understand that Public Partnerships LLC ("PPL")—an out-of-state entity with no experience serving New York consumers—was selected for the Statewide Fiscal Intermediary role.

13. I also understand that PPL will hire subcontractors to facilitate its delivery of services. PPL has not asked or offered Principle Homecare to serve as a subcontractor, and it has not entered into any subcontractor agreement with PPL. Even if PPL offered Principle Homecare a subcontractor position and it were able to negotiate an acceptable arrangement with PPL, Principle Homecare's current contracts with MMCOs would still be terminated, and it would no longer be able to operate independently as a fiscal intermediary. Regardless, as things stand, Principle Homecare is not a PPL subcontractor and has no path to becoming one.

14. I was taken aback when the State announced the passage of the CDPAP Amendment. This was partially because many small fiscal intermediaries have struggled with the current rate structure, which has reduced our profit margins. But it was also because fiscal intermediaries do much more than just push paperwork—we serve as lifelines to the consumer communities we serve. I did not expect that the government would intentionally destroy all these businesses, which worked hard to provide such a great public good with so little financial benefit.

15. In my professional experience, consumers and personal assistants benefit from a system that is driven by competition among fiscal intermediaries. If the CDPAP Amendment is fully implemented, I believe that it will become more difficult for many consumers to access quality home care services.

Irreparable Harm to Principle Homecare

16. The CDPAP Amendment will cause Principle Homecare to suffer ruinous, irreparable harm. Once the CDPAP Amendment transition is complete, all of Principle Homecare's existing contracts with MMCOs will be terminated and the full value of the contracts will be transferred to PPL as the Statewide Fiscal Intermediary.

17. Because Principle Homecare does not have non-CDPAP lines of business, it will be forced to close its doors once the transition to a Statewide Fiscal Intermediary is completed on April 1, 2025. The State has not offered any compensation or lifelines to our business.

18. The harm to Principle Homecare will start long before its contracts with MMCOs are formally nullified on April 1, 2025. As soon as the State begins to transition consumers to the Statewide Fiscal Intermediary, which I understand it will begin to do no later than early March 2025, Principle Homecare will begin to lose revenue. None of that lost revenue will ever be recoverable from the State. Principle Homecare is also unlikely to be able to recover the lost consumers once they move to a new fiscal intermediary. To prepare for this transition, moreover, the State has mandated that Principle Homecare bear the unrecoverable cost and burden of transferring its sensitive, proprietary business data—including information about the personal assistants with whom it has relationships—for PPL's use. In other words, Principle Homecare has to help put itself out of business, and foot the bill for doing so.

19. If the CDPAP Amendment is permitted to go into effect on April 1, 2025, that will mean the death of Principle Homecare. If that happens, Principle Homecare will lose all of its financial investments, which include countless funds to build the business from the ground up and tens of thousands of dollars spent on software and technology to streamline the CDPAP experience

for consumers. It invested this money with the reasonable expectation that it would be permitted to continue doing business and receiving revenue in New York State under the CDPAP program.

20. The implementation of the CDPAP Amendment will also severely harm Principle Homecare's employees, all of whom will lose their jobs when Principle Homecare goes out of business, and many of whom may struggle to find work once the transition is complete.

21. If Principle Homecare is forced to close, consumers will also lose out on the extra services that it provides to them, such as assistance with Medicaid enrollment and setting up trusts. In my experience, a fiscal intermediary's partnering with small, community-based organizations—such as by contributing to food banks and community events—is a critical part of ensuring consumer needs are met. I fear that a large, Statewide Fiscal Intermediary will neglect opportunities to build local connections within a consumer's community.

22. Once Principle Homecare closes up shop and parts ways with its consumers, employees, and personal assistants, it will almost certainly not be able to reopen even if the CDPAP Amendment is later struck down. Its consumers, employees, and personal assistants will likely have already moved on and transferred their allegiances. It would need to renegotiate the business's MMCO contracts and, assuming they are even willing to work at or with the company again, it would need to rehire and retrain staff and convince personal assistants and consumers to come back to the company in large numbers—all within a very uncertain regulatory landscape. In other words, our contracts and business-critical relationships will be gone, and Principle Homecare would need to start over from scratch. Regrettably, the reality is that the company and its owners won't have the financial means to overcome these hurdles and restart the business once it's been closed, even if employees, consumers, and personal assistants are willing to return. Thus, any closure will almost certainly be permanent.

Executed this 31 day of December 2024 at Bronx, New York.

Sasha Guillaume

EXHIBIT G

(Dist. Ct. Dkt. No. 36)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCIPLE HOMECARE, LLC, MARTON CARE INC., PROMPT HOME CARE LLC, and CARE CONNECT CDPAP, INC.,

Plaintiffs,

v.

JAMES V. MCDONALD, in his official capacity as Commissioner of the New York State Department of Health,

Defendant.

No. 1:24-cv-7071 (MMG)

DECLARATION OF GERSHON MARTON IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Gershon Marton, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and state as follows:

1. I am the Administrator of Marton Care Inc. ("Marton Care"), which is a fiscal intermediary with its principal place of business in Brooklyn, New York.

2. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction to provide an overview of Marton Care's fiscal intermediary business under the Consumer Directed Personal Assistance Program ("CDPAP"), and to explain the devastating and irreparable impact that the impending implementation of the State's amendment to the CDPAP statute (the "CDPAP Amendment") will have on Marton Care's business, employees, and consumers.

Background

3. I founded Marton Care in 2017, inspired by my own experience working as a CDPAP personal assistant for my elderly grandfather. Taking care of my grandfather was no easy task. He was a Holocaust survivor who suffered from dementia and mobility issues later in life. While previous caregivers struggled to gain his trust and anticipate his needs, I knew exactly how he liked his food prepared, how to calm him down, and the best way to bathe him. CDPAP gave my grandfather dignity, happiness, and a sense of security in his final years of life—and it gave our family comfort that his care was in the hands of a loved one. Marton Care helps consumers, like my grandfather, navigate CDPAP and get the care they deserve.

4. Today, Marton Care serves approximately 120 CDPAP consumers across New York State, including Arabic-, Spanish-, and Yiddish-speaking consumers. Marton Care has contracts with Medicaid managed care organizations ("MMCOs") to provide services in every county in New York State and currently serves consumers in 17 of those counties, including all five boroughs of New York City, as well as Albany, Broome, Cattaraugus, Erie, Lewis, Monroe, Nassau, Niagara, Oneida, Schoharie, Suffolk, and Washington Counties. It has never served consumers outside the State of New York.

5. Marton Care's revenue stream is built on its contracts with MMCOs, which allow it to deliver fiscal intermediary services to consumers. For example, Marton Care has a contract with Centers Plan for Healthy Living, LLC that has been in effect since October 1, 2017, and has automatically renewed annually since it was formed. At the time the contract was formed, I expected it to remain in effect indefinitely. My understanding was that Marton Care's contracts would terminate only if the MMCOs terminated them, or if Marton Care was "excluded, suspended, or barred" as a result of misconduct. I had no reason to think that any of the MMCOs

that Marton Care works with would terminate its contracts, nor did Marton Care engage in any misconduct that could lead to termination.

6. Marton Care currently has four employees who depend on the business's income and are dedicated to the cause.

7. Marton Care's dedication to its consumers goes above and beyond its statutory obligations. For example, Marton Care counsels consumers, coordinates peer mentoring for personal assistants, guides consumers through setting up transportation services, and generally helps consumers navigate the healthcare industry.

The CDPAP Amendment

8. On April 20, 2024, New York Governor Kathy Hochul signed into law the New York State Budget for State Fiscal Year 2024-25, which included an Amendment to CDPAP that will replace the more than 600 fiscal intermediaries with a single, private company (the "Statewide Fiscal Intermediary"). On April 1, 2025, the CDPAP Amendment will nullify the contracts of every fiscal intermediary currently operating in New York by forbidding existing fiscal intermediaries from providing fiscal intermediary services in the State as of that date. The full value of those contracts will be transferred to the Statewide Fiscal Intermediary, which will have full monopoly power over the entire fiscal intermediary industry.

9. I was shocked when I heard about the State's plan to gut the program. Having spent years working as both a personal assistant and a fiscal intermediary under CDPAP, I have a close view of the program's success and the industry at large. I would have never guessed that the State would pursue such a drastic change to the program—especially considering that the consequences of a failed transition would fall squarely on vulnerable consumers.

10. The Statewide Fiscal Intermediary was chosen through a procurement process that conditioned eligibility on a bidder having served as a fiscal intermediary on a statewide basis in a

state other than the State of New York (among other requirements). Because Marton Care does not have this out-of-state experience, it was prohibited from serving as the Statewide Fiscal Intermediary.

11. I understand that Public Partnerships LLC ("PPL")—an out-of-state entity with no experience serving New York consumers—was selected for the Statewide Fiscal Intermediary role.

12. 15. I also understand that PPL will hire subcontractors to facilitate its delivery of services. PPL has not asked or offered Marton Care to serve as a subcontractor, and it has not entered into any subcontractor agreement with PPL. Even if PPL offered Marton Care a subcontractor position and it were able to negotiate an acceptable arrangement with PPL, Marton Care's current contracts with MMCOs would still be terminated, and it would no longer be able to operate independently as a fiscal intermediary. Regardless, as things stand, Marton Care is not a PPL subcontractor and has no path to becoming one.

Irreparable Harm to Marton Care

13. The CDPAP Amendment will cause Marton Care to suffer ruinous, irreparable harm. Once the CDPAP Amendment transition is complete, all of Marton Care's existing contracts with MMCOs will be terminated and the full value of the contracts will be transferred to PPL as the Statewide Fiscal Intermediary.

14. Because Marton Care does not have non-CDPAP lines of business, it will be forced to close its doors once the transition to a Statewide Fiscal Intermediary is completed on April 1, 2025. The State has not offered any compensation or lifelines to our business.

15. The harm to Marton Care will start before its contracts with MMCOs are formally nullified on April 1, 2025. As soon as the State begins to transition consumers to the Statewide

Fiscal Intermediary, which I understand it will begin to do no later than early March 2025, Marton Care will begin to lose revenue. None of that lost revenue will ever be recoverable from the State. Marton Care is also unlikely to be able to recover the lost consumers once they move to a new fiscal intermediary. To prepare for this transition, moreover, the State has mandated that Marton Care bear the unrecoverable cost and burden of transferring its sensitive, proprietary business data—including information about the personal assistants with whom it works—for PPL's use.

16. If the CDPAP Amendment is permitted to go into effect on April 1, 2025, Marton Care will go out of business and all of the substantial investments that Marton Care has made in its business will be destroyed. Marton Care invested this money with the reasonable expectation that it would be permitted to continue doing business and receiving revenue in New York State under the CDPAP program. As just one example, Marton Care will need to close the office that it opened in Amherst, New York to better serve its upstate consumers, in which it invested tens of thousands of dollars.

17. If the transition is allowed to go into effect, Marton Care's employees will also be severely harmed. Marton Care's employees have expressed great concern about the potential loss of their financial livelihood and the business that they have taken so much pride in building.

18. I also worry about the well-being of Marton Care's consumers, who will be deprived of a competitive fiscal intermediary market that allows them to choose a fiscal intermediary that meets their needs. Indeed, one of the things that a Statewide Fiscal Intermediary will be unable to provide is the personal touch that comes with working as a local fiscal intermediary. For example, Marton Care employees call personal assistants to remind

them when their annual health assessments are coming due—and the company even pays for the personal assistant's physical if they lack health insurance.

19. Once Marton Care shuts its doors and parts ways with its consumers, employees, and personal assistants, it will almost certainly not be able to reopen even if the CDPAP Amendment is later struck down. Its consumers, employees, and personal assistants will likely have already moved on and shifted their allegiances. It would need to renegotiate the business's MMCO contracts and, assuming they are even willing to work at or with the company again, it would need to rehire and retrain staff and convince personal assistants and consumers to come back to the company in large numbers—all within a very uncertain regulatory landscape. In other words, our contracts and business-critical relationships will be gone, and Marton Care would need to start over from scratch. Sadly, the reality is that the company and its owners won't be in a financial position to complete these tasks and get the business up and running again at that point, even if employees, consumers, and personal assistants are willing to return. Thus, any closure will almost certainly be permanent.

Executed this 2 day of January, 2025 at Kings County, New York.

[signature]
Gershon Marton

EXHIBIT H

(Dist. Ct. Dkt. No. 37)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCIPLE HOMECARE, LLC, MARTON CARE INC., PROMPT HOME CARE LLC, and CARE CONNECT CDPAP, INC.,

Plaintiffs,

v.

JAMES V. MCDONALD, in his official capacity as Commissioner of the New York State Department of Health,

Defendant.

No. 1:24-cv-7071 (MMG)

DECLARATION OF ELI ROSENTHAL IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Eli Rosenthal, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and state as follows:

1. I am the Chief Executive Officer of Prompt Home Care LLC ("Prompt Home Care"), which is a fiscal intermediary with its principal place of business in the Bronx, New York.

2. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction to provide an overview of Prompt Home Care's fiscal intermediary business under the Consumer Directed Personal Assistance Program ("CDPAP"), and to explain the devastating and irreparable impact that the impending implementation of the State's amendment to the CDPAP statute (the "CDPAP Amendment") will have on Prompt Home Care's business, employees, and consumers.

Background

3. I founded Prompt Home Care in 2017 (though it did not commence operations until 2018) with the goal of expanding consumers' access to safe, personalized home care provided by a known and trusted caretaker of their choosing.

4. Before starting Prompt Home Care, I worked as an administrator at a different home care company and saw the tremendous need to educate the public about the benefits of CDPAP. Throughout my experience in home care services, I noticed that many consumers refused home care assistance because they were uncomfortable with the idea of letting a stranger into their home. But with CDPAP, consumers were more open to receiving assistance because they had control over who helped them with their care. I have always believed that it should be the consumers—and not the home care agencies—who have the final say on critical decisions such as the hiring and firing of personal assistants. Empowering patients to take control of their healthcare decisions is what drove me to found Prompt Home Care.

5. Prompt Home Care makes money through its contracts with Medicaid managed care organizations ("MMCOs"), which allow it to deliver fiscal intermediary services to consumers. For example, Prompt Home Care has a contract with Centers Plan for Healthy Living, LLC that has been in effect since January 10, 2018, and has automatically renewed annually since it was formed. At the time the contract was formed, I expected it to remain in effect indefinitely. My understanding was that Prompt Home Care's contracts would terminate only if the MMCOs terminated them, or if Prompt Home Care was "excluded, suspended, or barred" as a result of misconduct. I had no reason to think that any of the MMCOs that Prompt Home Care works with would terminate its contracts, nor did Prompt Home Care engage in any misconduct that could lead to termination.

6. During Prompt Home Care's first year of business, we onboarded approximately 300 new consumers. Today, Prompt Home Care serves over 700 CDPAP consumers across New York State. Prompt Home Care primarily serves the Dominican community in the Bronx, but it also serves consumers in Westchester and Nassau Counties. Prompt Home Care has never served consumers outside the State of New York.

7. When Prompt Home Care first opened, it invested hundreds of thousands of dollars in office space, supplies, and information technology systems just to get the business off the ground. Once it was up and running, it continued to invest money to expand the business and improve the delivery of services to its consumers. For example, in 2022, Prompt Home Care opened a second storefront location in the Bronx to better serve its growing consumer base.

8. Since its founding, Prompt Home Care has made a conscious effort to ensure that the makeup of the business reflects the community of consumers it serves. As a result, its eight employees—including the team members handling enrollment, Human Resources, and payroll—are all Spanish speakers, and virtually all of them are themselves Dominican.

9. The employees are the reason for Prompt Home Care's success and are the heart and soul of the business. Although many of them do not have a college or professional degree, they have worked hard to cultivate strong relationships with the consumer community and gain a deep expertise in the intricacies of CDPAP. Prompt Home Care has endeavored to make sure that its employees' compensation reflects their years of hard work and dedication to its consumers.

10. After opening its doors in 2018, Prompt Home Care grew steadily until the COVID-19 pandemic, when the company faced serious financial headwinds. Despite the financial troubles caused by the pandemic, Prompt Home Care did not terminate any of its employees. Similarly, in 2024, when the New York State Department of Health ("DOH") implemented changes to how

fiscal intermediaries are reimbursed for the administrative services component of CDPAP, Prompt Home Care's revenue was severely affected. But, once again, Prompt Home Care did not conduct any layoffs. Prompt Home Care has always prioritized safeguarding its most valuable resource: its employees.

11. Prompt Home Care consistently goes above and beyond its obligations under the CDPAP statute. For example, although fiscal intermediaries are not obligated to help their consumers navigate insurance-related issues or help facilitate telehealth visits, Prompt Home Care has endeavored to provide such assistance as a courtesy to its consumers.

The CDPAP Amendment

12. On April 20, 2024, New York Governor Kathy Hochul signed into law the New York State Budget for State Fiscal Year 2024-25, which included an Amendment to CDPAP that will replace the more than 600 fiscal intermediaries with a single, private company (the "Statewide Fiscal Intermediary"). On April 1, 2025, the CDPAP Amendment will nullify the contracts of every fiscal intermediary currently operating in New York by forbidding existing fiscal intermediaries from providing fiscal intermediary services in the State as of that date. The full value of those contracts will be transferred to the Statewide Fiscal Intermediary, which will have full monopoly power over the entire fiscal intermediary industry.

13. The Statewide Fiscal Intermediary was chosen through a procurement process that conditioned eligibility on a bidder having served as a fiscal intermediary on a statewide basis in a state other than the State of New York (among other requirements). Because Prompt Home Care does not have this out-of-state experience, it was prohibited from serving as the Statewide Fiscal Intermediary.

14. I understand that Public Partnerships LLC ("PPL")—an out-of-state entity with no experience serving New York consumers—was selected for the Statewide Fiscal Intermediary role.

15. I also understand that PPL will hire subcontractors to facilitate its delivery of services. PPL has not asked or offered Prompt Home Care to serve as a subcontractor, and it has not entered into any subcontractor agreement with PPL. Even if PPL offered Prompt Home Care a subcontractor position and it were able to negotiate an acceptable arrangement with PPL, Prompt Home Care's current contracts with MMCOs would still be terminated, and it would no longer be able to operate independently as a fiscal intermediary. Regardless, as things stand, Prompt Home Care is not a PPL subcontractor and has no path to becoming one.

16. Prompt Home Care had no reason to expect that the entire fiscal intermediary industry would be destroyed through legislative action; indeed, I was shocked when I heard the amendment had passed. Although CDPAP has always been regulated and has gone through changes over the years, none of the prior regulations or changes was existential. The CDPAP Amendment has therefore completely upended all of Prompt Home Care's expectations about how this industry would operate.

17. Prompt Home Care has already begun to feel the harmful effects of the CDPAP Amendment. For instance, due to the financial uncertainties associated with the CDPAP Amendment, we have been forced to close our Bronx office—at great expense to the business.

18. In the past few months, our office has also fielded numerous calls from consumers who have expressed anxiety and confusion about what is going to happen to their care if the CDPAP Amendment is implemented.

19. I have spoken with consumers who were surprised to learn that the CDPAP Amendment was passed and that they would be transferred to a new fiscal intermediary in just a few months. Unfortunately, I think this lack of awareness speaks to the failures of the State and DOH to get consumer buy-in for this drastic change to the program. It also serves as a warning

that DOH's rushed implementation of such a sweeping change to the program is likely going to be anything but smooth—as PPL will still need to onboard hundreds of thousands of consumers and personal assistants in a short amount of time.

Irreparable Harm to Prompt Home Care

20. The CDPAP Amendment will cause Prompt Home Care to suffer ruinous, irreparable harm. Once the CDPAP Amendment transition is complete, all of Prompt Home Care's existing contracts with MMCOs will be terminated and the full value of the contracts will be transferred to PPL as the Statewide Fiscal Intermediary.

21. Because Prompt Home Care does not have non-CDPAP lines of business, it will be forced to close its doors once the transition to a Statewide Fiscal Intermediary is completed on April 1, 2025. The State has not offered any compensation or lifelines to our business.

22. The harm to Prompt Home Care will start long before its contracts with MMCOs are fully nullified on April 1, 2025. As soon as the State begins to transition consumers to the Statewide Fiscal Intermediary, which I understand it will begin to do no later than early March 2025, Prompt Home Care will begin to lose revenue. Indeed, consumers have already left Prompt Home Care in anticipation of the transition. None of that lost revenue will ever be recoverable from the State. Prompt Home Care is also unlikely to be able to recover the lost consumers once they move to a new fiscal intermediary. To prepare for this transition, moreover, the State has mandated that Prompt Home Care bear the unrecoverable cost and burden of transferring its sensitive, proprietary business data—including information about the personal assistants with whom it works—for PPL's use.

23. If the CDPAP Amendment is permitted to go into effect on April 1, 2025, that will be the end of Prompt Home Care.

24. If Prompt Home Care is forced to close, its entire staff, most of whom lack college degrees but have developed specialized expertise in the fiscal intermediary industry, will be out of work. I worry that Prompt Home Care's employees will not be able to easily transition to a new job—especially as thousands of other former fiscal intermediary workers will be scrambling to find new positions as well.

25. Prompt Home Care employees have noted their anxiety about finding a job that will pay them enough to afford their housing costs and expenses. Some have expressed fear that they will have no option but to take an unskilled job that pays minimum wage and that does not provide benefits. One employee recently left to find another job because she was nervous about how the CDPAP Amendment would affect her employment. Prompt Home Care's employees should not be collateral damage in the State's failed experiment to "reform" home care in New York.

26. If all of this happens, Prompt Home Care will also be forced to abandon the community of consumers that it has served since its founding. It is difficult to put into words the magnitude of the loss that our consumers will be forced to endure.

27. Many of Prompt Home Care's consumers suffer from serious medical conditions, which make them particularly vulnerable to any disruptions in care caused by a rushed rollout of the program.

28. I am concerned that, under a single Statewide Fiscal Intermediary, consumers will not be offered the high-quality fiscal intermediary services that they are currently receiving. Since its founding, Prompt Home Care has taken great pains to provide quality fiscal intermediary services to its consumers. Prompt Home Care's success is due in large part to New York's thriving fiscal intermediary market, which allows consumers to choose who services them. This competitive market has incentivized Prompt Home Care to invest in its valued consumers by

fostering close connections with the communities that it serves. Based on my years of experience in this industry, I am confident that an out-of-state entity like PPL, which has no experience serving this community, will have a difficult time effectively anticipating patient needs and delivering quality services.

29. As an example, from my experience working closely with the Dominican community in the Bronx, I know that these consumers tend to be very family-oriented and are hesitant to include strangers in decision-making involving their healthcare. It took years of dedicated service to gain the trust of this community, and I fear that many of these consumers will forgo care altogether if they are forced to partner with an out-of-state entity that is completely unknown to them.

30. Prompt Home Care's consumers will also lose out on the additional services that it provides to consumers, including one-on-one assistance with navigating insurance-related issues and facilitating telehealth visits.

31. If I ever suspected that the State would fundamentally restructure CDPAP and take everything I had worked so hard to build, I would never have entered this business. Prompt Home Care's significant investments in the business over many years will be lost if the transition is fully implemented on April 1, 2025, as scheduled.

32. Prompt Home Care's success was based on the word-of-mouth recommendations of consumers in the industry—recommendations that it earned. It is heartbreaking to imagine the State coming in and ending consumer relationships that Prompt Home Care has spent years building.

33. Once Prompt Home Care closes down and parts ways with its consumers, employees, and personal assistants, it will almost certainly not be able to reopen even if the CDPAP

Amendment is later struck down. Its consumers, employees, and personal assistants will likely have already moved on and shifted their allegiances. It would need to renegotiate the business's MMCO contracts and, assuming they are even willing to work at or with the company again, it would need to rehire and retrain staff and convince personal assistants and consumers to come back to the company in large numbers—all within a very uncertain regulatory landscape. In other words, our contracts and business-critical relationships will be gone, and Prompt Home Care would need to start over from scratch. And the company and its owners won't be in a financial position to overcome these challenges and restart the business once it's been closed, even if employees, consumers, and personal assistants are willing to return. Thus, any closure will almost certainly be permanent.

Executed this 31st day of December, 2024 at Bronx, New York.

[signature]
Eli Rosenthal

EXHIBIT I

(Dist. Ct. Dkt. No. 38)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRINCIPLE HOMECARE, LLC, MARTON CARE INC., PROMPT HOME CARE LLC, and CARE CONNECT CDPAP, INC.,

Plaintiffs,

v.

JAMES V. MCDONALD, in his official capacity as Commissioner of the New York State Department of Health,

Defendant.

No. 1:24-cv-7071 (MMG)

DECLARATION OF DIANA YAKHNIS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Diana Yakhnis, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and state as follows:

1. I am the President of Care Connect CDPAP Inc. ("Care Connect"), which is a fiscal intermediary with its principal place of business in Brooklyn, New York.

2. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction to provide an overview of Care Connect's fiscal intermediary business under the Consumer Directed Personal Assistance Program ("CDPAP"), and to explain the devastating and irreparable impact that the impending implementation of the State's amendment to the CDPAP statute (the "CDPAP Amendment") will have on Care Connect's business, employees, and consumers.

Background

3. Together with my husband Alec Yakhnis, I founded Care Connect in 2016 (though it did not commence operations until 2018) on the belief that patients have the right to receive care from those they love and trust and who provide them with happiness and peace. As Ukrainian immigrants, my husband and I view Care Connect's success as the fulfillment of the American dream.

4. Care Connect makes money through its contracts with Medicaid managed care organizations ("MMCOs"), which allow it to deliver fiscal intermediary services to consumers. For example, Care Connect has a contract with Centers Plan for Healthy Living, LLC that has been in effect since June 1, 2018, and has automatically renewed annually since it was formed. At the time the contract was formed, I expected it to remain in effect indefinitely. My understanding was that Care Connect's contracts would terminate only if the MMCOs terminated them, or if Care Connect was "excluded, suspended, or barred" as a result of misconduct. I had no reason to think that any of the MMCOs that Care Connect works with would terminate its contracts, nor did Care Connect engage in any misconduct that could lead to termination.

5. Today, Care Connect serves approximately 500 CDPAP consumers throughout New York State. Care Connect serves consumers in all five boroughs of New York City, as well as Albany, Erie, Nassau, Niagara, Putnam, Schoharie, Schenectady, Suffolk, and Westchester Counties. Its language competencies include Albanian, Bengali, Chinese, French, Georgian, Hebrew, Hindi, Italian, Korean, Polish, Punjabi, Russian, Slavic, Spanish, Urdu, Ukrainian, Uzbek, and Yiddish. It has never served consumers outside the State of New York.

6. Care Connect has five employees who handle a range of responsibilities from compliance to HR.

7. Care Connect's dedication to its consumers goes above and beyond its statutory obligations. For example, Care Connect facilitates Medicaid certifications by connecting consumers with a third-party company that can assist with that process. Care Connect employees also help consumers find doctors and connect them with experts to assist with translation- and immigration-related needs.

8. Care Connect makes it a priority to monitor potential fraud. Care Connect monitors when the personal assistants begin and end their workday via phone or with a GPS-enabled app that only allows personal assistants to clock in within 100 feet of the patient's address. I personally oversee the process of verifying timesheets.

The CDPAP Amendment

9. On April 20, 2024, New York Governor Kathy Hochul signed into law the New York State Budget for State Fiscal Year 2024-25, which included an Amendment to CDPAP that will replace the more than 600 fiscal intermediaries with a single, private company (the "Statewide Fiscal Intermediary"). On April 1, 2025, the CDPAP Amendment will nullify the contracts of every fiscal intermediary currently operating in New York by forbidding existing fiscal intermediaries from providing fiscal intermediary services in the State as of that date. The full value of those contracts will be transferred to the Statewide Fiscal Intermediary, which will have full monopoly power over the entire fiscal intermediary industry.

10. The Statewide Fiscal Intermediary was chosen through a procurement process that conditioned eligibility on a bidder having served as a fiscal intermediary on a statewide basis in a state other than the State of New York (among other requirements). Because Care Connect does not have this out-of-state experience, it was prohibited from serving as the Statewide Fiscal Intermediary.

11. I understand that Public Partnerships LLC ("PPL")—an out-of-state entity with no experience serving New York consumers—was selected for the Statewide Fiscal Intermediary role.

12. I also understand that PPL will hire subcontractors to facilitate its delivery of services. PPL has not asked or offered Care Connect to serve as a subcontractor, and it has not entered into any subcontractor agreement with PPL. Even if PPL offered Care Connect a subcontractor position and it were able to negotiate an acceptable arrangement with PPL, Care Connect's current contracts with MMCOs would still be terminated, and it would no longer be able to operate independently as a fiscal intermediary. Regardless, as things stand, Care Connect is not a PPL subcontractor and has no path to becoming one.

13. When the news broke that a single fiscal intermediary would be taking over the entire industry, I was caught off guard. I could not believe that the State would actually go through with such a radical proposal. I came to this country with the dream of starting a business that helped people in my community. Now, the State has decided to steal that dream away from me without any compensation, leaving me without another way to support myself and my family. This business has been the sole source of income for my family since 2018, and I do not know how I am going to pay for basic day-to-day expenses going forward.

Irreparable Harm to Care Connect

14. The CDPAP Amendment will cause Care Connect to suffer ruinous, irreparable harm. Once the CDPAP Amendment transition is complete, all of Care Connect's existing contracts with MMCOs will be terminated and the full value of the contracts will be transferred to PPL as the Statewide Fiscal Intermediary.

15. Because Care Connect does not have non-CDPAP lines of business, it will be forced to close its doors once the transition to a Statewide Fiscal Intermediary is completed on April 1, 2025. The State has not offered any compensation or lifelines to our business.

16. The harm to Care Connect will start long before its contracts with MMCOs are formally nullified on April 1, 2025. As soon as the State begins to transition consumers to the Statewide Fiscal Intermediary, which I understand it will begin to do no later than early March 2025, Care Connect will begin to lose revenue. None of that lost revenue will ever be recoverable from the State. Care Connect is also unlikely to be able to recover the lost consumers once they move to a new fiscal intermediary. To prepare for this transition, moreover, the State has mandated that Care Connect bear the unrecoverable cost and burden of transferring its sensitive, proprietary business data—including information about the personal assistants with whom it works—for PPL's use. So we have to help the State put us out of business, and pay the bill for doing so.

17. If the CDPAP Amendment is permitted to go into effect on April 1, 2025, that will spell the end for Care Connect. If that happens, Care Connect will lose all of the investments it made in its business, including significant amounts of money to build the business from the ground up and approximately $100,000 that was used to customize its client-facing software to help make the CDPAP process as seamless as possible. Care Connect's investments in its business and consumers reflects its commitment to the mission of CDPAP and its reasonable expectation that it would be permitted to continue doing business and receiving revenue in New York State under the CDPAP program.

18. The transition also threatens Care Connect's consumers, many of whom depend on the personalized, one-on-one service that they have grown to expect from their local fiscal

intermediaries. In my professional experience, fiscal intermediaries routinely fill gaps in consumer need that the program may not have anticipated. In fact, I give out my personal phone number and tell consumers and personal assistants that they can call or text me with questions at any time—and they do. For example, when a consumer recently complained about needing eye surgery and having trouble finding a doctor who could perform the procedure, the Care Connect team stepped up to help them locate a doctor. Because fiscal intermediaries are the glue that helps hold this program together, I worry about what will happen to our consumers when an out-of-state entity with no experience serving New York takes over.

19. Once Care Connect shuts down and parts ways with its consumers, employees, and personal assistants, it will almost certainly not be able to reopen even if the CDPAP Amendment is later struck down. Its consumers, employees, and personal assistants will likely have already moved on and shifted their allegiances. It would need to renegotiate the business's MMCO contracts and, assuming they are even willing to work at or with the company again, it would need to rehire and retrain staff and convince personal assistants and consumers to come back to the company in large numbers—all within a very uncertain regulatory landscape. In other words, our contracts and business-critical relationships will be gone, and Care Connect would need to start over from scratch. Unfortunately, the company and its owners (my husband and I) won't have the financial means to complete these tasks and get the business up and running again at that point, even if employees, consumers, and personal assistants are willing to return. Thus, any closure will almost certainly be permanent.

Executed this 2nd day of January, 2025 at Brooklyn, New York.

[signature]
Diana Yakhnis

EXHIBIT J

(Dist. Ct. Dkt. No. 34-5)

Exhibit 5

Administrative Agreement
for the Provision of Fiscal Intermediary Services for the
Consumer Directed Personal Assistance Program

THIS AGREEMENT ("Agreement") is made and entered into as of ______________________ ("Effective Date") by and between ______________________ ("MCO") and [Insert Name of Fiscal Intermediary] ("FI"). MCO and FI are referred to hereinafter individually as "Party" and collectively as the "Parties".

WHEREAS, MCO offers Medicaid managed care health benefit plans and seeks to engage FI to provide fiscal intermediary services in relation to consumer directed personal assistance program benefits for Members of such plans;

WHEREAS, FI is a fiscal intermediary designated to provide wage and benefit processing for consumer directed personal assistants on behalf of an employing consumer and other responsibilities specified in this Agreement in accordance with 18 N.Y.C.R.R. § 505.28(i); and

WHEREAS, MCO and FI desire to enter into this Agreement.

NOW THEREFORE, the Parties agree as follows:

1. Definitions.

"**consumer**" means a medical assistance recipient who a social services district or MCO has determined eligible to participate in the consumer directed personal assistance program.

"**consumer directed personal assistance**" means the provision of some or total assistance with personal care services, home health aide services and skilled nursing tasks by a consumer directed personal assistant under the instruction, supervision and direction of a consumer or the consumer's designated representative.

"**consumer directed personal assistant**" ("CDPA") means an adult who provides consumer directed personal assistance to a consumer under the consumer's instruction, supervision and direction or under the instruction, supervision and direction of the consumer's designated representative. A consumer's spouse, parent or designated representative may not be the consumer directed personal assistant for that consumer; however, a consumer directed personal assistant may include any other adult relative of the consumer who does not reside with the consumer or any other adult relative who resides with the consumer because the amount of care the consumer requires makes such relative's presence necessary.

"**continuous consumer directed personal assistance**" means the provision of uninterrupted care, by more than one consumer directed personal assistant, for more than 16 hours per day for a consumer who, because of the consumer's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.

"**designated representative**" means an adult to whom a self-directing consumer has delegated authority to instruct, supervise and direct the consumer directed personal assistant and to perform

the consumer's responsibilities specified in subdivision (g) of Section 505.28 of Title 18 of the New York Codes, Rules and Regulations ("NYCRR") and who is willing and able to perform these responsibilities. With respect to a non-self-directing consumer, a "designated representative" means the consumer's parent, legal guardian or a responsible adult surrogate who is willing and able to perform such responsibilities on the consumer's behalf. The designated representative may not be the consumer directed personal assistant or a fiscal intermediary employee, representative or affiliated person.

"**fiscal intermediary**" ("FI") means an entity that has a contract with MCO to provide wage and benefit processing for consumer directed personal assistants and other fiscal intermediary responsibilities specified in subdivision (i) of Section 505.28 of Title 18 of the NYCRR.

"**home health aide services**" means services within the scope of practice of a home health aide pursuant to Article 36 of the Public Health Law including simple health care tasks, personal hygiene services, housekeeping tasks essential to the consumer's health and other related supportive services. Such services may include, but are not necessarily limited to, the following: preparation of meals in accordance with modified diets or complex modified diets; administration of medications; provision of special skin care; use of medical equipment, supplies and devices; change of dressing to stable surface wounds; performance of simple measurements and tests to routinely monitor the consumer's medical condition; performance of a maintenance exercise program; and care of an ostomy after the ostomy has achieved its normal function.

"Medicaid Contract" means the applicable agreement between the MCO and NYSDOH, or its successor, pursuant to which MCO agrees to provide and arrange for the provision of health care services to persons eligible for Medicaid under Title XIX of the Social Security Act.

"**NYSDOH**" means the New York State Department of Health.

"**personal care services**" means the nutritional and environmental support functions, personal care functions, or both such functions, that are specified in Section 505.14(a)(6) of Part 505 of Title 18 of the NYCRR except that, for individuals whose needs are limited to nutritional and environmental support functions, personal care services shall not exceed eight hours per week.

"**self-directing consumer**" means a consumer who is capable of making choices regarding the consumer's activities of daily living and the type, quality and management of his or her consumer directed personal assistance; understands the impact of these choices; and assumes responsibility for the results of these choices.

"**skilled nursing tasks**" means those skilled nursing tasks that are within the scope of practice of a registered professional nurse or a licensed practical nurse and that a consumer directed personal assistant may perform pursuant to Section 6908 of the Education Law.

"**some assistance**" means that a specific personal care service, home health aide service or skilled nursing task is performed or completed by the consumer with help from another individual.

"**stable medical condition"** means a condition that is not expected to exhibit sudden deterioration or improvement and does not require frequent medical or nursing evaluation or judgment to determine changes in the consumer's plan of care.

"**total assistance**" means that a specific personal care service, home health aide service or skilled nursing task is performed or completed for the consumer.

2. Fiscal Intermediary Responsibilities. The fiscal intermediary shall have the following responsibilities:

a. Process each CDPA's wages and benefits including establishing the amount of each assistant's wages and benefits; process all income tax and other required wage withholdings; and comply with workers' compensation, disability and unemployment insurance requirements.

b. Ensure that the health status of each consumer directed personal assistant is assessed pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation.

c. Maintain records for each CDPA which shall include, at a minimum, time records, the CDPA health assessments required pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation, and the information needed for payroll processing and benefit administration.

d. Maintain records for each consumer, including copies of the authorizations, reauthorizations, and the contracts between the consumer and the FI.

e. Obtain a signed agreement with consumer outlining consumer's responsibilities as contained in 18 NYCRR § 505.28. Use best efforts to notify the MCO if the FI becomes aware that the consumer has been admitted to a higher level of care such as an inpatient hospital or skilled nursing facility. Monitor enrollment in MCO on the 1st and 15th of each month; provided, however, that such monitoring on the part of the FI shall not relieve the MCO of the MCO's responsibility to notify the FI in the event of a consumer's disenrollment in the MCO or in the event of a determination that the consumer is no longer authorized to participate in the CDPAP program.

f. Monitor the ability of the consumer, or the ability of the consumer's designated representative, if applicable, to fulfill the consumer's responsibilities under the consumer directed personal assistance program and notify the MCO promptly in the event that the FI becomes aware of any circumstances that may affect the ability of the consumer, or that of the consumer's designated representative, if applicable, to fulfill such responsibilities.

g. Comply with applicable NYSDOH regulations regarding the responsibilities of providers enrolled in the medical assistance program.

h. Enter into an Agreement with the consumer that stipulates that **the consumer** and, as applicable, the consumer's designated representative shall be solely responsible to:

i. Manage the plan of care authorized by the MCO, including recruiting and hiring a sufficient number of CDPAs to provide authorized services as set forth in the plan of care authorized by the MCO; training, supervising and scheduling each CDPA; terminating the CDPA's employment with the consumer; and assuring that each CDPA completely and safely performs the personal care services, home health aide services and skilled nursing tasks included on the consumer's MCO approved plan of care;

ii. Notify the MCO within 5 business days of any changes in the consumer's medical condition or social circumstances including but not limited to, any hospitalization of the consumer or change in the consumer's address or telephone number;

iii. Timely notify the FI of any changes in the employment status of each CDPA;

iv. Attest to the accuracy of each time record for each CDPA;

v. Transmit the CDPA's time records to the FI according to the FI's policies and procedures;

vi. Timely distribute each CDPA's paycheck, if needed;

vii. Arrange and schedule substitute coverage when a CDPA is temporarily unavailable for any reason;

viii Acknowledge and agree that: (1) any person who receives, directly or indirectly, an overpayment from the Medicaid program is obligated to report and return the overpayment, within sixty days of the identification of the overpayment. Failure to do so may expose the person to liability under the False Claims Act, including whistleblower actions, treble damage and penalties; and (2) that the Office of the Medicaid Inspector General or MCO may suspend payments to the FI and CDPA, if applicable, pending an investigation of a credible allegation of fraud against the FI or CDPA, as applicable, unless the state determines there is good cause not to suspend such payments; and

ix Comply with applicable labor laws and provide equal employment opportunities to CDPAs in accordance with applicable laws.

x. Notify the FI and/or MCO of any disclosure of information that the MCO has taken reasonable measures to maintain as confidential and which derives independent economic value from not being generally known or readily ascertainable by the public (Proprietary information). Proprietary information includes the compensation arrangements between the MCO and the FI and the amount the FI pays the CDPA and any other information relating to the MCO's business that is not public information.

3. MCO Responsibilities. The MCO shall undertake the following:

a. Provide information to any enrollee determined to be in need of home care that CDPAS is available and the conditions under which a consumer is eligible.

b. Conduct initial and semi-annual nursing and social assessments of consumers.

c. Determine that the consumer is eligible for long term care services provided by a certified home health agency, the AIDS home care program or personal care services, and is in need of home care services or private duty nursing.

d. Determine that the consumer is eligible to participate in the CDPAP program. A consumer is eligible if the consumer: (1) has a stable medical condition; (2) is self-directing or if, non-self-directing, has a designated representative; (3) needs some or total assistance with one or more personal care services, home health aide services or skilled nursing tasks; (4) is able and willing or has a designated representative able and willing to fulfill the responsibilities of a consumer, including but not limited to, making informed choices as to the type and quality of services, including but not limited to nursing care, personal care, transportation and respite services; (5) participates, as needed, or has a designated representative participate in the required assessment and bi-annual reassessment process, or if the MCO determines an unexpected change in the consumer's social circumstances, mental status or medical condition has occured during the authorization or reauthorization period that would affect the type, amount or frequency of consumer directed personal assistance provided during such period and does not have (a) voluntary assistance available from informal caregivers, including, but not limited to, the consumer’s family, friends or other responsible adult, provided that thsis shall include an evaluation of the potential contribution of informal supports, such as family members or friends, to the individual's care, which must consider the number and kind of informal supports available to the individual; the ability and motivation of informal supports to assist in care; the extent of informal supports' potential involvement; the availability of informal supports for future assistance; and the acceptability to the individual of the informal supports' involvement in his or her care; or formal services provided by an entity or agency or (b) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies are provided to the consumer and can safely and cost-effectively meet the need for services.

e. Determine the consumer’s eligibility for the program through its initial and periodic assessments. The MCO will authorize the level and amount of services and will authorize payment for the CDPAP services and communicate such authorization to the consumer, or if applicable, the designated representative, and the FI. The MCO shall not refuse to authorize consumer directed personal assistance when a consumer is otherwise eligible unless it reasonably expects that such assistance cannot maintain the consumer’s health and safety in the home or other setting in which consumer directed personal assistance may be provided and that a designated representative

either cannot be identified or would not result in a change in the consumer's ability to maintain his or her health and safety in the home.

f. Notify the FI in the event that the MCO makes changes to the authorization for the amount duration or scope of CDPAS services; or determines that the consumer is no longer eligible to participate in the CDPAP program; or that the consumer is no longer able to fulfill the consumer's responsibilities under the program.

g. Comply with the assessment, authorization, reassessment and reauthorization procedures required by regulation and/or NYSDOH guidance.

h. Receive and promptly review the FI notification to the MCO of any circumstances that may affect the consumer's or, if applicable, the consumer's designated representative's ability to fulfill the consumer's responsibilities under the program and make changes in the consumer's authorization and reauthorization as needed.

i. Monitor the FI's performance under this Agreement to ensure that the FI is fulfilling its responsibilities under this Agreement.

j. Monitor consumer's on-going eligibility for the program and discontinue authorization for CDPAP services when MCO determines that the consumer or their designated representative is no longer able to fulfill their responsibilities or no longer desires to continue in the program and a designated representative or alternative designated representative cannot be identified. In such case, the MCO must authorize other services as required.

k. Enter into an understanding with the consumer, the terms of which shall be defined by the NYSDOH.

4. Maintenance of Records. The FI shall maintain consumer records for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after the age of majority or six (6) years after the date of service, whichever is later, or for such longer period as required by law, regulation or the Medicaid Contract. This provision shall survive the termination of this Agreement regardless of the reason.

5. MCO Protocols. The FI agrees to comply fully and abide by the rules, policies and procedures that the MCO (a) has established or will establish to meet general or specific obligations placed on the MCO by statute, regulation, Medicaid Contract, or DOH guidelines or policies and (b) has provided or given access to the FI at least thirty (30) days in advance of implementation regarding, but not limited to, authorization requirements, referral processes, quality improvement and management activities, and utilization management.

6. Representations and Warranties. The FI is a duly organized validly existing organization in good standing, as designated by NYSDOH or the LDSS. FI agrees it is and will continue to be for the term of the Agreement eligible to participate in the NYS Medicaid Program, and to comply with all state and federal laws and regulations, including Medicaid program requirements and the Medicaid Contract.

7. Monitoring and Auditing. MCO shall monitor the performance of the FI's obligations under this Agreement, by reasonable and appropriate financial, programmatic and oversight tools and measures. Copies of all such tools and measures used shall be provided to the FI in advance, to facilitate and foster proactive on-going continuous improvement efforts. The MCO and any government officials with oversight authority over the MCO, including but not limited to the Department of Health and Human Services, shall have the right, during normal business hours and upon advance written notice, to monitor and evaluate, through inspection or other means, FI's performance under this Agreement, including but not limited to access to consumer records and CDPA personnel records in the possession of the FI. The FI shall permit MCO and any government officials with oversight authority over the MCO to conduct site visits, upon prior notice, to verify the performance under this Agreement and that such performance continues to comply with the terms and standards of the MCO and any NYSDOH standards. This provision shall survive the termination of this Agreement regardless of the reason.

8. Quality, Data and Reporting Requirements. FIs shall comply with MCO data and reporting requirements. The MCO shall provide the FI with full, complete, and current copies of its protocols for all such activities in advance.

9. Payment. MCO shall pay FI as set forth on Attachment ____ within thirty (30) days from when MCO receives a claim. The Parties acknowledge and agree that unless otherwise provided by law, Section 3224(a) and (b) of the NYS Insurance Law does not apply to this Agreement as of the date of execution of this Agreement. No payment shall be made to the FI or, if made shall be recouped, even if authorized by the MCO, unless the FI's claim is supported by documentation, including but not limited to CDPA time records, of the time spent in provision of services for each consumer.

10. Term. The term of the Agreement shall begin as of the Effective Date and shall continue for one (1) year, after which this Agreement shall re-new for additional one (1) year terms; unless otherwise terminated as provided by this Agreement or either Party gives sixty (60) days advance written notice prior to the renewal date.

11. Termination. Either Party shall have a right to terminate this Agreement without cause upon 60 days written notice. Either Party shall have the right to terminate this Agreement upon 30 days written notice, or such earlier time period if warranted, if the other Party materially breaches this Agreement and such breach is not cured within the 30 days' notice period. This Agreement shall terminate automatically and immediately in the event that either Party is excluded, suspended or barred from participating in any government health care program.

12. Obligations Post Termination. Upon termination, FI shall: (1) assist in effecting an orderly transfer of services and obligations to another FI to which MCO has assigned consumers to prevent any disruption in services to such consumers; (2) provide MCO and NYSDOH with access to all books, records and other documents relating to the performance of services under this Agreement that are required or requested, at no charge; and (3) subject to applicable laws and regulations, stop using and return and/or destroy all proprietary information. This provision shall survive the termination of the Agreement regardless of the reason.

13. Indemnification. Neither FI nor MCO shall be responsible for fulfilling the responsibilities of the consumer or, if applicable, the consumer's designated representative as set forth in the agreements between the FI and consumer or in the agreement between the MCO and the consumer. This shall not diminish the FI's or MCO's respective obligations to exercise reasonable care in properly carrying out its respective responsibilities under the consumer directed personal assistance program. Both FI and MCO understand and acknowledge that pursuant to state law, the Office of the Medicaid Inspector General (OMIG) and/or the Office of the Inspector General (OIG) may review and audit all contracts, claims, bills and other expenditures of medical assistance program funds to determine compliance. Each Party agrees to indemnify and hold the other Party harmless from any and all liability arising out of any suit, investigation, administrative action, fine, penalty or sanction by or on behalf of the OMIG and/or the OIG against the other Party, to the extent that such liability arises directly out of the wrongful acts or omissions of the indemnifying party.

14. Adjustments: Recoupment/Adjustments for incorrect/over payment to FI. Other than recovery for duplicate payments, MCO will provide FI with not less than 30 days prior written notice before engaging in incorrect/over payment recovery efforts seeking recovery of the incorrect/over payment to the FI. Such notice shall state the specific information relating to such incorrect/over payment, payment amount and proposed adjustment with a reasonable explanation of the proposed adjustment. Within 30 days after receipt of such notice, FI may dispute the allegation(s) of incorrect/over payment and the proposed adjustment in writing. MCO shall submit a written response to FI's dispute within 10 days, addressing each of the disputed particulars in detail. The Parties shall apply their best efforts to resolve the dispute by good-faith negotiation. MCO will not initiate incorrect/over payment recovery efforts more than six (6) years after the original payment unless authorized or required by the state.

15. Non-discrimination. FI shall not discriminate against any consumers based on color, race, creed, age, gender, sexual orientation, disability, place of origin or source of payment or type of illness or condition. FI shall comply with the Federal Americans with Disabilities Act (ADA).

16. Confidentiality. Each Party understands the other Party to be a covered entity, as that term is defined by the Health Insurance Portability and Accountability Act ("HIPAA") and thus, not a business associate requiring a business associate agreement. FI agrees to adhere to and comply with the applicable provisions of HIPAA; the Health Information Technology for Economic and Clinical Health Act (HITECH); and the HIV confidentiality requirements of Article 27-F of the Public Health Law; Mental Hygiene Law Section 33.13, if applicable; and the confidentiality requirements set forth in the Medicaid Contract.

17. Lobby Certification. FI agrees, pursuant to 31 U.S.C. § 1352 and CFR Part 93, that no Federally appropriated funds have been paid or will be paid to any person by or on behalf of FI for the purpose of influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the award of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. FI agrees to complete and submit the "Certification Regarding Lobbying," form, if this Agreement exceeds $100,000. If any funds

other than federally appropriated funds have been paid or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the award of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement, and payments to the FI under this Agreement exceed $100,000, FI shall complete and submit, if required, Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

18. Implementation Prior to DOH Approval. This Agreement is subject to the approval of the NYSDOH and if implemented prior to such approval, the Parties agree to incorporate into this Agreement any and all modifications required by NYSDOH for approval or, alternatively, to terminate this Agreement if so directed by NYSDOH, effective sixty (60) days subsequent to such notice.

19. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld.

20. Model Contract. This Agreement incorporates the pertinent obligations under the Medicaid Contract, including but not limited to the Medicaid Managed Care and/or the Family Health Plus contract, and/or the Managed Long Term Care Plan contract, between the MCO and DOH as if set forth fully herein.

21. Sanctioned Individuals. FI is required to check staff and employees and CDPAs against the Excluded Provider List, which includes updates from the List of Excluded Individuals and Entities (LEIE) and the Restricted, Terminated or Excluded Individuals or Entities List, on a monthly basis.

22. Subcontractors. FI agrees it shall notify MCO if it subcontracts any of its obligations hereunder or the performance of any of FI's obligations and responsibilities. Any subcontractor shall be subject to the provision of this Agreement to the same extent as the FI.

23. Fraud, Waste and Abuse Compliance and Reporting. Claims, data and other information submitted to MCO pursuant to this Agreement and used, directly or indirectly, for purposes of obtaining payments from the government under a Federal health care program, and payments that FI receives under this Agreement are, in whole or in part, from Federal funds. Accordingly, FI shall: (1) upon request of MCO, certify, based on its best knowledge, information and belief, that all data and other information directly or indirectly reported or submitted to MCO pursuant to this Agreement is accurate, complete and truthful; (2) not claim payment in any form, directly or indirectly, from a Federal health care program for items or services covered under this Agreement; (3) comply with laws designed to prevent or ameliorate fraud, waste, and abuse, including applicable provisions of Federal criminal law, the False Claims Act (31 USC §§ 3729 et. seq.), and the anti-kickback statute (section 1128B(b) of the Social Security Act); and (4) require it and its employees and its subcontractors and their employees comply with MCO compliance program requirements, including MCO's compliance training requirements, and to report to MCO any suspected fraud, waste, or abuse or criminal

acts. Further, FI acknowledges and agrees pursuant to Section 6402 of PPACA, MCO may suspend payment to the FI pending an investigation of a credible allegation of fraud, unless the state determines there is a good cause not to suspend such payments.

24. Insurance. FI shall secure and maintain for itself and its employees, commercial general liability as may be necessary to insure FI, its agents and employees, for claims arising out of events occurring during the term of this Agreement or any post termination activities under this Agreement. Coverage shall be in amounts and terms customary for the industry and in general conformity with similar type and size entities within New York State, and, if required by State laws, worker's compensation insurance in amounts required by such State laws. FI shall, upon request of MCO, provide MCO with certificates of insurance or other evidence of coverage reflecting satisfaction of the foregoing requirements of this paragraph. FI shall provide at least 30 days notice to MCO in advance of any material modification, cancellation or termination of its insurance.

25. Modifications and Amendments. Except as otherwise set forth in this Agreement, any amendments to this Agreement shall be in writing and signed by both Parties. Amendments required due to changes in state law or regulation or as required by NYSDOH and implemented by MCO shall be unilaterally and automatically made upon thirty (30) days notice to FI.

26. Notification. All notices required or permitted under this Agreement must be in writing and sent by (a) hand delivery, (b) U.S. certified mail, postage prepaid, return receipt requested, or (c) overnight delivery service providing proof of receipt. Any such notice shall be deemed given: (i) when delivered, if delivered in person; (ii) four (4) calendar days after being delivered by U.S. mail, or (iii) one (1) business day, if being sent by overnight carrier. Notices shall be sent to the address listed on the Signature Page, otherwise each Party may designate by notice any future or different addresses to which notices will be sent. Notices will be deemed delivered upon receipt or refusal to accept delivery. Routine day to day operational communications between the Parties are not notices in accordance with this section.

27. Proprietary Information. In connection with this Agreement, a Party or its affiliates may disclose to the other Party, directly or indirectly, certain information that the disclosing Party has taken reasonable measures to maintain as confidential and which derives independent economic value from not being generally known or readily ascertainable by the public ("Proprietary Information"). Proprietary Information includes Member lists, the compensation provisions of this Agreement, and other information relating to the Party's business that is not generally available to the public. Each Party shall, and shall require its subcontractors hold in confidence and not disclose any Proprietary Information and not use Proprietary Information except (1) as expressly permitted under this Agreement, or (2) as required by law or legal or regulatory process. Each Party shall, and shall require its subcontractors disclose Proprietary Information only in order to perform their obligations under this Agreement, and only to persons who have agreed to maintain the confidentiality of the Proprietary Information. The requirements of this Agreement regarding Proprietary Information shall survive expiration or termination of this Agreement.

28. Dispute Resolution. MCO and FI agree to meet and confer in good faith to resolve any problems or disputes that may arise under this Agreement.

a. Any dispute, other than a dispute regarding malpractice, fraud or abuse, or a failure of the Parties to agree on a reimbursement amount between the Parties regarding the performance or interpretation of this Agreement shall be resolved, to the extent possible, by informal meeting or discussions between appropriate representatives of the Parties.

b. In the event the Parties are unable to resolve a dispute informally, the Parties agree to submit the matter to binding arbitration before a single arbitrator acceptable to both Parties, under the commercial rules of the American Health Lawyers Association ("AHLA") then in effect. The Parties agree to divide equally the AHLA's administrative fee as well as the arbitrator's fee, if any, unless otherwise apportioned by the arbitrator. The arbitrator shall not award punitive damages to either Party. The arbitrator's award may be enforced in any court having jurisdiction thereof by the filing of a petition to enforce such award.

c. Arbitration shall take place in the county in which the MCO does business unless otherwise agreed to by the Parties.

d. The Parties acknowledge that the Commissioner of NYSDOH is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and NYSDOH shall be given notice of all issues going to arbitration or mediation, and copies of all decisions.

29. Relationship of the Parties. No provision of this Agreement is intended to create, and none shall be deemed or construed to create, any relationship between MCO and FI other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of the Agreement. Neither Party nor any of their respective employees shall be construed under this Agreement to be the partner, joint venture, agent, employer or representative of the other for any purpose, including, but not limited to, unemployment or Worker's Compensation. In its capacity as an independent contractor, FI shall have sole responsibility for the payment of federal and state taxes.

30. Waiver. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed or taken to be a waiver of any other covenant, condition or provision hereof or a waiver of any subsequent breach of the same covenant, condition or provision hereof.

31. Severability. When possible, each provision of this Agreement shall be interpreted in such manner as to be effective, valid and enforceable under applicable law. The provisions of this Agreement are severable, and, if any provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, in whole or in part, in any jurisdiction, said provision or part thereof shall, as to that jurisdiction be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

32. Governing Law. This Agreement shall be governed by and construed and enforced in

accordance with the laws of the State of New York applicable to contracts, except where Federal law applies, without regard to principles of conflict of laws. Each Party hereby agrees to settle disputes by means other than trial by jury in any suit, action or proceeding arising hereunder. Notwithstanding anything in this Agreement, either Party may bring court proceedings to seek an injunction or other equitable relief to enforce any right, duty or obligation under this Agreement.

33. Third Parties. Except as otherwise provided in this Agreement, this Agreement is not a third party beneficiary contract and no provision of this Agreement is intended to create or may be construed to create any third party beneficiary rights in any third party, including any consumer or CDPA.

34. Non-Solicitation. For the term of this Agreement and for one year thereafter, FI shall not directly or indirectly solicit any consumer to join a competing health plan or induce any consumer to cease doing business with MCO. The foregoing shall not be deemed to prohibit FI from informing consumers as to the names of all the managed care organizations with which FI has contractual relationships in compliance with NYSDOH marketing guidelines.

36. Compliance with all Laws. The Parties shall comply with all applicable federal and state laws and regulations and shall assist each other in such compliance. During the term of this Agreement, FI shall comply with all applicable federal and state laws and regulations relating to the provision of consumer directed personal assistance.

37. Entire Agreement. This Agreement and the attachments, each of which are made a part of and incorporated into this Agreement, comprises the complete agreement between the Parties and supersedes all previous agreements and understandings, oral or in writing, related to the subject matter of this Agreement.

38. Names, Symbols and Service Marks. The Parties shall not use each other's name, symbol, logo or service mark for any purpose without the other Party's prior written approval. However, MCO shall be allowed to include FI, its name, address, telephone number, and other professional demographics in MCO's listings, directories and publications, in any marketing or advertising materials, and MCO's Internet sites, to help promote MCO to potential consumers. FI agrees that such listings are considered accurate if based upon the most recent information submitted to MCO by or on behalf of FI.

39. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

40. Ownership and Controlling Interest Requirements. FI shall comply with requirements for disclosure of ownership and control, business transactions, and information for persons convicted of crimes against Federal health care programs as described in 42 CFR part 455 subpart B (Program Integrity: Medicaid).

41. Ineligible Persons. FI warrants and represents, and shall cause each CDPA to warrant and represent that, as of the Effective Date and throughout the term of the Agreement and the duration of post expiration or termination transition activities described in this Agreement, that none of its principal owners or any individual or entity it employs or has contracted with to carry

out its part of this Agreement, is an Ineligible Person. "Ineligible Person" means an individual or entity who (1) is currently excluded, debarred, suspended or otherwise ineligible to participate in (a) Federal health care programs, as may be identified in the List of Excluded Individuals/Entities maintained by the OIG, or (b) Federal procurement or nonprocurement programs, as may be identified in the Excluded Parties List System maintained by the General Services Administration, (2) has been convicted of a criminal offense subject to OIG's mandatory exclusion authority for Federal health care programs as described in section 1128(a) of the Social Security Act, but has not yet been excluded, debarred or otherwise declared ineligible to participate in such programs, or (3) is currently excluded, debarred, suspended or otherwise ineligible to participate in State medical assistance programs, including Medicaid or CHIP, or State procurement or nonprocurement programs as determined by a State governmental authority.

IN WITNESS WHEREOF, the undersigned with the intent and authority to legally bind the respective Party, have caused this Agreement to be duly executed and effective as of the Effective Date.

MCO	**FISCAL INTERMEDIARY**
By: ___________________________	By: ___________________________
Print Name: ____________________	Print Name: ____________________
Title: _________________________	Title: _________________________
Date: _________________________	Date: _________________________
Notice Address:	Notice Address:
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

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