

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Case No. 1:25-cv-01689-FB-LKE

LIZA ENGESEER, MARISOL
GETCHIUS, GEETANJALI
SEEPERSAUD by her Next Friend
SAVITRI SEEPERSAUD, and MARIA
JAIME on her own behalf and as Next
Friend to Y.P.S. and C.P., individually and
on behalf of all persons similarly situated;
BROOKLYN CENTER FOR
INDEPENDENCE OF THE DISABLED,
and REGIONAL CENTER FOR
INDEPENDENT LIVING,

Plaintiffs,

v.

JAMES V. MCDONALD, as Commissioner
of the New York State Department of Health,

Defendant.

**STATEMENT OF INTEREST OF THE
UNITED STATES OF AMERICA**

The United States of America respectfully submits this Statement of Interest in accordance with federal statutes that authorize the United States Department of Justice “to attend to the interests of the United States” by “argu[ing] any case in a court of the United States in which the United States is interested.” 28 U.S.C. §§ 517, 518.¹ In this case, the United States’ interests relate

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” Under 28 U.S.C. § 518, “[w]hen the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.” These statutes provide a

to whether (1) the New York Department of Health is complying with federal law governing the provision of Medicaid services; (2) the State of New York has made material misrepresentations to patients, their personal assistants (“PAs”), and the public regarding an ongoing transition of federal health care benefit programs; and (3) privacy-protected patient data is being shared without patient consent.

New York’s Consumer Directed Personal Assistance Program (“CDPAP”) has historically given low-income patients—who might not otherwise be able to access or afford robust caregiving options—access to flexible and informal care for themselves and their loved ones. In addition to helping vulnerable patients and providing a livelihood for thousands of caregivers, the CDPAP system has allowed a dynamic ecosystem of hundreds of relatively small Fiscal Intermediaries to cater to a local caregiving market. According to Plaintiffs and various other reports, New York’s CDPAP transition has displaced this entrenched local system, placing at risk the care and compensation of many thousands of program participants.

Historically, CDPAP was administered by a large network of so-called Fiscal Intermediaries. In 2024, a change to New York law mandated that there could be only one Fiscal Intermediary for the whole state. The contract to serve as the sole Fiscal Intermediary was subsequently awarded to Public Partnerships, LLC (“PPL”). New York set the CDPAP transition deadline as March 28, 2025.

Plaintiffs have sued the Commissioner of the New York Department of Health to challenge the “botched transition” to PPL’s administration of CDPAP. Plaintiffs’ Corrected Class Action

mechanism for the United States to submit its views in cases in which the United States is not a party. *See, e.g., Application of Blondin v. Dubois*, 78 F. Supp. 2d 283, 288 n.4 (S.D.N.Y. 2000); *Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, 49 N.Y.2d 771, 773 (1980) (per curiam).

Complaint (“Plaintiffs’ Complaint”) alleges that the transition process—transferring, within a short period of time, CDPAP services for hundreds of thousands of patients from hundreds of Fiscal Intermediaries to PPL—has been plagued by myriad structural, operational, and logistical defects. Compl. ¶¶ 112-151 (ECF No. 32). The United States has at least three significant concerns as to whether the ongoing CDPAP transition process is consistent with applicable federal law.

First, the United States shares Plaintiffs’ significant concerns regarding the integrity and viability of the CDPAP transition. *See In re Pharm. Indus. Average Wholesale Price Litig.*, 457 F. Supp. 2d 65, 75 (D. Mass. 2006) (noting the “strong federal interest in ensuring that the Medicaid system is run efficiently and fairly”). Notably, the state-mandated transition process has apparently required CDPAP participants themselves to bear the logistical burden of transitioning from their prior Fiscal Intermediary to PPL. That is, CDPAP participants—many of whom face informational, medical, educational, and language barriers—have been forced affirmatively to enroll with PPL in order to avoid losing access to services. At the same time, Plaintiffs’ Complaint also describes numerous notice issues that may have impeded patients’ ability to proactively transition from their prior Fiscal Intermediary to PPL. Compl. ¶¶ 78-88. Plaintiffs credibly allege that this transition process has burdened vulnerable CDPAP patients and threatened their ability to maintain critical care.

These concerns extend to the manner in which the New York Department of Health has interpreted the Court’s existing Temporary Restraining Order (“TRO”). *See* ECF No. 37. That TRO prohibited the State of New York “from disallowing” Fiscal Intermediaries other than PPL “from servicing those CDPAP participants who have not yet registered with PPL.” *Id.* at 2. And the Court clarified that, the New York Department of Health “must ensure and take whatever action necessary to ensure that all CDPAP consumers and PAs who received care and payment before

April 1, 2025 . . . shall continue to receive care from their existing PAs, who shall be timely paid for their services.” *See* Order of April 2, 2025. However, the New York Department of Health has confirmed that all “outgoing” Fiscal Intermediary “contracts have been canceled.” ECF No. 43 at 15. It is therefore unclear whether, consistent with this Court’s TRO, patients that have not completed registration with PPL are continuing to receive appropriate care, or if PAs that have not registered with PPL are receiving payment.

Second, over recent months, representatives of the State of New York have assured CDPAP patients, their PAs, and the public that the CDPAP transition will not jeopardize the healthcare or livelihoods of thousands of New Yorkers. Notwithstanding these assurances, Plaintiffs’ Complaint details serious, endemic issues with the transition. The United States’ concern therefore extends to the veracity of representations and assurances made by key drivers of the transition in communications to CDPAP patients, their PAs, and the public.

A federal statute, 18 U.S.C. § 1035, proscribes any materially false or misleading statements involving federal health care benefit programs like Medicaid. In this instance, the State of New York has made representations to CDPAP participants and the public about, *inter alia*, continuity of care through the transition, the impacts of the transition to PPL on access to care or compensation, and the role of incumbent Fiscal Intermediaries before and during the transition. At least some of these statements appear to be in tension with the on-the-ground reality. For instance, the New York Department of Health promised CDPAP patients that “[y]our plan of care, hours of service, and your right to choose your personal assistant(s) is not affected by [the] change in providing fiscal intermediary services.” New York State Department of Health, *FI Discontinue*

Services Template FI to Consumer (Dec. 6, 2024).² It further promised that “the truth” is that “[i]f you’re a CDPAP user, you can keep your trusted caregiver,” “[i]f you’re a caregiver, it will be easier for you to get paid,” and that “New Yorkers will get better care and better service at a better price.” New York State Department of Health, *Consumer Directed Personal Assistance Program (CDPAP)* (Jan. 8, 2025).³ But Plaintiffs’ Complaint describes tens of thousands of CDPAP patients who, Plaintiffs allege, have lost or will lose the ability to obtain care due to problems with the transition process. *See* Compl. ¶¶ 112-156. This suggests that vulnerable CDPAP patients and their caregivers may have been misled by formal and informal representations and omissions regarding the mechanisms of the CDPAP transition and the corresponding effect on their healthcare.

Finally, the handling of CDPAP patients’ HIPAA-protected personal and sensitive health data—and the potential transfer of that data to PPL prior to PPL providing any services at all—is another serious area of concern. The New York Department of Health has directed current Fiscal Intermediaries to “provide data files” to Medicaid managed care plans, who “will share member data and updated prior authorizations with [PPL].” New York State Department of Health Notice, *Consumer Directed Personal Assistance Program (CDPAP) Statewide Fiscal Intermediary Transition Policy for Medicaid Managed Care Plans* (Dec. 6, 2024).⁴ At the same time, HIPAA imposes strict requirements regarding the lawful disclosure of protected health information,

² Available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/2024/docs/fi_discontinue_template_fi_to_consumer.pdf

³ Available at <https://www.youtube.com/watch?v=UOKgww5Khw&pp=0gcJCdgAo7VqN5tD>

⁴ Available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/2024/docs/mcp_sfi_transition_policy.pdf

see 42 U.S.C. § 1320d-6, and it is at present unclear whether the ongoing CDPAP transition complies with these requirements.

* * *

The United States has a significant interest in ensuring fair treatment and continued, uninterrupted, and critical care for the thousands of vulnerable New Yorkers in the CDPAP program affected by this transition. The United States will monitor this litigation to ensure that this interest is served by the CDPAP program.

Dated: April 9, 2025

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