GLASER & WEINER, P.C.
ATTORNEYS AT LAW

Client Alert

July 24, 2026

Discontinuance of the Alternative Competency Demonstration Provision for PCA Certification

On July 16, 2026, The New York State Department of Health (DOH) issued a Dear Administrator Letter (DAL DRS 26-02 / HHCBS 26-05) announcing that the DOH is discontinuing the Alternative Competency Demonstration (ACD) provision for Personal Care Aide (PCA) certification effective immediately. DOH stated that the continued operation of the ACD **"presents disproportionate compliance risks for training programs, candidates, and patients, as evidenced by recent observations by the Department.**" Any ACD process underway as of July 16, 2026, must be discontinued immediately and effected candidates must instead complete the full 40-hour program through a DOH-approved or SED-approved PCA training program.

Agencies that offer training classes should update their policies and procedures to eliminate ACD testing.

PPL Class Action Settlement

On July 1, 2026, U.S. Magistrate Judge Lara K. Eshkenazi of the U.S District Court for the Eastern District of New York granted preliminary approval of the proposed settlement in the class action lawsuit, Calderon et al. v. Public Partnerships, LLC (PPL). In the settlement, PPL agreed to pay the members of the class (approximately 200,000 Personal Assistants (PAs) working in the Consumer Directed Personal Assistance Program (CDPAP)) the amount of $162 million. The proposed settlement would cover all current and former PAs who were paid through PPL as the statewide fiscal intermediary for services performed as part of CDPAP in New York City, Nassau County, Suffolk County, and/or Westchester County at any time between March 1, 2025 and April 30, 2026.

The lawsuit alleged that PPL violated state and federal law by, among other things, failing to pay PAs accurately and on time, and by providing benefits that did not comply with the New York Home Care Worker Wage Parity Act. The settlement consists of:

- $40.5 Million - general damages;
- $25 Million - payment in Wage Parity compensation previously allocated to the PPL Minimum Essential Coverage (MEC) plan;
- $92 Million - payment of accrued paid time off; and
- A reserve of at least $4.5 million.

The settlement remains subject to final court approval; the court has scheduled a final approval hearing for November 10, 2026. Our Firm will provide updates as more information becomes available.

NYC Finalizes "Protected Time Off" Rules Under the Earned Safe and Sick Time Act

On July 23, 2026, the NYC Department of Consumer and Worker Protection ("DCWP") adopted its final rule implementing the amendments to the Earned Safe and Sick Time Act ("ESSTA"). The statutory amendments, including the new 32-hour unpaid leave requirement, took effect February 22, 2026; the final rule took effect July 23, 2026. The rules now use the term protected time off in place of safe/sick time and expand the covered reasons for leave to include caring for a minor child or care recipient (including school holidays and day care closures), attending legal proceedings related to subsistence benefits or housing, responding to a public disaster, and addressing workplace violence. Paid prenatal leave remains a separate entitlement.

The 32-Hour Unpaid Bank
All NYC employers, regardless of size, must provide each employee with 32 hours of unpaid protected time off, immediately available at hire and on the first day of each calendar year (any consecutive 12-month period the employer designates). The allotment may not be prorated for part-time or mid-year hires. Unused hours do not have to be carried over, however, a fresh bank of hours must be provided annually. The 32 hours are in addition to, not a substitute for, the 40 or 56 hours of paid leave required under ESSTA's accrual or frontloading rules, though the final rule confirms an employer may satisfy the requirement by providing some or all of the 32 hours as paid leave, frontloaded on the same schedule.

Three administrative points from the final rule warrant particular attention. First, when an employee has both paid and unpaid time available, the employer must apply paid leave first unless the employee affirmatively elects otherwise. Second, an employee rehired within the same calendar year is entitled to reinstatement of the unused balance of the 32-hour bank, not a new allotment. Third, employers should

pay overtime-exempt employees who use “unpaid” leave where necessary to satisfy salary basis requirements under the FLSA and New York law, particularly for partial-day absences.

Recordkeeping, Pay Statements, and Post-Employment Access
Records and each pay period’s pay statement must separately reflect paid and unpaid protected time off (accrued, used, and available) along with paid prenatal leave used and remaining and records must be retained for at least three years. Employers using electronic systems must make accrual, use, and balance information for all past pay periods accessible to employees outside the workplace throughout their tenure, and, upon separation, must either continue the former employee’s system access for six months or furnish a written statement of the required leave information within one week of the final payday.

Immediate Action Items:

1. Update written policies to address the 32-hour allotment, expanded covered reasons, and paid prenatal leave, and distribute as required;
2. Configure payroll systems to track paid and unpaid time separately, default to paid leave first, and produce compliant pay statements;
3. Build the six-month access / one-week statement requirement into offboarding; and
4. Review treatment of exempt employees using “unpaid” leave to avoid salary basis violations.

With the final rule now in effect and DCWP actively enforcing the amended law, prompt compliance review is advised. Please contact us with any questions.

OIG Denies Recertification of the New York MFCU

On June 30, 2026, the US Department of Health and Human Services Office of Inspector General (OIG) sent a letter to NY Attorney General James and NY Medicaid Fraud Control Unit (MFCU) Director Held denying recertification of the NY MFCU. The OIG stated that the New York MFCU was the poorest performing Unit by a wide margin among similar-sized Units (California, Texas, Ohio and Florida) from 2023 to 2025. In FY 2025 and FY 2023, the Unit only secured eight or nine criminal indictments while other similar-sized Units have secured hundreds, even though those other Units oversee Medicaid programs that are half the size of the New York Medicaid program. OIG cited the NY MFCU’s failure to materially comply with Federal statutes, regulations, and the terms and conditions of the Federal grant as the reasoning behind this decision. Suspension of the NY MFCU Federal funds grant will remain in effect until the current grant period expires on September 30, 2026. The suspended grant, approximately $60 million annually, represents roughly 75% of the Unit’s total funding, and the suspension took effect July 1, 2026. The denial follows OIG’s June 4, 2026 decertification of Hawaii’s MFCU, the first in the program’s history, underscoring heightened federal scrutiny of state MFCU performance nationwide.

The OIG stated that New York MFCU is not effectively prosecuting criminal Medicaid fraud. For criminal fraud convictions, the New York MFCU is last (five of five) among similar-sized Units. The Unit reported only 53 fraud convictions from 2023 to 2025. This is by far the lowest among similar-sized Units; the next lowest number of reported fraud convictions for this period was 129.

To regain recertification, the New York MFCU must take corrective actions to come into compliance with the MFCU performance standards. The New York MFCU must also demonstrate effectiveness in using its resources to investigate and prosecute criminal Medicaid fraud cases and Medicaid patient abuse or neglect cases.

As a result, NY MFCU will be under pressure to increase criminal referrals and accelerate pending investigations, with the goal of having its funding restored which will also allow it to ramp up investigation of older cases. NY Medicaid providers will be under heightened scrutiny with respect to billing, documentation, managed care audits, quality-of-care issues, and other compliance-related matters as the NY MFCU takes corrective actions to regain certification.

Providers should review their Medicaid compliance programs, internal reporting processes, documentation practices, and managed care billing controls.

OMIG Updates Compliance Program Review Module

On July 6, 2026, the Office of the Medicaid Inspector General (OMIG) released an updated version of the Compliance Program Review (CPR) Module. The updated CPR Module has been reformatted and now provides clarity on instructions for completion and a document request section within each relevant question. Aside from providers already in the process of completing the previous Module, the updated CPR Module must be used for any future CPR submissions. As a reminder, providers may only submit a completed CPR Module if they receive Notification Letter instructing them to do so.

DOJ Sues DOH Commissioner Dr. James McDonald, DOH Medicaid Director Amir Bassiri, and PPL Over Alleged Medicaid Fraud

On June 16, 2026, the US Department of Justice (DOJ) filed a complaint in the U.S. District Court for the Eastern District of New York against, New York State Department of Health (DOH) Commissioner Dr. James McDonald (in his official capacity), DOH Medicaid Director Amir Bassiri (individually and in his official capacity), and Public Partnerships LLC (PPL) (together the “Defendants”) in connection with naming PPL as the sole fiscal intermediary (FI) of the Consumer Directed Personal Assistance Program (CDPAP). In its complaint, the DOJ alleges that:

- The process by which PPL was selected as the sole FI was fraudulent;
- PPL made material misrepresentations in its bid regarding the nature and amounts of costs that it would charge to administer the Program. Specifically, DOJ alleges that PPL impermissibly extracts profits from direct care costs through an “hourly rate game” that allows PPL to siphon as profits a small percentage of the cost of each hour of care billed to American taxpayers;
- DOH and PPL made material misrepresentations about PPL’s ability to effectively take over the role of sole FI of CDPAP on the contractually imposed timeline;
- DOH made material misrepresentations regarding the effect the transition to a sole FI would have on CDPAP beneficiaries and caregivers; and
- PPL is profiting from the above misrepresentations

The DOJ is seeking (among other things):

- Injunctive relief restraining all future fraudulent conduct by the Defendants;
- Injunctive relief restraining Defendants from committing a Federal health care offense, and making false statements and misrepresentations related to CDPAP;
- An order freezing an amount equivalent to any gross proceeds PPL has obtained, is obtaining, and will obtain from the CDPAP contract; and
- The appointment of a receiver for PPL.

Our Firm will continue to provide updates as the case progresses.

2025 Home Care Cost Report Reminders

On June 1, 2026, the 2025 Home Care Cost Report (Cost Report) became available on the online Home Care Dashboard linked here. All Cost Reports must be submitted by August 31, 2026.

As a reminder, Cost Reports must be submitted only by Certified Home Health Agencies (CHHAs), Licensed Home Care Services Agencies (LHCSAs), and Fiscal Intermediaries (FIs) receiving Medicaid reimbursement (through Fee-for-Service (FFS) or Medicaid Managed Care, or through a contract with NYC Human Resource Administration (HRA)) for home care services. The following are examples of providers who are NOT required to submit a Cost Report:

- Agencies only authorized for Assisted Living Program (ALP);
- Private pay only agencies;
- Hospital-based CHHAs or LHCSAs;
- Agencies only authorized for Private duty nursing;
- LHCSAs who contract with CHHAs and provide no other home care services;
- CHHAs who are only authorized to provide Hospice services;
- Facilities only authorized for the Programs of All-Inclusive Care for the Elderly (PACE) program;
- Facilities only authorized for Nursing Home Transition and Diversion (NHTD) and the Traumatic Brain Injury (TBI) program; and
- Pharmacies with a LHCSA license only authorized to deliver Home Infusion Therapy Services.

Providers can find the list of services that require a Cost Report in Appendices A, B C, and D of the Cost Report Instructions linked here.

DOL Proposes Rule to Clarify Joint Employer Status under FLSA, FMLA, and MSPA

On April 22, 2026, the Department of Labor (DOL) Wage and Hour Division proposed the Joint Employer Status Under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA) rule (the “Proposed Rule”). The Proposed Rule would clarify how to determine joint employer status under the FLSA and implement the FLSA analysis in the FMLA and MSPA. The goal of the Proposed Rule is to ensure a consistent standard for joint employer status across the FLSA, FMLA, and MSPA. The Proposed Rule follows DOL’s July 2021 rescission of its 2020 joint employer rule, which left the Department without generally applicable regulatory guidance on FLSA joint employment. The 60-day public comment period closed on June 22, 2026, and a final rule is awaited. The Proposed Rule sets forth two scenarios for joint employment: vertical and horizontal joint employment.

Vertical joint employment occurs when an employee’s work simultaneously benefits two or more employers. In the typical scenario, there is no dispute that the employee has a primary employer; the question is whether a separate entity that also benefits from the employee’s work qualifies as a joint employer as well. Vertical joint employment is determined by four non-dispositive factors including whether the other person or entity:

- Hires or fires the employee;
- Supervises and controls the employee's work schedule or conditions of employment to a substantial degree;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.

The Proposed Rule allows for reserved control of these factors to be considered, but reserved control will be seen as less indicative of joint employment than exercised control.

Horizontal joint employment occurs when an employee works separate hours for two or more employers in the same workweek, and the employers are sufficiently associated with each other with respect to the employee’s employment such that they are joint employers. Sufficient association is determined by whether:

- There is an arrangement between them to share the employee's services;
- One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or
- They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

If you have any questions please contact our office

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