

Client Alert

April 10, 2025

Statement of Interest Submitted by Department of Justice in SFI Transition Case

On April 9, 2025, the United States Department of Justice submitted a Statement of Interest (the Statement) in the *Engesser et al. v. McDonald* class action suit. According to the Statement, the US has a significant interest in ensuring fair treatment and continued, uninterrupted, and critical care for the thousands of vulnerable New Yorkers in the Consumer Directed Personal Assistance Program (CDPAP) affected by the transition to Public Partnerships LLC (PPL) as the single statewide fiscal intermediary (SFI).

DOJ expressed the following concerns:

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

Item 1: DOJ's concern is that the CDPAP transition requires Consumers themselves to transition from their prior FI to the SFI in order to avoid losing access to services, while at the same time recognizing that numerous issues have impeded Consumers' ability to transition to PPL which threatens their ability to maintain critical care. DOJ also cited DOH's confirmation that all "outgoing" FI contracts had been canceled, making it unclear whether Consumers who have not completed registration with PPL are continuing to receive appropriate care, or if PAs that have not registered with PPL are receiving payment.

Item 2: DOJ raises questions regarding the truth and accuracy of representations and assurances made by DOH to Consumers, PAs and the public. DOJ cites the Plaintiff's description of the reality that there are thousands of Consumers who have allegedly lost or will lose the ability to obtain care due to problems with the transition process, despite DOH's representation that the CDPAP transition would not jeopardize the healthcare

services or livelihoods of thousands of New Yorkers, which may amount to violations of federal law.

Item 3: Consistent with allegations raised in other lawsuits, DOJ expressed concern with the handling of Consumers' HIPAA-protected health data and the potential transfer of that data to PPL prior to PPL providing services.

While the ultimate impact of DOJ's filing remains to be seen, it will undoubtedly be considered by the Court as it monitors the transition to the SFI and DOH's actions from now until June 6, 2025.

Preliminary Injunction Issues in SFI Transition Case

Judge Frederic Block, the judge presiding over the *Engesser et al. v. McDonald* class action suit issued a preliminary injunction (Injunction) today that replaces the Temporary Restraining Order previously issued by the Court on March 31, 2025. The Injunction will remain in place until its Expiration Date of June 6, 2025, or any date further ordered by the Court.

The intent of the Injunction is to create a pathway for Consumers to continue to receive services and their Personal Assistants (PAs) to continue to be timely paid for their services, while Consumers and PAs transition to the Single Statewide Fiscal Intermediary, Public Partnerships LLC (PPL).

Under the Injunction, Consumers and PAs are grouped into three categories (A,B,C) based on whether they are fully registered/onboarded with PPL. A Fully Registered Consumer is defined as a Consumer who has themselves or through a Designated Representative (DR):

1. completed the necessary steps for registration with PPL; and
2. signed the required memorandum of understanding with PPL.

A Fully Onboarded PA is defined as a PA who has:

1. completed all legal requirements to become a PPL employee, including employment eligibility verification; and
2. has been notified that the PA is fully onboarded.

Category A (Fully Registered Consumer, Fully Onboarded PA). PPL is responsible for timely payment of the PAs wages from April 1, 2025 or the last date that the Fully Registered Consumer/PA received payment from the Fiscal Intermediary providing services to the Consumer as of March 31, 2025 (Prior FI), whichever is later. The Department of Health (DOH) is responsible for prioritizing the transfer of the Authorization for any Consumer who is Fully Registered but whose Authorization has not yet been transferred to PPL.

Category B (Fully Registered Consumer, Not Fully Onboarded PA). At the Consumer's election, PAs who are not Fully Onboarded with PPL will be employed and paid by their Prior FI while they complete the onboarding process with PPL, provided that the requirements set forth below are satisfied. Once the requirements are met, DOH will direct the MCO/LDSS to immediately reinstate the Consumer's Authorization with the Prior FI.

A Consumer or their Designated Representative may request any PA who is not yet fully onboarded receive payment from their Prior FI, provided that:

1. The Consumer's MCO/LDSS is capable of updating the Consumer's authorization to the Prior FI in sufficient time for the worker to be paid within seven (7) days;

2. The Prior FI exists, is operational, has no other legal impediments to employing or paying PAs, made timely payments through March 31, 2025, and agrees to employ and make timely payments to the PA until such time as the PA becomes a Fully Onboarded PA;
3. The Prior FI agrees to an economic arrangement with the applicable MCO/LDSS that is not significantly different from the arrangement that existed immediately prior to April 1, 2025, including, without limitation, the payment for such services; and
4. The Prior FI agrees not to make any misrepresentations to any Consumer or PA regarding the CDPAP Transition.

If these requirements are not met, the Consumer and the Consumer's PA will be directed by the MCO/LDSS to the Expedited PPL Onboarding Mechanism, a process for the urgent onboarding of PAs who are not Fully Onboarded with PPL.

When a PA becomes Fully Onboarded with PPL, PPL must:

1. Inform the Consumer/the Consumer's DR and the PA via email and phone, that the PA is employed and will be paid by PPL, along with the date payment will begin;
2. Provide the Consumer/Consumer's DR and PA, with instructions for submitting and approving time; and
3. Fully and timely pay the PA back to April 1, 2025 or the last date that the PA received payment from the prior FI, whichever is later.

Category C (Not Fully Registered Consumers). At the Consumer's election, PAs whose Consumers are not Fully Registered with PPL will be employed and paid by the Prior FI if the same Category B requirements are met. If the requirements are not met, the MCO/LDSS will be responsible for directing the PA/Consumer to the Expedited PPL Onboarding Mechanism. DOH is responsible for directing the MCOs/LDSS to contact all Category C Consumers within five (5) days from the date of the Injunction to encourage registration with PPL.

DOH and PPL are responsible for establishing a dedicated process for Consumers receiving services through LDSS who are not Fully Registered and whose PAs are not Fully Onboarded. Consumers are still entitled to notice, an opportunity to be heard, and aid-continuing before any reduction, suspension or termination of services.

The expectation is that all Consumers become Fully Registered with PPL by May 15, 2025, to allow their PAs to be Fully Onboarded by June 6, 2025 (or any later date set by the Court).

Contact our office with any questions.

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