



# Client Alert

## January 27, 2025

### **TRO Granted Today by Nassau County Supreme Court regarding DOH's Data Transfer Requirements**

The Hon. Jerome C. Murphy of the Nassau County Supreme Court issued a Temporary Restraining Order (TRO) today, January 27, 2025, against the New York State Department of Health (DOH), DOH Commissioner, James V. McDonald (McDonald), Michael Lewandowski, and Public Partnerships LLC (PPL) (collectively, Defendants), restraining and enjoining Defendants from taking any adverse action or issuing sanctions or penalties against Plaintiffs Caring Professionals and any Fiscal Intermediary that is a Member of Plaintiff Consumer Directed Personal Assistance Association of New York State in connection with any failure to adhere to the January 15, 2025 Data Transfer deadline contained in the Memorandum issued by DOH. This would include efforts to have Caring Professionals and/or any Fiscal Intermediary who is a Member of CDPAANYS expelled and/or terminated from the Medicaid Program.

As a reminder, the DOH Memorandum required Current FIs to transfer data related to the CDPAP consumers they serve and their PAs to the Managed Care Plans for managed care enrollees and the Department for fee-for-service members no later than January 15, 2025. The data Current FIs were required to transfer included: the full names of CDPAP Consumers; Consumer CIN; Designated Representative and contact information; Consumer contact information (phone number, email address); Consumer preferred language; PA(s) for each Consumer; PA contact information (phone number, email address); and PA wage information.

This TRO will remain in effect until March 4, 2025, when there will be a hearing regarding Plaintiffs' motion for a preliminary injunction:

1. Enjoining DOH from enforcing the directives of the DOH Memorandum, and seeking to compel Plaintiffs to convey any data, records, or notifications as required by the DOH Memorandum, during the pendency of the lawsuit; or
2. In the alternative, staying any deadline in the DOH Memorandum until and unless such times as all Defendants can demonstrate procedural safeguards are in place to protect the confidential, proprietary data and alleviate any concerns of violation of HIPAA and any other applicable statutes or regulations; and
3. Enjoining DOH from seeking to terminate or exclude Plaintiffs from the Medicaid Program or taking any other adverse action against Plaintiffs as a consequence of failing to abide by the DOH Memorandum, including any action described in the DOH Update, dated December 23, 2024.

At today's hearing, counsel for DOH indicated that without this information, it

would be challenged to meet the April 1, 2025 implementation deadline for the single statewide fiscal intermediary. This TRO is broader than the one issued from the Livingston County Supreme Court, which only covered a single plaintiff. Our office will keep you updated with further developments.

### **New Cultural Competency LGBTQ+ Training Requirements**

In conjunction with Dear Administrator Letter (DAL) [DAL # HCBS 24-04](#), the Department of Health (DOH) has issued DAL [DRS #25-02](#), to clarify the cultural competency training requirements of New York Personal Care Aide Training Programs (PCATP), Home Health Aide Training Programs (HHATP) and Certified Nurse Aide Training Programs (CNA). The DAL lays out the LGBTQ+ requirements so that caregivers are given the knowledge and tools when working with individuals with diverse sexual orientations and gender identities or expressions. The new training is required for certification or recertification, as applicable, of home health aides (HHAs), personal care aides (PCAs), and certified nurse aides (CNAs).

To ensure compliance, the DAL requires, at minimum, that:

- HHAs, PCAs, and CNAs must take the training at certification and recertification.
- HHAs, PCAs, and CNAs must take the training every two (2) years if they are staff of a nursing home or an adult care facility, including an assisted living residence.
- Existing HHAs, PCAs, and CNAs must take the training within 6 months of 01/17/2025.
- All new training program applicants must demonstrate their capacity to provide the required training within their standard curriculum. Existing training programs are not required to submit new class schedules to the Department.

The training is available online through DOH's Learning Management System or training programs may update their existing cultural competency training curriculum to comply with these requirements, in which case the training program is responsible for demonstrating compliance if requested.

[DAL # HCBS 24-04](#) includes a checklist of the required components and information for such training.

If you have any questions or require assistance updating your cultural competency training and/or drafting policies and procedures, contact our office.

### **US Department of Commerce to Recognize Minority Owned Business Enterprise Status of Jewish-Owned Businesses**

On January 13, 2025 the Minority Business Development Agency of the U.S. Department of Commerce, signed a joint Memorandum of Understanding (MOU) with the Orthodox Jewish Chamber of Commerce, that will enable "minority" status to be conferred on Jewish-owned businesses. This partnership enables Jewish businesses and entrepreneurs to have access to more resources and opportunities to grow their business. Obtaining Minority-Owned Business Enterprise status will allow Jewish business owners to access contracts, secure capital, and increase their participation in various industries. This will also improve the chances of Jewish-owned businesses being awarded federal or state contracts. Prior to this MOU, Minority or Women-Owned Business Enterprise (MWBE) certification was available only to businesses that were at least 51% owned, managed, and controlled by individuals who are Asian-Indian, Asian-Pacific, Black, Hispanic, Native American, or Women. We anticipate a revised MBE application will be available shortly.

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