

In The  
Supreme Court of the United States

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PRINCIPLE HOMECARE, LLC, ET AL.,

*Applicants,*

v.

JAMES McDONALD, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH,

*Respondent.*

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**On Emergency Application for Writ of Injunction**

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**Brief of the Consumer Directed Personal Assistance Association of New  
York State as *Amicus Curiae* in Support of Applicants**

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## INTEREST OF AMICUS CURIAE

The Consumer Directed Personal Assistance Association of New York State is the only association in New York State dedicated to the principles of self-direction and support for the Consumer Directed Personal Assistance Program (“CDPAP” or “Consumer Directed Program”). The Association’s members are individuals who are Consumers, that is, recipients of CDPAP services, and CDPAP Fiscal Intermediaries committed to Consumer self-direction. Fiscal Intermediaries provide the administrative supports that underpin the Consumer Directed Program.<sup>1</sup>

CDPAANYS has an interest in the continued operation of Fiscal Intermediaries, a vibrant Fiscal Intermediary market, and a Consumer Directed Program that meets Consumers’ needs.

## SUMMARY OF ARGUMENT

In New York CDPAP, Fiscal Intermediaries have competed to provide services to Consumers. Choice and Consumer autonomy are important principles of self-direction. New York’s move to a single, statewide Fiscal Intermediary removes Consumer choice. Forcing Consumers to rely on a monopoly provider denies Consumers the benefits of Fiscal Intermediary competition. It is also contrary to federal Medicaid law and New York’s federally required Medicaid State Plan. Both federal Medicaid law and New York’s State Plan require that Medicaid beneficiaries have their

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

choice of providers. Further, the entity chosen by Respondent to be the single, statewide Fiscal Intermediary is not yet ready to perform those services.

Establishing a statewide Fiscal Intermediary monopoly is wreaking havoc in the marketplace. Hundreds of not-for-profit and for-profit providers are being wiped out literally overnight. The jobs of their administrative staffs will be gone, their investments rendered worthless. Consumers and their home care aides will be cut adrift. They will lose the support they have received from Fiscal Intermediaries organized by individuals with disabilities. They will lose the support from Fiscal Intermediaries who speak their language, community-based organizations of the same ethnicity or religion, or simply Fiscal Intermediaries with which they have grown comfortable, who have shown they can meet their needs.

### **ARGUMENT**

This case presents the important issue of whether the State of New York can wipe away long-standing contractual relationships that greatly benefit New York Medicaid beneficiaries and replace those relationships with a monopoly which eliminates a choice of providers. The case has implications that go well beyond the impact upon the plaintiffs. The actions by the State of New York are having and will have a profound effect upon all participants in the New York Consumer Directed Personal Assistance Program (“CDPAP” or the “Consumer Directed Program”).

CDPAP, as currently constituted, is a wonderful program available to all New York Medicaid beneficiaries otherwise eligible for home care services. NY Social Services Law 365-f(1),(2). The Program is founded on the principles of self-direction – on the idea that individuals with disabilities who are able and wish to do so should be

able to direct their own home care. Every state has a Medicaid Self-direction program.

Self-direction is a powerful concept. It is liberating. In the Consumer Directed Program, it means that individuals – the Consumers – choose their own home care workers, called Personal Assistants. It means that Consumers train their Personal Assistants, set their schedules, supervise them, and, if need be, dismiss them from employment. *Id.*, 365-f(3), 18 NYCRR 505.28(g)(1). Because of CDPAP, in the day-to-day of a person’s life, a Consumer is able to decide for him- or herself when to get up, when to get dressed, when to eat, what to eat, and how and when to do all those other things that individuals without disabilities take for granted. CDPAP is very different from agency-operated home care. In those circumstances, the agency chooses the aides, trains the aides, and sends the aides when they are available, not when the individual receiving care most wants them. *See* 18 NYCRR 505.14(d),(f).

Fiscal Intermediaries have been central to the operation of the Consumer Directed Program. Indeed, even before New York codified the Consumer Directed Program in 1995, *see* Laws of New York, 1995, Chapter 81, a Fiscal Intermediary – Concepts of Independence – was in place. The history of the Consumer Directed Program in New York begins with Concepts of Independence. In the late 1970s, the City of New York, through its Human Resources Administration, was organizing home care services. Several individuals with disabilities balked at receiving home care through an institutional provider. Those individuals insisted that they were capable of managing their own home care, and should be given the opportunity to do so. The Human



Resources Administration agreed to give them that opportunity. Those individuals organized themselves into Concepts of Independence, and the Consumer Directed Program was born. <http://www.coiny.org/aboutus.php>. Even today, several of those individuals remain on the Board of Directors of Concepts of Independence.

Concepts of Independence acted, and still does today, as a Fiscal Intermediary. See <https://coiny.org/>. Fiscal Intermediaries have two roles: administrative convenience and Consumer support. See 18 NYCRR 505(i). In terms of administrative convenience, Fiscal Intermediaries perform functions that most Consumers could not easily perform, nor would the Medicaid program want them to perform. Fiscal Intermediaries are enrolled Medicaid providers. 18 NYCRR 505.28(i)(1)(6). As such, they are able to bill for and receive Medicaid funds. *Id.*, 505.28(j)(1). Without Fiscal Intermediaries, Consumers would have to fulfill those functions. Medicaid payors would receive bills from tens of thousands of Consumers, sending checks to each of them. Those same Consumers would have to arrange Workers' Compensation and Disability coverage, enroll in unemployment insurance for each of their Personal Assistants, and perform the employer functions for related claims. *Cf. Id.*, 505.28(i)(1)(i)(Fiscal intermediary responsibilities). Each Consumer would also need a taxpayer identification number, and would handle payroll and withhold taxes. *Id.* Instead, Fiscal Intermediaries handle all those functions.

Fiscal Intermediaries also guard CDPAP integrity. As New York Medicaid providers, Fiscal Intermediaries must ensure that the rules of the Program are followed. *Id.*,

505.28(i)(1)(vi). Each Consumer is assessed annually.<sup>2</sup> The assessment results in a determination of whether a Consumer is eligible for CDPAP, and how many hours of CDPAP Personal Assistance service the Consumer may receive each week. *Id.*, 505.28(e). Fiscal Intermediaries are responsible for assuring that Consumers receive no more than their authorized hours of service. *Id.*, 504.3(e). They are also responsible for assuring that Personal Assistants meet Program standards, including that Personal Assistants: have annual health assessments, which demonstrate fitness for the position, *id.*, 505.28(i)(1)(ii); have required health immunities or immunizations, *id.*, 505.28(i)(1)(iii); meet minimum age requirements, *id.*, 504.3(e), 505.28(b)(3); are eligible to work in the United States, 8 USCS § 1324(a) ; are not barred from the position due to a familial relationship, *id.*, 504.3(e), 505.28(b)(3); and that they have not been excluded from the Medicaid program, 18 NYCRR 515.5. Fiscal Intermediaries are responsible for the accuracy of their Medicaid billing, *id.*, 504.3(e), and must implement an Electronic Visit Verification system in collecting Personal Assistant time records. NYS Department of Health, Electronic Visit Verification, Frequently Asked Questions, 2.2., available at Electronic Visit Verification (EVV) Resource Library.

Finally, Fiscal Intermediaries support Consumers. Managing one's own home care is not always easy. Many Consumers need to learn how to manage employees, how to find employees, and how to select employees. Conflicts sometimes develop

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<sup>2</sup> Assessments are performed by Local Departments of Social Services or Medicaid Managed Care Organizations. 18 NYCRR 505.28(d),(f). Fiscal Intermediaries have no role in the assessment process.

which Fiscal Intermediaries mediate. Family members sometimes create issues, such as requesting that Personal Assistants perform services for them as well. Issues of sexual harassment or racial discrimination sometimes arise. Fiscal Intermediaries deal with all of this. New York also requires that every employer, even employers with only one employee, provide employees with training against sexual harassment. NY Labor Law 501-g. Fiscal Intermediaries must make that training available.

New York also requires that Personal Assistants have at least twenty-four consecutive hours off each work week or be paid at overtime rates for hours during that period. NY Labor Law 161. The responsibility for that falls on Fiscal Intermediaries. New York also requires that Personal Assistants receive a minimum amount of paid leave each year. The responsibility for assuring all of these requirements are met falls upon Fiscal Assistants. There are other restrictions on Personal Assistant hours that Fiscal Intermediaries must assure Consumers respect. If a Consumer receives more than sixteen hours of Personal Assistance in a day, the Consumer must use more than one Personal Assistant. 18 NYCRR 505.28(b)(4). If a Consumer is authorized to receive live-in twenty-four hour care, Consumers must provide a separate space reserved for the Personal Assistant. In addition, each Personal Assistant must receive three one-hour breaks and a five-hour uninterrupted break. *Andryeyeva v. NY Health Care, Inc.*, 33 N.Y.3d 152, 166 (2019). If those breaks are not received, the rate of payment to the Personal Assistant is significantly different. *Id.* Fiscal Intermediaries must work with Consumers to assure these rules are respected.

An important aspect of self-direction is personal autonomy. That autonomy extends beyond decisions about how a Consumer manages care to choice of providers. Given the central role that Fiscal Intermediaries play in CDPAP, Fiscal Intermediary choice is important to Consumers. Fiscal Intermediaries compete for Consumers in numerous ways. They compete in the support services they provide. Some Fiscal Intermediaries pay higher wages or provide different benefits than others. Some focus on individuals with particular disabilities. One New York City Fiscal Intermediary, for example, has a particular expertise supporting Consumers with vision issues. Many Fiscal Intermediaries have expertise in several of the many languages spoken in the State of New York, especially, but not exclusively, New York City. Others have their roots in specific ethnic or religious groups. Consumers find their way to the Fiscal Intermediaries that best serve them.

If New York is permitted to interfere with the contracts that current Fiscal Intermediaries have with New York Medicaid Managed Care Plans and Local Departments of Social Services and move to a single statewide Fiscal Intermediary, choice will be lost. Consumers will be left with a monopoly and the level of service that a monopoly provides.

Elimination of choice cannot be justified by expected cost savings. Lack of choice violates New York's federally required State Medicaid Plan. As a condition of participation in Medicaid, which is a joint federal/state partnership, New York must file with the Center for Medicare/Medicaid Services a State Medicaid Plan and adhere

to the terms of that Plan. Each plan must meet the requirements of the Social Security Act. Applicable portions of the Social Security Act require free choice of providers (Section 1902(a)(23)), comparability (Section 1902(a)(10)(B)) and state wideness (Section 1902(a)(1)). New York's amendments to the Consumer Directed Personal Assistance Program enabling act, NY Social Services Law 365-f, violate all three.

Section 1902(a)(23) of the Social Services Act guarantees that "any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. §1396a(a)(23); *see also* 42 C.F.R. § 431.51(b) ("Free Choice of Providers": "A State plan . . . must provide as follows: . . . a beneficiary may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is — (i) Qualified to furnish the services; and (ii) Willing to furnish them to that particular beneficiary.").

New York's elimination of all current Fiscal Intermediaries and the consequent limitation of Medicaid beneficiaries to a single statewide Fiscal Intermediary violates these requirements. Current existing Fiscal Intermediaries are qualified to provide the services. New York cannot evade the free choice of provider requirements by "simply labeling any exclusionary rule as a 'qualification' to evade the mandate of the free-choice-of-provider requirement." *Planned Parenthood of Kansas v. Andersen*, 882

F.3d 1205, 1236 (10th Cir. 2018) (rejecting Kansas’s efforts to limit choice of reproductive health services providers).

In addition, even if New York could somehow avoid the free choice of provider requirement, New York has not proposed amendments to its Medicaid State Plan. “States must propose any standards relating to the qualifications of providers during the Medicaid state plan approval process, as specified in section 1902(a)(22) of the Act.” CMS State Medicaid Letter 16-005, available at <https://www.medicaid.gov/federal-policyguidance/downloads/smd16005.pdf>. Without approved amendments, New York cannot deviate from its State Plan.

Nor can New York justify this change as an effort to combat fraud in the program. New York has used the words “fraud, waste and abuse” as an incantation, as though those mere words, without any credible allegation of fraud, much less proof, are a sufficient basis to invalidate Fiscal Intermediary contracts and limit Consumer choice. The Social Security Act provides a separate authority to combat specific providers who have committed fraud. *See* 42 U.S.C. § 1396a(p)(1). In New York, both the New York State Office of Medicaid Inspector General and the New York Attorney General’s Medicaid Fraud Control Unit can and do investigate allegations of Medicaid fraud and pursue appropriate remedies. The antifraud provisions of Medicaid law would override the Act’s provider choice guarantees. *See Planned Parenthood Arizona, Inc. v. Betlach*, 899 F.Supp.2d 868, 881 (D. Ariz. 2012) (“1396a(p)(1) does not

give states sweeping authority to determine qualification standards; rather, it specifies narrowly drawn exceptions to the freedom of choice guarantee, all of which are related to excluding providers for fraudulent or illegal activities.”).

Here, it is also noteworthy that the centerpiece of this purported “anti-fraud” initiative will be a monopoly contract awarded outside of the State of New York’s usual contracting process and without the oversight of the New York State Comptroller. *Compare* New York State Session Laws Chap. 57, Part HH (enacted April 20, 2024) *with* NY State Finance Law § 163.

The single, statewide Fiscal Intermediary also violates the requirements of comparability and state wideness. A strength of the current system of multiple Fiscal Intermediaries is that it permits access across the diverse geographical scope of New York, from the urban concentration of New York City to the remote communities of the Adirondacks, from the rural counties of New York’s Southern Tier, through the suburban landscape of the lower Hudson Valley and Long Island, and the mix of communities that line the Erie Canal corridor from Buffalo to Albany. It also permits those who speak the hundreds of languages spoken in New York to access CDAPAP through culturally and linguistically competent Fiscal Intermediary Services in their communities. Although the NY Social Services Law 365-f(4-a)(b)(i)(B), as amended, purports to require that the newly selected sole Fiscal Intermediary demonstrate cultural and linguistic competence, a single, statewide entity will find it impossible to achieve the same level of cultural and linguistic competence as the current Fiscal Intermediary network. *See* “New law will make it harder for the sick and disabled to

receive care at home,” by Candace Prince-Modeste, President of the Jamaica Branch NAACP. Albany Times Union, June 7, 2024, available at <https://www.timesunion.com/opinion/article/law-make-harder-sick-disabled-receivecare-home-19499391.php>.

Among Black New Yorkers, and in other communities of color, CDPAP is not just a program, it’s a lifeline. It allows non-English speakers to receive care from someone they can communicate with, it allows people with religious or cultural needs to receive care that respects their beliefs, and it allows people to receive care without bankrupting themselves and their families.

*Id.*

Finally, New York Governor Hochul has stated that the justification for a single statewide Fiscal Intermediary is to save money. *See* Governor Hochul Announces Historic Investments of FY 2025 New York State Budget, April 22, 2024, available at <https://www.governor.ny.gov/news/governor-hochul-announces-historic-investments-fy-2025-new-york-state-budget>. Whether a monopoly provider will save any money is questionable, at best, and current reports are that no money will actually be saved by this change. Nevertheless, cost-savings cannot be achieved at the cost of noncompliance with federal standards nor by diminishing and disrupting care to Medicaid beneficiaries.

It is true that several other states use a statewide Fiscal Intermediary. That, however, cannot justify New York’s failure to follow established legal standards. In utilizing single statewide Fiscal Intermediaries, those states have created their Consumer self-direction programs under other statutory authority or have secured waiv-



ers. California, for example, established its In-Home Supportive Services (IHSS) Program under the Self-Directed Personal Assistance Services State Plan Option, Social Security Act. § 1915(j) (codified at 42 U.S.C. § 1396n). California provided a detailed plan for how that service would be provided, which CMS reviewed and approved. *See* California State Plan Amendment 09-06, available at:

<https://www.dhcs.ca.gov/formsandpubs/laws/Documents/CA%20SPA%2009-006.pdf>.

Moreover, California utilizes the State itself and its fifty-eight counties, which is something other than a single Fiscal Intermediary. *See* <https://www.cdss.ca.gov/in-foresources/county-ihss-offices>.

New York is not ready to make the switch to a single, statewide Fiscal Intermediary. The CDPAP statute, as amended, states that no entity other than the single, statewide Fiscal Intermediary may perform Fiscal Intermediary services as of April 1, 2025, only three days away. NY Social Services Law 365-f(4-a-i). The statute, however, presumes that a single, statewide Fiscal Intermediary will be fully functioning as of that date. Eliminating all extant Fiscal Intermediaries without a replacement would be irrational. Otherwise qualified Medicaid beneficiaries in need of home care are entitled to CDPAP services.

The New York Commissioner of Health has conceded that PPL, the company the Department of Health has selected as the single, statewide Fiscal Intermediary is not yet capable of performing its duties. On Wednesday of this week, the Commissioner publicly asked employees of the State Department of Health to assist in completing the registration of Consumers and their Personal Assistants with PPL. Kate

Lisa, Spectrum Local News, *DOH Asks State Employees to Help with CDPAP Home Care Transition*, Mar. 27, 2025, <https://spectrumlocalnews.com/nys/central-ny/politics/2025/03/27/doh-asks-state-employees-to-help-with-cdpap-home-care-transition>.

This assistance is obviously necessary, albeit shocking that a company awarded a multi-billion dollar, multi-year contract, is in need of assistance to meet its contractual duties.

This concession follows the Commissioner's announcement on Friday, March 24<sup>th</sup>, that a one-month late registration window would be opened from April 1<sup>st</sup> to April 30<sup>th</sup>. New York State Department of Health, *CDPAP Update: State Department of Health Announces Plan to Protect Cdpap Consumers & Workers Who Register After April 1 Transition Deadline*, March 24, 2025, [s://www.health.ny.gov/press/releases/2025/2025-03-24\\_cdpap\\_update.htm](s://www.health.ny.gov/press/releases/2025/2025-03-24_cdpap_update.htm). During this window, Personal Assistants whose registrations with PPL have not yet been completed would be permitted to continue to work for their Consumers whose registrations have not yet been completed. If those registrations are completed by April 30<sup>th</sup>, the registrations will be treated as retroactive to April first and PPL will pay the Personal Assistants for their work. The Personal Assistants would bear the risk. How many Personal Assistants can work with only the hope of delayed wages is unknown.

Presumably, this window has been opened because of the large number of Consumers and Personal Assistants who have not yet completed registration. According to the Department of Health's own numbers, as of March 26<sup>th</sup> only 165,000 out of 280,000 Consumers have either started or completed the registration process. The

numbers for Personal Assistants are even grimmer, only 170,000 out of 400,000 Personal Assistants. Notably, the Department of Health has not issued numbers of actual completions.

There is no reason to believe that PPL can complete registrations for these hundreds of thousands in only one month's time. PPL's registration process has been fraught with difficulties. Staff is incompletely trained. There are insufficient numbers of translators covering too few languages. Phones go unanswered. Calls are not returned. Phone lines are full the moment the phone lines open. The automated computer systems overload and crash.

All this Medicaid carnage could be easily avoided. Fiscal Intermediaries are necessary for CDPAP. Instead of some Personal Assistants continuing to work in the hope of getting paid, existing Fiscal Intermediaries could pay Personal Assistants their earned wages on a regular basis, in accordance with New York State and federal labor laws. *See* N.Y Lab. L. § 191(d) (2024). This media-neutral citation is based on the American Association of Law Libraries Universal Citation Guide and is not necessarily the official citation.

Workers' Compensation coverage would remain in place. Benefits would remain in place. Consumers would continue to have the support of Fiscal Intermediaries. Oversight would remain in place.

These problems are magnified beyond the one-month window. Instead of the vibrant market of current Fiscal Intermediaries, Consumers will be left with one monopoly provider, PPL, a company that describes itself as a "financial management

services company”. See <https://pplfirst.com/about-us/>. Concepts of Independence, the original New York Fiscal Intermediary, founded by and for individuals with disabilities, will be gone. Consumer Directed Choices, Inc., a Fiscal Intermediary founded more than twenty-five years ago by Constance Laymon, a woman who became a quadriplegic only days before her high school graduation and who inspired and reminded so many with the words “[n]ever about us without us!” will be gone. Their staffs, including individuals with disabilities, will be gone. And so will all other Fiscal Intermediaries and the administrative staffs they employ, Fiscal Intermediaries big and small, both for-profits and not-for-profits. They will lose the investments they have made in training, in outreach, in billing systems, in compliance systems. Their multiple language capabilities will be lost. The cultural competencies developed over time, or inherent in ethnically or religiously founded Fiscal Intermediaries, will be lost. The picnics and other get togethers for staffs, Consumers and Personal Assistants will be gone. All gone, all to be replaced by a self-described “financial management services company.”

In short, New York’s movement to a single, statewide Fiscal Intermediary does not need to happen, should not happen, and can only happen through the unlawful termination of private contracts, and in contravention of other principles of law including the free choice of providers. New York’s Consumers, Medicaid beneficiaries with disabilities in need of home care, will suffer from the loss of choice. They have benefited from Fiscal Intermediary competition. Fiscal Intermediaries will lose their

investments and goodwill. Their staffs will lose their jobs. Their communities will lose their presence.

### CONCLUSION

The Motion for Emergency Relief should be granted.

Dated: March 28, 2025

Respectfully submitted,

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