



April 1, 2025

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**VIA ECF**

Honorable Frederic Block  
United States District Court  
Eastern District of New York  
225 Cadman Plaza  
Brooklyn, NY 11201

**Re: *Engesser et al. v. McDonald,*  
Civil Action No. 25-cv-01689 (FB) (LKE)**

Dear Judge Block:

We represent Plaintiffs in the above-captioned matter. Regrettably, we write to inform the Court of significant factual developments subsequent to the Court's entry of the temporary restraining order ("TRO") yesterday. Defendant Commissioner McDonald and the New York Department of Health (together with Defendant, "DOH") have advanced an erroneous interpretation of the TRO that renders it meaningless for tens of thousands if not more of the CDPAP consumers in our class. Starting early this morning and continuing into the afternoon, we have heard widespread reports that Personal Assistants cannot log in to their work accounts—either with PPL or with the Fiscal Intermediaries ("FIs") they previously used. This means they cannot report hours worked, which means they will not be paid for their services. As of 3:00 p.m. today, Plaintiffs' Counsel has received dozens of calls and emails from CDPAP participants whose CDPAP services ended today, without notice or an opportunity to be heard. DOH is in contempt of the Court's TRO.

**A. The Court's March 31, 2025 TRO**

The Court's TRO was intended to ensure that all CDPAP recipients can continue to receive essential home care services during the pendency of the State's transition to a single fiscal intermediary—even those CDPAP recipients whose "registration is still pending." See ECF No. 50, March 31, 2025 Transcript, 21:14-22:2, 25:12-25:21 (noting that under TRO, DOH would "have the discretion to do what they think is appropriate to protect people").

Pursuant to the TRO, CDPAP consumers who have completed enrollment with PPL and whose Personal Assistants are fully registered with PPL and received confirmation that they can begin work, can use the PPL system and will be paid by PPL.

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For all other CDPAP consumers — those who have not yet enrolled with PPL, those who are in the middle of the enrollment process, and those who have themselves enrolled, but whose Personal Assistants are not fully registered and confirmed to begin work with PPL — the TRO maintains the status quo. All those consumers and Personal Assistants can continue to use their former FI's systems and the Personal Assistants will be paid by the FI.

## **B. DOH Is Disregarding the Requirements of the TRO**

Based on reports from clients and other advocates today, DOH is defying the TRO's requirements in at least the following ways:

- *First*, for those consumers who have not yet begun enrollment with PPL, many of their Personal Assistants cannot clock in with their existing FIs. Based on this, Plaintiffs' counsel believes that DOH has not ordered Managed Care Organizations ("MCOs") or Local Departments of Social Services ("LDSS") to take the steps necessary to actually provide CDPAP services to these individuals. For instance, upon information and belief, DOH has not ordered MCOs or LDSS to reinstate their contracts with the FIs, to enable the FIs to continue paying CDPAP Personal Assistants and therefore, continue the care for this group of consumers. Nor has DOH ordered the MCOs or LDSS to send authorizations to the FIs to allow them to provide services. As we shared during oral argument yesterday, we estimate this group numbers approximately 20,000-35,000 CDPAP consumers.
- *Second*, according to MCOs' communications with FIs, DOH believes the TRO's preservation of the status quo only extends to CDPAP consumers who have not started the enrollment process. According to these communications, the TRO "does not apply to consumers who have already started or completed their registration in PPL," which represents "the vast majority of our members." Exhibit A. Upon information and belief, this is the largest group of affected CDPAP consumers. Pursuant to explicit instructions from DOH, as of midnight tonight, MCOs are directing FIs to stop processing payments for anyone who has taken any action to initiate enrollment with PPL—even if they or their Personal Assistants have not completed the process and are not set up to be paid. *Id.* ("Our plan will NOT be legally able to pay for dates of services starting 12:00AM 4/1/2025 for any CDPAP services to any FI besides PPL – unless that member is [in the group of consumers who have not started enrollment].")<sup>1</sup> Consequently, DOH has excluded from continuing care the large number of consumers who have *begun* enrollment with PPL but have not *completed* enrollment, or whose Personal Assistants are not fully registered. These consumers are in limbo—their Personal Assistants cannot be paid

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<sup>1</sup> Similarly, PPL has instructed its FI-Facilitators that "[a]ny action by a facilitator to retain or somehow redirect the registration of a consumer with PPL will be considered a blatant violation of our agreement and of the scope and intent of the TRO." Exhibit B.

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by their old FIs, and because they or their Personal Assistants are not fully registered with PPL, they also cannot be paid by PPL. According to DOH, they are out of luck, notwithstanding that Your Honor issued a TRO yesterday specifically to ensure payment and continuing care for these individuals as well as for those who have not yet started the process.

- *Third*, upon information and belief, DOH is not taking the necessary steps to protect even the CDPAP consumers who are fully registered with PPL. That is, even those consumers (1) who are themselves fully enrolled with PPL, (2) whose Personal Assistants are fully registered with PPL, and (3) who have and whose Personal Assistants have been confirmed as fully registered and ready to clock in on the PPL app, cannot receive services. These consumers report that their Personal Assistants are unable to log in for a wide variety of reasons, including allegedly missing authorizations, missing documents, and the fact that previously approved Personal Assistants are labeled "returned" in the system. Additionally, Personal Assistants who had submitted all forms and signed contracts are unable to clock in to begin work without clicking an acknowledgement that **they are not an employee of PPL and will only receive payment retroactively before they are permitted to clock in for work today**. See Exhibit C. Among other things, this expressly violates the prompt payment provisions of New York Labor Law § 191.

The TRO requires more. It preserves the status quo by enjoining implementation of the CDPAP Amendment's ban on non-PPL FIs. Part and parcel of that order is restoring the contractual arrangements between MCOs or LDSS and still-existing FIs, so that those FIs can operate and pay the Personal Assistants for consumers who have not yet started or not yet finished registration.

DOH is defying the Court's TRO to serve their overarching goal of punishing the existing FIs at the expense of CDPAP consumers—our clients in this litigation who need the critical support of Personal Assistants to stay in their homes and avoid hospitalizations, nursing homes or other congregate care restricted living arrangements. Yesterday, Your Honor made clear that it was up to the State to figure out how to delay implementation of the portion of the CDPAP Amendment that requires the existing FIs to close so that CDPAP Personal Assistants can continue to be paid—and provide care—in compliance with applicable labor and employment law until the preliminary injunction hearing on Friday. Instead, DOH is causing *more* people to be harmed.

We ask the Court to explicitly order DOH to reinstate the contracts with the existing FIs in a manner that covers consumers who have not yet begun enrollment with PPL, or who have started but they or their Personal Assistants have not yet completed it, in compliance with applicable law, so that the services they are legally entitled to receive are not abruptly cut off because DOH is refusing to provide a mechanism for the prompt payment of wages to their Personal Assistants.

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This submission is made on an expedited basis given the harm that occurs each hour as tens of thousands of CDPAP consumers in all stages of the transition process encounter roadblocks to receiving care, despite the Court's TRO. Plaintiffs respectfully request that the Court hold an expedited hearing or a telephone conference as soon as possible to ensure that the scope of the TRO is honored expressly by DOH and to prevent additional harm to CDPAP consumers, or in the alternative, issue an order clarifying DOH's obligations under the TRO that the Court issued yesterday.

Respectfully yours,

/s/ Lisa E. Cleary  
Lisa E. Cleary

cc (by email or ECF)  
Rachel Summer, NYAG  
Samantha Buchalter, NYAG  
Elizabeth Jois, NYLAG  
Julia Russell, NYLAG

# Exhibit A

**From:** [Lindsay Miller](#)  
**To:** [Lindsay Miller](#)  
**Subject:** FW: Temporary Restraining Order (TRO) Issued - Response Required  
**Date:** Tuesday, April 1, 2025 3:33:29 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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**From:** Provider Relations <[providerrelations@nascentiahealth.org](mailto:providerrelations@nascentiahealth.org)>  
**Sent:** Tuesday, April 1, 2025 1:33 PM  
**To:** Provider Relations <[providerrelations@nascentiahealth.org](mailto:providerrelations@nascentiahealth.org)>  
**Subject:** RE: Temporary Restraining Order (TRO) Issued - Response Required

You don't often get email from [providerrelations@nascentiahealth.org](mailto:providerrelations@nascentiahealth.org). [Learn why this is important](#)

**CAUTION: This email originated from a sender OUTSIDE the organization. Please proceed with caution when clicking links, or opening attachments. If this message purports to be from someone inside the organization, it is an impersonation attempt.**

Dear Valued Fiscal Intermediary,

1. We have been informed that on 3/31/25 a judge has issued a temporary restraining / short-term order regarding certain elements of NYS transition to Single FI:
  - a. NYS has informed us that this does NOT apply to consumers who have already started or completed their registration in PPL
  - b. Further it does not restrict consumers, or their associated PAs, from starting or completing their registration with PPL
  - c. We will continue to proceed with working with PPL as members are registered and completing time tracking activities
  - d. Note: We have been informed by NYS that the TRO does NOT apply to categories that represents the vast majority of our members (Defined here as, "Majority TRO NOT Applicable Members")
  - e. The TRO has been described as "focused on the few consumers" (Defined here as, "Limited TRO Applicable Members") who have not already registered with PPL
2. Your Actions / Responsibilities
  - a. As you are aware, our agreement is an Administrative Agreement, governed by the rules and regulations of NYS. The agreement is for the FI to provide wage and benefit processing for consumer directed personal assistants on behalf of an employing consumer and other responsibilities specified in this Agreement in accordance with 18 N.Y.C.R.R. § 505.28(i)
  - b. Based on the information provided to our plan, and since, per NYS, the TRO does NOT apply to categories that represents the vast majority of our members:
    - i. Our plan will NOT be legally able to pay for dates of services starting 12:00AM 4/1/2025 for any CDPAP services to any FI besides PPL - unless that member is inside the Limited TRO Applicable Members cohort

- c. We will abide by NYS direction regarding this TRO
  - d. FIs should not be overcommunicating Medicaid beneficiary “rights”, “obligations”, perceived “status”, or directing them to take action not in line with the Administrative Agreement. Those actions would not be in keeping with the best interest of the Medicaid beneficiary.
3. Next Steps: Please provide the following by response email by **COB today:**

Name of FI:	
TIN of FI:	
NPI of FI:	
Will the FI be able to provide FI services (including clock-in / clock-out) for the Limited TRO Applicable Members for the dates of 4/1/25 through 4/4/25 (possible other dates depending on court): (Provide “Yes” or “No” only) <u>(If yes, the Plan will provide the listing of the Limited TRO Applicable Members based on the member’s previous FI status and NYS Guidance)</u>	
Will the FI refrain from further TRO related / service options past 4/1/25 messages to Plan Members that the FI serves / served that fall into the Majority TRO NOT Applicable Members: (Provide “Yes” or “No” only)	
Will the FI accept as definitive the plan’s listing, which is based on the guidance provided to the plan, of “Limited TRO Applicable Members” and “Majority TRO NOT Applicable Members” (Provide “Yes” or “No” only)	

Best Regards,



TOMORROW'S HEALTHCARE TODAY



### Provider Relations

p: (315) 477-9280  
 f: (315) 671-5129  
[providerrelations@nascentiahealth.org](mailto:providerrelations@nascentiahealth.org)  
 nascentiahealth.org  
 1050 West Genesee St.  
 Syracuse, NY 13204

# Exhibit B



On March 31<sup>st</sup>, the United States District Court for the Eastern District of New York issued a temporary restraining order (TRO) in the matter of Engesser v. McDonald.

The TRO has a limited scope. PPL is not prevented or restricted in any way from operating, processing applications, servicing or paying any CDPAP participants registered with PPL or from otherwise registering any additional CDPAP participants. Rather, only through this Friday, April 4, 2025, the TRO prevents the Department of Health from “disallowing other fiscal intermediaries from servicing those CDPAP participants who have not yet registered with PPL.”

In short, the nearly 200,000 consumers who have already registered with PPL, and their PAs are not subject to this TRO.

PPL is disappointed in the issuance of the TRO, as the implementation of it could be problematic. Outgoing fiscal intermediaries do not possess valid service authorizations for consumers, do not have valid contracts with health plans, and do not have mechanism to be paid for their services.

Most importantly, we are concerned that the TRO’s implementation will cause fear and confusion among consumers and personal assistants.

As our trusted subcontractor facilitator, we expect that you will help quell that confusion in the coming days. We expect you to continue to fulfill, in all respects, your contractual duties to PPL and to the program, including continuing work to register consumers and PAs with PPL and help them onboard. If asked about the TRO, we expect you will respond with the truth--that the TRO is limited in scope, temporary in nature, and should not affect their ongoing registration effort with PPL.

Of course, consumers who have registered with PPL remain registered with PPL, regardless of the facilitator assigned to them. Any action by a facilitator to retain or somehow re-direct the registration of a consumer with PPL will be considered a blatant violation of our agreement and of the scope and intent of the TRO.

We wish to make clear that we will be unable to continue our partnership with any facilitator who cannot meet these expectations and who does not follow in all respects the terms of its agreement with PPL, as well as be truthful about the scope of the TRO.

This latest turn of events is an unfortunate small victory for those groups who have consistently put their own interests ahead of the wellbeing of the vulnerable population we serve. We fully expect that the TRO will expire on Friday and not be extended after the court has further opportunity to reflect on the merits of the case. We hope that we can continue our partnership with you throughout this week, while the TRO is in effect, and well into the future as we work together to strengthen and improve this critical program.

A handwritten signature in blue ink, appearing to read 'Vince Coppola', is written over a light blue horizontal line.

Vince Coppola  
Chief Executive Officer, PPL

# Exhibit C



### Time4Care

I will use Time4Care before becoming an employee of PPL as a CDPAP PA.

I understand that I am being granted access to this app in accordance with DOH's Retroactive Payment Policy for the CDPAP program. I understand that although I have registered to become an employee of PPL, I am not yet a PPL employee and will not be employed by PPL until the hiring process is complete.

I understand that according to the NYDOH Policy, if (and only if) I become employed by PPL before April 30, I will be paid retroactively for time accurately entered into Time4Care before my employment with PPL.

**I understand**

[Sign up with email.](#)

[Sign up with phone number.](#)