

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

United States of America,

Plaintiff,

v.

PUBLIC PARTNERSHIPS, LLC, a Delaware limited liability company; DR. JAMES MCDONALD, in his official capacity as Commissioner of the New York State Department of Health; and AMIR BASSIRI, individually and in his official capacity as Medicaid Director at the New York State Department of Health,

Defendants.

Case No.: 1:26-cv-3601 (OEM)

Hon. Orelia E. Merchant

**NOTICE OF DEFENDANTS DR. JAMES MCDONALD'S AND AMIR BASSIRI'S
MOTION TO DISMISS**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, and the accompanying Declaration of Arun G. Rao, dated August 10, 2026, and the exhibits attached thereto, Defendants Dr. James McDonald and Amir Bassiri ("Defendants"), by and through their counsel, shall move before the Honorable Orelia E. Merchant, United States District Judge for the Eastern District of New York, at the United States Courthouse located at 225 Cadman Plaza East, Brooklyn, New York 11201, for an Order dismissing the Complaint of Plaintiff United States of America as against Defendants, pursuant to Federal Rule of Civil Procedure 12(b)(6), together with such other and further relief as this Court deems appropriate.

~ Signature on following page ~

Dated: August 10, 2026

/s/ Arun G. Rao

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS OF DEFENDANTS
DR. JAMES MCDONALD AND AMIR BASSIRI**

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I. INTRODUCTION

The claims asserted by the U.S. Department of Justice (DOJ) against the State of New York via the two New York defendants, Dr. James McDonald, Commissioner of the Department of Health (DOH), and Amir Bassiri, New York’s Medicaid Director, are bizarre and unprecedented—for example, asserting that the State of New York itself is subject to criminal liability under federal law—and must be dismissed for multiple independent reasons. DOJ seeks injunctive relief under 18 U.S.C. § 1345 based on alleged false statements, or statements fraudulently concealing material facts, by New York officials. But that statute requires proof of violations happening *now* or *imminently*—and the complaint does not identify a single such statement in the last year. Indeed, the complaint fails to allege any such statements by the New York defendants—let alone any that were willful and material as required to violate 18 U.S.C. § 1035, the predicate criminal law invoked by DOJ. Certainly, Section 1035 does not apply to states or state officials sued in their official capacity, as the New York defendants are here. Any contrary interpretation would raise grave federalism concerns by effectively imposing criminal liability on a state.

Because DOJ’s claims relate entirely to New York’s Consumer Directed Personal Assistance Program (CDPAP), some background regarding the program is necessary to understand the wholly unjustified nature of those claims.

Many Medicaid recipients in New York have chronic illnesses or disabilities, and require help for basic daily activities; they are often better suited to receive care from family and friends, rather than hiring unknown professional homecare workers. CDPAP thus allows New Yorkers to select caregivers of their choice to provide home health aide services, personal care, and skilled nursing care. These Medicaid benefits are administered through local government agencies and managed care organizations that contract with DOH, and then contract with “fiscal intermediaries”

(FIs) to provide necessary administrative services, such as processing wages and benefits for the caregivers. More than 200,000 New Yorkers receive home care under CDPAP.

Prior to April 2025, New York's CDPAP was anomalous: it had more than 600 different FIs; other states had only one, or, at most, several FIs. The large number of FIs was costly and made it difficult for New York to monitor operations for fraud and waste.

In April 2024, New York took action to reform the system and conform it to the national norm. The Legislature enacted a law directing DOH to contract with a single statewide FI to provide the administrative services required for CDPAP, replacing the 600 different FIs. The law established criteria for selecting a contractor and stated that after April 1, 2025, FI services could be provided only by the single statewide FI. The State's budget office estimated that the transition to a single FI would save approximately \$500 million annually.

Pursuant to the new law, DOH issued a request for proposals, evaluated the proposals received, and then selected and entered into a contract with defendant Public Partnerships LLC (PPL) on September 30, 2024. The transition to the statewide FI began in January 2025. By August 2025, 210,000 CDPAP beneficiaries had transitioned, while another 80,000 consumers opted to receive home care through a licensed home care services agency. That total of 290,000 beneficiaries compares to 280,000 New Yorkers receiving benefits under CDPAP in 2024.

DOJ's claims relate to that transition, and its claims fail for multiple reasons. First, DOJ's claims cannot plausibly meet the strict timing standard commanded by the text of the statute DOJ invokes, 18 U.S.C. § 1345. The statute requires facts supporting a plausible inference that the defendant "*is . . . violating or about to violate*" an underlying criminal statute. *Id.* (emphases added). DOJ invokes 18 U.S.C. § 1035, which criminalizes knowing, willful, and material false statements or falsified or concealed facts in connection with health care benefit programs. But the

allegations concerning the two New York defendants rest entirely on statements regarding a transition completed over a year ago. Indeed, the most recent allegedly false statement identified in the complaint is from August 2025. Because the complaint cites no ongoing false statements, the federal government's claims against the New York defendants must be dismissed.

Second, the complaint appears to assert that, even if there are no ongoing false statements, DOJ may seek injunctive relief against the State to remedy what it claims is continuing harm from past conduct. It refers vaguely (at ¶ 121) to “an injunction” to “help restore the status quo,” where “restor[ing] the status quo” presumably means voiding a contract upon which caregivers to more than 200,000 New Yorkers are currently paid, and reinstating a system of 600 FIs that has not existed for more than a year. The statute does not authorize such relief and would violate the Constitution if it did, because that would impose extensive affirmative obligations on state officials in violation of the anti-commandeering doctrine. *See Printz v. United States*, 521 U.S. 898, 929-31 (1997); *see also Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 470 (2018).

Third, the claims against the New York defendants in their official capacities must be dismissed because they depend on proving that the State itself is engaged in an existing or impending violation of the underlying criminal statute, 18 U.S.C. § 1035. It would be unprecedented to hold that a state is subject to *criminal* liability under a federal statute—and actions against state officers in their official capacities qualify as actions against the state.

Fourth, the complaint fails to plead a violation of Section 1035, much less one that satisfies the strict pleading requirements applicable to allegations of fraud. Section 1035 requires the government to establish that the state officials: (1) made false statements or falsified or concealed a fact; (2) knowingly and willfully; (3) regarding a material fact; (4) in the course of delivering or obtaining payment for health care services. The complaint's allegations fall far short of what is

required to support plausible inferences as to each of those elements. It also fails to comply with Federal Rule of Civil Procedure 9(b)'s requirement that fraud be pled with particularity.

Finally, the complaint's allegations that the New York defendants participated in a criminal conspiracy with PPL are also grossly insufficient. The core of DOJ's theory is that PPL overcharged the State for FI services. If true—and for reasons discussed in PPL's motion to dismiss, that claim is also fatally flawed—New York would be the victim, not a co-conspirator. Certainly, the complaint has no factual allegations supporting a plausible inference of conspiracy involving PPL and the New York defendants or explaining why they would choose to pay for unauthorized costs. The Court should dismiss the claims against Dr. McDonald and Mr. Bassiri.

II. STATUTORY AND REGULATORY BACKGROUND

Medicaid is a jointly funded federal-state program administered by the states that provides medical assistance to low-income individuals. *See* 42 U.S.C. § 1396a; 42 C.F.R. § 430.0. State Medicaid plans must meet minimum federal standards set by the Medicaid statute and implementing regulations, and states retain broad discretion in structuring their Medicaid programs and expending Medicaid funds. *See* 42 U.S.C. § 1396 *et seq.*; 42 C.F.R. § 430.0; *Community Health Ctr. v. Wilson-Coker*, 311 F.3d 132, 134 (2d Cir. 2002). DOH is responsible for administering New York's Medicaid program. *See* N.Y. Soc. Serv. Law (SSL) § 363-a(1). DOH also administers certain aspects of New York's Medicaid program through local government agencies, termed local departments of social services (LDSSs), and through private managed care organizations (MCOs). *See* SSL §§ 61, 62; 42 U.S.C. § 1396b(m)(1)(A); 42 C.F.R. § 438.2.

CDPAP allows eligible Medicaid beneficiaries to receive home care services, including personal care and skilled nursing care. Beneficiaries hire a caregiver of their choice, who is paid by Medicaid. *See* SSL § 365-f(1)-(2); 18 N.Y.C.R.R. § 505.28(a), (b)(2)-(3), (c).

Historically, MCOs and LDSSs administering CDPAP benefits contracted with FIs to perform certain administrative tasks for which the FIs were reimbursed by New York's Medicaid program. *See* SSL § 365-f(3); 18 N.Y.C.R.R. § 505.28(b)(4), (b)(8)-(9), (j). Those tasks include processing wages and benefits for caregivers and maintaining employment records and records of consumers' CDPAP authorizations. 18 N.Y.C.R.R. § 505.28(j)(1).

Prior to 2025, New York's CDPAP was an extreme outlier compared to similar programs in other states. Nearly all other states use one or a few FIs. But in New York, there were over six hundred FIs contracted by LDSSs and MCOs to administer payments for CDPAP caregivers. *See* FY 2025 NYS Enacted Budget Financial Plan, at 113 (May 2024), <https://perma.cc/P3FA-3MT6> (Financial Plan). That required New York to spend hundreds of millions of Medicaid dollars to cover rising overhead and other administrative costs for all of these FIs, rather than using those funds to pay for consumers' personal care services. *See id.* at 35, 113.

In addition, DOH had limited ability to oversee the FIs' operations to monitor for fraud, waste, and abuse and other issues. Indeed, during this period, both the federal government and New York brought enforcement actions against FIs for improperly billing Medicaid for CDPAP services and other misconduct.¹ To address these issues, New York's legislature had, prior to 2024, made several attempts to reduce the number of FIs providing services and thereby reduce

¹ *See, e.g.*, Superseding Indictment, *United States v. Khan*, No. 24-cr-409 (Dkt. No. 88) (E.D.N.Y. Mar. 18, 2025) (alleged kickback scheme to bill Medicaid for CDPAP services that were medically unnecessary, not provided, and/or induced by illegal kickbacks and bribes); Office of the N.Y. Attorney General, *Attorney General James and U.S. Attorney Peace Secure Over \$17 Million From Home Health Agencies for Cheating Workers and Defrauding Medicaid in Landmark Wage Parity Agreement*, <https://perma.cc/WFG5-WNKT> (announcing settlements with two FIs who allegedly failed to pay minimum wages and benefits and defrauded Medicaid); *see also* U.S. Dep't of Health & Human Services, *Office of the Inspector General, New York Claimed Federal Reimbursement for Consumer-Directed Services that Did Not Meet Medicaid Requirements* (June 2018), <https://perma.cc/R9YN-LK9B> (concluding New York had improperly claimed \$74.8 million in Medicaid reimbursement for CDPAP services due to lack of effective monitoring).

administrative service costs. *See, e.g.*, 2019 Sess. Law News of N.Y., ch. 57, pt. G; 2021 Sess. Law News of N.Y., ch. 57, pt. LL; 2022 Sess. Law News of N.Y., ch. 57, pt. PP.

Ultimately, in April 2024, the New York Legislature passed Part HH of Chapter 57 of the New York Session Laws of 2024 (CDPAP Amendment). The CDPAP Amendment directed DOH to contract with a single statewide FI to provide administrative services beginning April 1, 2025, and it required LDSSs and MCOs providing CDPAP services to contract with that entity. SSL § 365-f(4-a)(a)(ii-a). The State estimated that this would save approximately \$500 million annually, including during the fiscal year beginning April 1, 2025. Financial Plan at 23, 35.

The CDPAP Amendment specified a procurement process for selecting the statewide FI. It required the entity selected to (i) have “demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce,” (ii) have “experience serving individuals with disabilities,” and (iii) as of April 1, 2024, be “providing services as a fiscal intermediary on a statewide basis with at least one other state.” SSL § 365-f(4-a)(b)(i)(B).

III. FACTUAL BACKGROUND

The RFP for the Statewide FI Contract. Pursuant to the CDPAP Amendment, DOH issued a request for proposals seeking bids for the single statewide FI. *See* DOH, Request for Proposals (RFP): RFP #20524 (June 17, 2024), <https://perma.cc/54VY-LUR6>. Bidders were first required to satisfy the minimum statutory requirements; qualifying proposals were then evaluated using the criteria set forth in Sections 6.0 and 8.0 of the RFP, which addressed quality, cost, and other considerations. The RFP provided that finalists for the contract would be selected based on the scoring of each bid’s technical proposal and cost proposal. *Id.* § 8.5. It specified that the technical evaluation would be conducted by a committee; each committee member would score the technical proposal independently; and the committee members’ scores would be averaged. *Id.* § 8.3.

For the cost evaluation, the RFP specified that the maximum score would be allocated to the proposal with the lowest all-inclusive maximum price, and all other proposals would receive a reduced score based on a formula set out in the RFP. *Id.* § 8.4. The RFP provided that the evaluation committee would recommend that the contract be awarded to the bidder with the highest composite score of its bid’s technical and cost components. *Id.* § 8.7. Pursuant to State Finance Law §§ 139-j and 139-k, the RFP also made clear that, during the “restricted period” that began when DOH issued the RFP on June 17, 2024, procurement-related communications would be made only to the contact designated in the RFP. RFP § 5.1.

The RFP contained detailed provisions regarding compensation for the statewide FI. The statewide FI would be reimbursed for three categories of costs: Administrative Costs, Direct Care Service Costs, and Initial Transition Costs. RFP § 5.4; DOH, RFP #20524: N.Y.S. Fiscal Intermediary Services, Amendment #3 (Aug. 7, 2024), <https://perma.cc/4R9Q-5JU4> (Amendment #3). Administrative Costs would be paid based on the contractor’s proposed Per Member Per Month (PMPM) price, and the RFP indicated that a contractor would not otherwise be reimbursed separately for its administrative services. RFP § 5.4.1. The RFP indicated that the statewide FI would also be reimbursed separately for Direct Care Service Costs according to its contracts with MCOs or according to a fee-for-service schedule where applicable. *Id.* § 5.4.2.

The RFP did not address what costs could be included as Direct Care Service Costs. DOH indicated in response to questions during the RFP process that “[a]dministration will exclusively be paid through the PMPM established under this contract. Direct care will be paid through existing means with the expectation it flows to the worker.” Compl. ¶ 39.

The Bid Evaluation Process. Consistent with the procedures set out in the RFP, a three-person panel, which included Mr. Bassiri as the State Medicaid Director tasked with administering

CDPAP, reviewed the technical proposals from entities found qualified to serve as statewide FI. Compl. ¶¶ 28, 33, 35-36; Ex. A, Technical Proposal Score Tool.² The complaint alleges that Mr. Bassiri gave a positive evaluation to certain aspects of PPL's bid, but his technical score for PPL's bid was lower than the scores given by the two other review committee members. *See* Ex. A. PPL also received the highest score on the cost component of its bid, based on a proposed PMPM payment of \$68.50. Compl. ¶ 40. Following the RFP process, PPL was selected as the statewide FI on September 30, 2024. Office of the Governor, *Governor Hochul Announces Next Steps in Plans to Strengthen Home Care Services for New Yorkers*, <https://perma.cc/2D4M-ZW5E>.

The Transition Process. In January 2025, PPL began the transition process to take over as the statewide FI by April 1, 2025, as required by statute. Initially it faced challenges getting consumers and caregivers registered, particularly because some legacy FIs refused to transfer their consumers' information or provided incorrect information to CDPAP consumers. Compl. ¶¶ 67, 80-83; DOH, Press Release, *CDPAP Update: State Department of Health Announces Plan to Protect CDPAP Consumers & Workers Who Register After April 1 Transition Deadline* (Mar. 24, 2025), <https://perma.cc/XS9B-JG2P> (March 2025 Update).

DOH subsequently provided that caregivers who registered with the statewide FI by April 30 would receive retroactive payments, *see* March 2025 Update, and the registration deadline was further extended to August 1, 2025, pursuant to a settlement agreement reached in litigation challenging the transition to a statewide FI, *see Engesser v. McDonald*, 2025 WL 2371078, at *2 (E.D.N.Y. Aug. 14, 2025). According to testimony by Dr. McDonald, of the 280,000 consumers

² The United States' complaint relies on and cites scores from the technical review panel's evaluation of the qualified bids the committee received. *See* Compl. ¶¶ 33, 35, 36. The Court therefore may consider the scoring tool because it is either incorporated by reference or is integral to the complaint. *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010); *Prime Contractors, Inc. v. APS Contractors Inc.*, 754 F. Supp. 3d 289, 300–01 (E.D.N.Y. 2024).

that received CDPAP services prior to the transition to a statewide FI, 210,000 had successfully registered and remained in the program as of August 21, 2025. N.Y. Senate, Joint Public Hearing: Consumer Directed Personal Assistance Program, Written Testimony of Dr. James V. McDonald, <https://perma.cc/HVJ2-PVSN> (McDonald Testimony).³

Rate-Setting. DOH's contract specified two categories of ongoing payments to PPL: (1) the PMPM Administrative Cost payment, paid by DOH and fixed at \$68.50 by the contract; and (2) the Direct Care Service Cost, paid by LDSSs and MCOs and not set by DOH's contract with PPL.⁴ The 2025 Direct Care rate for LDSSs was set pursuant to the governing statute and DOH regulations, which specified that—for a provider like the new statewide FI with no New York operating costs for prior years—direct service rates should be calculated based on “estimated operating costs” submitted to DOH by the provider. 18 N.Y.C.R.R. §§ 505.14(c)(6), 505.14(h)(7)(i)(b)(2). After such a provider has contracted with an LDSS for a year, it is directed to submit actual operating costs for the year. *Id.* § 505.14(h)(7)(i)(b)(9); *see also* 18 N.Y.C.R.R. § 505.28(o) (applying this procedure to the statewide FI's Direct Care rates). The 2025 Direct Care Service Cost for MCOs was set in contract negotiations between PPL and individual MCOs. Compl. ¶ 64.

The process for setting Direct Care Service Cost rates was clarified for 2026. DOH issued amended regulations directing that rates be set based on a combination of historic and estimated

³ Another 80,000 consumers opted to receive personal care services through a licensed home care services agency. *See* McDonald Testimony. Dr. McDonald's testimony is incorporated by reference at Compl. ¶ 111. *See Prime Contractors, Inc.*, 754 F. Supp. 3d at 300–01 (“A document may be deemed incorporated by reference when a complaint . . . includes any statements from those documents.”). Courts also take judicial notice of testimony before legislative bodies as public records. *See Johnson & Johnson v. Am. Nat. Red Cross*, 528 F. Supp. 2d 462, 464 n.1 (S.D.N.Y. 2008); *Clark v. Boughton*, 2022 WL 4778582, at *1 n.2 (D. Conn. Oct. 3, 2022).

⁴ The contract also provided for payments relating to PPL's transition costs. RFP § 5.4.

costs. *See* 18 N.Y.C.R.R. § 505.28(m)-(o). DOH promulgated new rates pursuant to this process in 2026. *See* DOH, *1/1/2026 CDPAP Rates*, <https://perma.cc/72TQ-TH69>.

The Complaint's Allegations. DOJ's complaint alleges that, in bidding to serve as statewide FI, PPL misrepresented its capabilities, and intended to and did include in its 2025 Direct Care rates various costs that were not properly allowable as Direct Care costs. Compl. ¶¶ 3-6, 31-56, 64-66, 90-92. The complaint generally asserts that the bid process was a "sham" and that it involved "improper pre-bid award communications," *e.g., id.* ¶¶ 1, 3, 6, 109, but it does not allege any facts plausibly indicating either New York defendant acted unlawfully or improperly in the bidding process or setting Direct Care rates. Rather, it alleges that the two New York defendants, Dr. McDonald and Mr. Bassiri, and other unnamed DOH officials or employees made supposedly false statements relating to the fairness of the RFP process, the pace and challenges of the transition, the nature of DOH's contractual relationship with PPL, and the anticipated savings from the switch to PPL as the single statewide FI. *See, e.g., id.* ¶¶ 71, 79, 89, 111-13, 135.

IV. ARGUMENT

This action is governed by the Federal Rules of Civil Procedure. 18 U.S.C. § 1345(b). To survive a motion to dismiss, the complaint must plead facts, not merely "labels and conclusions," that plausibly support inferences establishing each element of the plaintiff's claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); Fed. R. Civ. P. 8(a)(2). "Facts that are 'merely consistent with' a defendant's liability . . . 'stop[] short of the line between possibility and plausibility.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557) (emphasis added). Rather, a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Additionally, because the allegations here sound in fraud, the complaint must allege fraud with particularity under Federal Rule of Civil Procedure 9(b). *See United States v. Bank of N.Y. Mellon*, 941 F. Supp. 2d 438, 464 (S.D.N.Y. 2013) (applying Rule 9(b) to complaint seeking injunction pursuant to 18 U.S.C. § 1345). Rule 9(b) applies when, as here, a complaint alleges conduct that is fraudulent in nature; it is irrelevant whether the claim requires proof of fraud as an element. *Rombach v. Chang*, 355 F.3d 164, 171 (2d Cir. 2004). Rule 9(b) therefore requires a plaintiff to “(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.” *Id.* at 170. In addition, a plaintiff must “plead the factual basis which gives rise to a strong inference of fraudulent intent.” *United States ex rel. Hart v. McKesson Corp.*, 96 F.4th 145, 153 (2d Cir. 2024) (citation omitted).

A. The Complaint Fails To Allege Any Basis For Injunctive Relief Under 18 U.S.C. § 1345.

The complaint fails to allege a plausible basis for injunctive relief against the state officials because it does not allege any ongoing or imminent violations. It therefore must be dismissed.

The cause of action created by 18 U.S.C. § 1345 may be invoked when a person “*is . . . violating or about to violate*” various fraud statutes; it authorizes the government to sue “to enjoin *such* violation.” *Id.* § 1345(a)(1) (emphases added). “Congress’s use of a verb tense is significant in construing statutes.” *United States v. Wilson*, 503 U.S. 329, 333 (1992). Section 1345’s use of the present and future tense requires DOJ to allege currently occurring or imminent violations.

Thus, the Second Circuit held that a statute’s “use[of] the present tense”—authorizing relief when a person “*is under imminent danger*”—made clear “that the danger must exist at the time the complaint is filed.” *Malik v. McGuinness*, 293 F.3d 559, 562-63 (2d Cir. 2002) (emphasis added); *accord Dole Food Co. v. Patrickson*, 538 U.S. 468, 478 (2003) (“[T]he plain text of this provision,

because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed.”). Courts therefore hold that Section 1345 authorizes relief “only when the alleged fraudulent scheme is ongoing” and not based on “solely past violations.” *United States v. William Savran & Assocs., Inc.*, 755 F. Supp. 1165, 1178 (E.D.N.Y. 1991); *see also United States v. CLGE, Inc.*, 2014 WL 12543797, at *2 (E.D.N.Y. Dec. 19, 2014).

The predicate fraud statute that DOJ invokes with respect to the New York defendants, 18 U.S.C. § 1035, criminalizes knowing and willful “materially false, fictitious, or fraudulent statements or representations” in connection with the delivery or payment of health benefits. The complaint therefore must allege ongoing or imminent false statements violative of Section 1035, but it does not plausibly make any such allegations as to a New York defendant.

DOJ alleges three categories of supposedly false statements by the New York defendants: (1) statements related to the fairness of the RFP process; (2) statements related to the transition to PPL as the Statewide FI; and (3) statements relating to the contractual relationship between DOH and PPL and the savings associated with the switch to a Statewide FI. *See supra*, at p. 10. The complaint fails to plausibly allege any ongoing or future false statements with respect to any of these categories—let alone statements that were willfully and knowingly false. *See infra*, at pp. 28-30 (explaining insufficiency of scienter allegations even for alleged past statements).

The RFP process and the transition to PPL as the statewide FI both were completed over a year ago. The complaint does not identify any false statements since January 2025 regarding those matters. Compl. ¶ 112. And it contains no allegations supporting a plausible inference that the New York defendants would make any future willful and knowing false statements regarding them. Allegations about purported statements from more than a year and a half before this action are plainly insufficient to support a Section 1345 claim. *See, e.g., Savran*, 755 F. Supp. at 1178.

With respect to the third category, the 2025 Direct Care rates that are the focus of the federal government's allegations, *see* Compl. ¶¶ 52-56, 62-66, 111, have been superseded by new currently operative 2026 Direct Care rates, set by a clarified regulatory process. *See supra*, at p. 10. The complaint contains no allegations regarding the process by which the now applicable 2026 rates were developed or any other basis to infer that these rates are problematic in any way. And the complaint contains no factual allegations supporting an inference that the New York defendants are "about to" make statements regarding the 2025 rates. Neither does the complaint contain allegations of ongoing or imminent statements related to anticipated savings from the switch to a single FI. Indeed, the most recent alleged false statement that the complaint specifically identifies—without indicating that it is an actionable false statement—is testimony at a State legislative hearing in August 2025. *See id.* ¶ 111.

Because the complaint does not plausibly allege any ongoing false statements or imminent future false statements by any New York defendant, there are no grounds for DOJ to obtain relief, and the claims against the New York defendants must be dismissed.

The United States cannot avoid its obligation to plausibly allege ongoing fraudulent conduct by arguing that the complaint alleges a continuing conspiracy. As an initial matter, as explained *infra*, at pp. 34-35, the conclusory allegations in the complaint do not provide any basis to infer that a conspiracy existed among any New York defendant and PPL.

Moreover, the complaint does not allege that the New York defendants took any distinct actions as part of any purported conspiracy other than the asserted past false statements; it simply asserts that "[b]y reason of the same conduct" alleged to violate Section 1035, the New York defendants conspired to violate 18 U.S.C. § 371. Compl. ¶ 136. None of that conduct is ongoing or alleged to be ongoing, and there is consequently nothing for the court to enjoin.

DOJ may argue that a conspiracy “continues through the conspirators’ receipt of ‘their anticipated economic benefits,’” *United States v. Salmonese*, 352 F.3d 608, 615 (2d Cir. 2003) (citation omitted), but that only underscores the deficiencies of the complaint’s allegations as to the New York defendants. There is no allegation that any New York defendant is profiting from what the United States asserts is PPL’s inflated billing of CDPAP in New York. Rather, New York would be the *victim* of any such alleged fraud, and any continued receipt of benefits by other parties provides no justification for issuance of injunctive relief against any New York defendant.

The complaint appears to suggest that, even in the absence of any plausible allegation of ongoing false statements, an injunction is justified to “restore the status quo.” Compl. ¶ 121. But the status quo *is* a statewide FI. Pursuant to the express directive of a validly enacted state law, New York switched from a system of 600-plus FIs to a single FI over a year ago. The United States cannot obtain an injunction directing the State of New York to reinstate the system replaced by the Legislature in 2024 or to continue making payments to legacy FIs. Section 1345 authorizes the United States to sue “to enjoin such violation” of a specified fraud statute, not to obtain relief requiring a defendant to take other actions that DOJ might think appropriate to “restore the status quo.” *See United States v. New York City Hous. Auth.*, 347 F. Supp. 3d 182, 206 (S.D.N.Y. 2018) (explaining that consent decree provision that did not “seek[] to directly enjoin” alleged false statements to federal regulators was “outside [18 U.S.C. § 1345’s] statutory regime[]”).

Moreover, construing the statute to authorize broad affirmative relief compelling the State, through two high-level officials, to restructure a multi-billion-dollar program or otherwise alter CDPAP in New York, would violate the Constitution. The federal government may “encourage” states to undertake activities with the inducement of funding, *NFIB v. Sebelius*, 567 U.S. 519, 577-80 (2012), but it may not “issue orders directly to the States,” *Murphy*, 584 U.S. at 470, or “compel

the States to enact or administer a federal regulatory program,” *Printz*, 521 U.S. at 933. Nor may the federal government accomplish these illicit ends through the fiction of directing state officials’ actions as “individuals”: when the statutory duty “controls their actions, not as private citizens, but as the agents of the State,” *Printz*’s limit on federal authority applies. *Id.* at 930. To the extent the complaint’s reference to “restor[ing] the status quo” involves directing New York officials to take any steps to unwind the CDPAP transition, or any other steps as agents of the State, the anti-commandeering doctrine bars that relief.

B. 18 U.S.C. § 1035 Does Not Apply To State Defendants Acting In Their Official Capacities.

The claims against the New York defendants in their official capacities must be dismissed for an additional, independent reason. The complaint seeks injunctive relief under 18 U.S.C. § 1345 on the ground that the New York defendants are violating, or are about to violate, 18 U.S.C. § 1035—a provision criminalizing knowing and willful false statements in connection with health care benefits. But these official capacity claims are claims against the State of New York, which means that the United States can prevail only if Section 1035 imposes criminal liability on the State itself. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984) (“[T]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter.” (quotation marks omitted)). There is no basis for giving the provision that unprecedented, extraordinary interpretation.

Section 1035 provides that “[w]hoever” commits the statutorily prescribed health care fraud offense “shall be fined under this title or imprisoned not more than 5 years, or both.” *Id.* There is no indication in the statutory text that Section 1035 applies to a state, and we have identified no case in which it has been applied to a state government or instrumentality or official-capacity defendant. But that is exactly what the complaint asserts. It claims that a New York State agency—

DOH—through Dr. McDonald, Mr. Bassiri, and other employees made false statements and material omissions that constitute an ongoing violation of 18 U.S.C. § 1035.

Section 1035 does not contain any statute-specific definition in any way suggesting that “whoever” encompasses a state or its instrumentalities. The Dictionary Act provides that “the words ‘person’ and ‘whoever’ include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” 1 U.S.C. § 1. In applying this definition to the companion term “person,” “[t]he Supreme Court has explained that the common usage of the term ‘persons’ does ‘not include the sovereign, and statutes employing it will ordinarily not be construed to do so.’” *Bainbridge Fund Ltd. v. Republic of Argentina*, 37 F.4th 847, 850 (2d Cir. 2022) (quoting *United States v. United Mine Workers of Am.*, 330 U.S. 258, 275 (1947)). That presumption “is ‘particularly applicable where it is claimed that Congress has subjected the States to liability to which they had not been subject before.’” *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 781 (2000) (quoting *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989)). *Will* held that “neither a State nor its officials acting in their official capacities are ‘persons’ under [28 U.S.C.] § 1983.” 491 U.S. at 71. And in *Vermont Agency*, the Court held that states are not persons under the False Claims Act. 529 U.S. at 787-88.

The inapplicability of Section 1035 to a state is even clearer, because the federal government’s official-capacity claims would require the Court to construe the generic term “whoever” to include the State in the context of a *criminal* statute. But, as the Tenth Circuit held in rejecting a similar argument that “whoever” in the federal criminal code encompassed an assistant United States attorney acting in his official capacity, it is “patently absurd” to think that Congress intended to subject the United States acting in its sovereign capacity to criminal

prosecution. *United States v. Singleton*, 165 F.3d 1297, 1300 (10th Cir. 1999). The same holds true for DOJ’s attempt to subject the State of New York, a coequal sovereign, to criminal liability here.⁵

The federal government cannot avoid this principle by arguing that its official-capacity claims do not constitute actions requiring a determination that the State committed a federal crime.

The Supreme Court in *Ex parte Young*, 209 U.S. 123 (1908), applied a fiction that, even though a state official is sued in her official capacity, certain claims are not claims against the state itself. This “narrow exception” to state sovereign immunity, “grounded in traditional equity practice,” “allows certain private parties to seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law.” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 39 (2021); *see also, e.g., Pennhurst*, 465 U.S. at 114 n.25 (noting that “the authority-stripping theory of *Young* is a fiction that has been narrowly construed”). Here, however, the question is whether Section 1035 may be construed to impose criminal liability on the State itself—a context far beyond *Ex parte Young*’s limited scope of civil suits seeking injunctions barring enforcement of a state law. *See Whole Woman’s Health*, 595 U.S. at 39.

In addition, interpreting Section 1035 to subject the State itself to criminal liability would dramatically “alter the usual constitutional balance between the States and the Federal Government,” and Congress therefore had to “make its intention to do so unmistakably clear in the language of the statute.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Assuming that Congress even has the remarkable power to subject the states to criminal liability, it did not act with the necessary clarity here.

⁵ For the same reasons, “person” in 18 U.S.C. § 1345, itself a provision of the federal criminal code, should not be understood to encompass official-capacity defendants given the absence of any indication Congress sought to include states within that provision’s scope. *See supra* at pp. 15-16.

C. The Complaint Fails To Plead Facts Supporting A Plausible Inference Satisfying Any Of The Elements Of A Section 1035 Violation.

The claims against the New York defendants predicated on a purported violation of 18 U.S.C. § 1035 should be dismissed for the independent reason that the complaint fails to allege that necessary predicate.⁶ To establish a violation, the federal government must show (1) that a defendant falsified or concealed a fact or made a false statement; (2) that the defendant acted “knowingly and willfully”; (3) that the false statement or concealed fact was material; and (4) that the false statement or concealed fact was “in connection with the delivery of or payment for health care benefits, items, or services.” *Id.* The complaint does not plausibly allege any of these elements.

1. The complaint does not allege any false statements or concealed facts by a New York defendant.

The complaint sets out three categories of purportedly false statements, but it fails to identify an actual alleged false statement by either New York defendant, much less identifying the statement and the basis for asserting it to be fraudulent with the specificity required by Rule 9(b).

The RFP process. The complaint suggests that DOH made false statements in “represent[ing] that the bid process was fair and competitive.” Compl. ¶ 135(c). But the only specific statement alleged is a statement from Mr. Bassiri in sworn court filings indicating that “PPL had attempted no ‘improper influence’ over the bidding process.” *Id.* ¶¶ 112, 135(c). The complaint contains no allegations supporting an inference that this alleged statement is false.

As an initial matter, to the extent the government’s quoted statement is intended to reference Mr. Bassiri’s affirmations in *Freedom Care LLC v. DOH*, Civ. Index No. 161036-24 (N.Y. Sup.

⁶ This includes the claims brought against Mr. Bassiri in his individual capacity. Although the complaint alleges claims against Mr. Bassiri in both his official and individual capacities, it provides no indication what actions allegedly undertaken by Mr. Bassiri were purportedly taken in either capacity.

Ct.), Mr. Bassiri’s January 2025 affirmation said specifically that he “was unaware of any alleged attempts by PPL to influence the procurement during the restricted period” and was not aware of any “improper communications” between PPL and DOH. *See* Ex. B, Bassiri Affirmation. The “restricted period” at issue in the statement is the statutorily mandated period during an active RFP in which prospective bidders can communicate only through certain designated channels. *See* N.Y. State Fin. Law §§ 139-j-139-k. For DOH’s CDPAP FI procurement, the restricted period ran from June 17, 2024, until September 27, 2024. *See supra*, at p. 7.

The complaint does contain allegations of communications between PPL and DOH officials including Mr. Bassiri, but those alleged communications occurred in March and early April 2024, months before the RFP process and indeed before the New York Legislature enacted the law requiring selection of a statewide FI via a competitive procurement. Compl. ¶¶ 21-23. The complaint provides no plausible factual support to conclude that those communications were “improper”—the RFP indicated that the “restricted period” did not begin until the RFP was issued. RFP § 5.1. To the extent DOJ suggests that pre-RFP communications—let alone communications occurring before the law that gave rise to the RFP had even been *introduced*—reflected improper influence, it identifies no law, regulation, or other provision that the alleged communications violated or any other support for any general allegation that they were improper.

The complaint contains several other allegations relating to the RFP process, but again without factual allegations raising an inference of improper influence. The complaint asserts that “DOH sought to disqualify as many other bidders as possible” and disqualified other bidders on purportedly “pretextual” reasons. Compl. ¶¶ 28-29. But its allegations that certain disqualifications were pretextual are conclusory and in any event not connected by any factual allegations to any “improper influence” purportedly exercised by PPL. *See, e.g., City of Pontiac Police & Fire Ret.*

Sys. v. BNP Paribas Sec. Corp., 92 F.4th 381, 411 n.14 (2d Cir. 2024) (dismissing allegation that justification was “pretext” as a “‘naked assertion’ [that] does not suffice, even at the pleading stage” (quoting *Iqbal*, 556 U.S. at 678)); *see also Jackson v. Cnty. of Rockland*, 450 F. App’x 15, 18-19 (2d Cir. 2011) (holding “conclusory allegations ‘masquerading as factual conclusions’ . . . insufficient to defeat a motion to dismiss”).

Far from plausibly alleging that the New York defendants were conducting a “sham bid process” to select PPL, Compl. ¶ 3, the complaint contains no explanation why any New York defendant would want PPL to win the bid, beyond an unexplained assertion that a former parent company of PPL was a DOH contractor with which Mr. Bassiri was familiar. *Id.* ¶ 21; *see Caldarera v. Int’l Longshoremen’s Ass’n, Loc. 1*, 765 F. App’x 483, 486 (2d Cir. 2019) (dismissing “skeletal” allegations of a union-employer conspiracy based on “rough proximity in time” between plaintiff’s altercation with union steward and adverse employment action).

The complaint contains a few other allegations relating to the RFP process, but they are even more untethered to any asserted false statement. Thus, it alleges that Mr. Bassiri disqualified other bidders after he had evaluated PPL’s bid. Compl. ¶ 28. But it provides no basis to infer that that was improper under the RFP or any other rule or regulation. *See SEC v. Dellomo*, 2025 WL 2379307, at *15 (D. Conn. Aug. 15, 2025) (concluding “unexplained and conclusory allegations” regarding defendant’s accounting practices “are inadequate to state a claim for relief”).

The complaint alleges that Mr. Bassiri scored PPL’s bid well on various metrics. Compl. ¶¶ 33, 35-36. But it provides no basis to plausibly infer that those actions were improper or that Mr. Bassiri’s scoring did not reflect his honest assessment of the bid and the information PPL had provided. Indeed, as the scoring documents the complaint cites reflect, the other two members of the technical review committee gave PPL’s bid a *higher* score overall than Mr. Bassiri. *See Ex. A.*

The complaint consequently provides no basis to infer that Mr. Bassiri's alleged actions reflected anything other than the panel's unanimous assessment that PPL's bid performed the best on the metrics set out in the RFP. *Cf. LaFlamme v. Societe Air France*, 702 F. Supp. 2d 136, 151 (E.D.N.Y. 2010) (noting, in the antitrust context, that mere allegation of parallel conduct by defendants requires "some factual enhancement that crosses it from 'the factually neutral' to 'the factually suggestive'" (quoting *Twombly*, 550 U.S. at 557 n.5)).

Transition to a Statewide FI. The complaint also generally asserts that DOH made false statements regarding the transition to a statewide FI and its impact on consumers and caregivers. Compl. ¶ 135(b). But it fails to identify any specific false statements.

For example, the complaint alleges that DOH issued statements containing the number of CDPAP consumers that had begun the process to register with PPL as of January 23, 2025, but not the smaller subset of persons who had completed the process. *Id.* ¶¶ 79-80. Even assuming the number of persons that had completed registration was the more relevant number (and it almost certainly was not, so close in time to the start of the transition), the failure to disclose this more "granular data," *id.* ¶ 75, does not represent an actionable "concealed fact" unless DOH had an obligation to disclose it. *See, e.g., United States v. Nersesian*, 824 F.2d 1294, 1312 (2d Cir. 1987) (holding that, under 18 U.S.C. § 1001, which is worded identically to Section 1035 in relevant part, a defendant generally cannot be prosecuted for concealing material facts unless he had a duty to disclose the facts at issue); *see also United States v. Safavian*, 528 F.3d 957, 964 (D.C. Cir. 2008) ("Concealment cases in this circuit and others have found a duty to disclose material facts on the basis of specific requirements for disclosure of specific information.").

The complaint fails to provide any basis for concluding that DOH had such an obligation here. Indeed, it would be particularly perverse to interpret Section 1035 to reach such a claim

where doing so would insert “‘the Federal Government in setting standards’ of ‘good government for local and state officials.’” *McDonnell v. United States*, 579 U.S. 550, 577 (2016) (quoting *McNally v. United States*, 483 U.S. 350, 360 (1987)); *see id.* at 576 (rejecting interpretation of criminal statute that raised such “significant federalism concerns”).

The complaint similarly cites an “internal exchange” between PPL and a DOH employee in which PPL indicated that a category of persons whose registration was described as “in progress” included people who had not yet started the process. Compl. ¶ 86. The complaint does not, however, even attempt to connect this exchange to a false statement, much less one made by any New York defendant. And the conclusory allegation that Dr. McDonald made a “misrepresentation” in stating in late February 2025 that it was anticipated that the “transition would advance at the pace we’ve seen thus far,” *id.* ¶ 89, is not tied to any allegation suggesting this very general statement was false or did not represent a sincerely held opinion. *See United States v. Bynon*, 2026 WL 1595296, at *7 (S.D. Tex. June 3, 2026) (“‘A sincere statement of pure opinion is not an “untrue statement of material fact.”’” (brackets omitted) (quoting *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 186 (2015))).

The complaint also cites statements regarding the transition process to the single Statewide FI. For example, it cites (at ¶ 71) a statement that reads, in full, that “th[e] process to strengthen CDPAP will take steps to ensure caregivers continue to receive timely payments and avoid any disruptions in services for those who rely on the program.” *See* DOH, New York State Department of Health Updates New Yorkers on Statewide CDPAP Transition Progress (Jan. 24, 2025), <https://perma.cc/6FXT-HZPV>. But it identifies nothing false about that statement. At most, the complaint’s allegations suggest that, in hindsight, DOJ believes other steps should have been taken to avoid potential disruption, even disruption caused by caregivers not registering in time or by

outgoing FIs. Certainly, the allegations do not provide any basis to infer that this forward-looking statement of opinion was not honestly held when made. *See Bynon*, 2026 WL 1595296, at *7; *cf. Rombach*, 355 F.3d at 174 (“People in charge of an enterprise are not required to take a gloomy, fearful or defeatist view of the future; subject to what current data indicates, they can be expected to be confident about their stewardship and the prospects of the business that they manage.”).

The complaint also cites a statement by Dr. McDonald in a public service announcement indicating that, “If you’re a CDPAP user . . . you can keep your trusted caregiver” and, “If you’re a caregiver, it will be easier for you to get paid.” Compl. ¶ 71. But again, nothing alleged in the complaint suggests that this statement was false, or that it was not an honestly held belief when made even if there were disruptions over the course of the transition process, due in part to the resistance of legacy FIs to facilitating the transition, *see supra*, at p. 8. The complaint vaguely alleges that DOH put out other “deceptive public statements concealing the impending disruptions to patient care,” *id.* ¶ 74, without identifying any additional purportedly false statements, and certainly not providing the specificity required by Rule 9(b).

Finally, the complaint alleges that “PPL executives and DOH staff” discussed a need to extend the transition time frame from April 2025 to September, and a “DOH principal” indicated that the Governor’s office “wasn’t entertaining options to move off a path that gets this done by 4/1.” Compl. ¶¶ 68-69. But as the quoted statement reflects in referencing the need for “statutory or regulatory changes” to alter the April 1 deadline, the transition date was established by statute. *See id.* ¶ 69; SSL § 365-f(4-a-1)(a). Musing about an extension that could not have been effectuated without legislative enactment provides no plausible support for inferring that DOH’s public statements were false. And again, the complaint simply does not identify any false statement made by any New York defendant related to any such internal discussions.

Nature of DOH's Relationship with PPL and Resulting Savings. The complaint alleges that DOH made false statements regarding the nature of its contractual relationship with PPL, whether PPL would be compensated exclusively through the PMPM payment for administrative services it included in its bid to serve as statewide FI, and the savings that a statewide FI would generate. Compl. ¶ 135(a). Again, however, the complaint does not plausibly allege any specific false statements as to any of those subjects.

As an initial matter, the complaint contains various allegations that PPL in some ways acted inconsistently with its contract or the RFP. *See* Compl. ¶¶ 4-7, 31-36, 41-56, 61-66, 90-107, 118-120. But none of these allegations suggests that DOH or any of its officials engaged in any fraudulent conduct. If anything, to the extent the complaint's allegations are correct, they mean that New York has been overcharged by PPL, not that the New York defendants participated in any fraud. Similarly, allegations of false statements *by PPL* do not establish that either New York defendant violated 18 U.S.C. § 1035 or is subject to relief under 18 U.S.C. § 1345.

None of the specific statements alleged in the complaint plausibly constitutes a false statement by a New York defendant. For example, the complaint alleges that DOH stated in response to a question during the RFP process that Administrative Costs would be paid exclusively through the PMPM established under the contract, and that Direct Care costs would be “paid through existing means with the expectation it flows to the worker.” Compl. ¶ 39. That response accurately reflects that Direct Care rates would not be set by the contract between DOH and PPL or by the RFP, but instead by the then-governing mechanisms of (1) contracts between the FI and MCOs, to which DOH was not a party; and (2) rates set by the fee-for-service schedule.

The complaint alleges that, after this statement was made, DOH allowed administrative costs to be included in the Direct Care rate paid by MCOs. Compl. ¶¶ 62-66. The complaint does not,

however, identify any specific administrative cost included in the Direct Care rate, nor does it allege any specific facts supporting a plausible inference that a New York defendant knew that PPL's rates charged to MCOs included any unallowable costs. The sole allegations on this point are that in "late fall 2024 and January 2025" DOH employees raised concerns regarding PPL's approach to its negotiations with MCOs, and that PPL falsely claimed to MCOs that DOH had approved its rates. *Id.* ¶ 64; *see id.* ¶¶ 64-66. The complaint does not assert that any DOH employee made any false statement in connection with any of these alleged events. And certainly no allegation of future concerns regarding PPL's approach raises an inference that a New York defendant made a false statement in an August 2024 Q&A, before any such concerns had been, or could have been, raised because the contract had not even been awarded.

The complaint also alleges that "DOH" failed to enforce "explicit limitations" in the RFP and the contract with PPL precluding PPL from making a profit through its rates for Direct Care services. Compl. ¶ 62. The complaint asserts that the RFP and contract made clear that the statewide FI "would be compensated solely with a [PMPM] payment from the state to compensate the FI for all costs." *Id.* ¶ 38. But the RFP is clear that the statewide FI would be reimbursed for both Administrative Costs and Direct Care service costs, with the PMPM payment serving as compensation for Administrative Costs specifically. *See* RFP §§ 5.4.1, 6.3. Direct Care service costs would be reimbursed separately "according to the contracts with the [MCOs] or the Fee for Service (FFS) Fee Schedule for FFS Members." *Id.* § 5.4.2; *see supra*, at pp. 9-10.

In any event, the only conceivable alleged "false statement" on this point is DOH entering into the contract itself—the contention that the New York defendants entered into a contract that "did not reflect the financial reality of the parties' relationship." Compl. ¶ 135(a). But the complaint does not identify any particular provision of the contract that is purportedly false in this

regard. And there is no allegation that the New York defendants believed anything other than that PPL would comply with the contract at the time they entered into it. *See, e.g., U.S. ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650, 665 (2d Cir. 2016) (rejecting fraud claim based on “contractual representations of quality” where there was no evidence “that, at the time of contract execution, Defendants had no intent ever to honor these representations”).⁷

The complaint also asserts that DOH did not act to “curb” PPL’s failure to follow other contractual promises, but it provides no actual examples of DOH’s failure to act, much less a false statement associated with any purported DOH inaction. Compl. ¶ 58; *cf. Minpeco, S.A. v. ContiCommodity Servs., Inc.*, 552 F. Supp. 332, 340 (S.D.N.Y. 1982) (“No case has been cited, nor has any come to our attention, in which a defendant has been held liable for fraud simply for his failure, without fraudulent intent, to prevent a third party from defrauding the plaintiff.”).

The complaint alleges that DOH improperly advanced payments relating to initial transition costs, subject to reconciliation later in the year. Compl. ¶ 60. But nothing in the contract prohibited advancing such payments or suggests that it could not be reasonably understood to allow them. *See United States v. Whiteside*, 285 F.3d 1345, 1353 (11th Cir. 2002) (concluding the government failed to prove a false statement relating to the manner in which interest was calculated in a Medicare cost report where the “competing interpretations of the applicable law are far too reasonable to justify these convictions” (brackets and quotation marks omitted)).

The only other purportedly false statements by a New York defendant relating to DOH’s relationship with PPL are general statements by DOH officials that the switch to a statewide FI

⁷ The complaint additionally faults PPL for not knowing what certain items would cost but including them in 2025 rate modeling. Compl. ¶¶ 48-49. This allegation is unrelated to any alleged false statement by a New York defendant. Moreover, the governing regulations specified that—for a provider like the new statewide FI with no actual New York operating costs for prior years—rates should be calculated based on “estimated operating costs.” *See supra*, at p. 9.

would generate savings. Compl. ¶¶ 111-12. But these are forward-looking statements of opinion for which there is no allegation that they were not honestly held when made. And the statements correctly reflect that the anticipated savings would result from the decrease in the PMPM payment, which did decrease from a schedule ranging from \$145 to \$1,036 under the old framework to the \$68.50 provided in PPL’s contract with DOH. *See* 18 N.Y.C.R.R. § 505.28(k)(3) (2021).

The complaint asserts that the \$68.50 PMPM cost represents a “new expense” for New York, and that previous PMPMs had been paid only “by a handful of MCOs to legacy FIs for a modest subset of patients.” Compl. ¶ 111. That is not correct. As noted above, DOH had previously issued a regulation providing that FIs being compensated on a fee-for-service basis would be compensated for their Administrative Costs separately pursuant to a tiered PMPM payment. In 2024, DOH issued guidance extending this approach to FIs contracting with MCOs as well. *See* N.Y.S. Medicaid Update (May 2024), <https://perma.cc/E34G-ZQXT>.⁸ The complaint does not even attempt to square its assertion that the PMPM payment to PPL was a new expense with this regulatory history. For similar reasons, although the complaint faults Mr. Bassiri for citing the fact that PPL’s bid was cheaper than other bids where it involved only \$1 billion in costs associated with PMPM payments, *id.* ¶ 112, there is no plausible inference that he made a false statement in doing so, particularly where the lower payments were tied to anticipated savings for the State.

⁸ An association of FIs and individual FIs challenged the guidance extending this approach to MCOs, and the New York Supreme Court issued a decision declaring the guidance void in March 2025. *See Consumer Directed Personal Assistance Association of New York State (CDPAANYIS) v. McDonald*, Civ. Index No. 907019-24 (N.Y. Sup. Ct. Mar. 19, 2025). An appeal from this decision as it relates to payments made between August 2024 and April 2025 remains pending. *See CDPAANYIS v. McDonald*, No. CV-25-0692 (N.Y. App. Div. 3d Dep’t).

2. The complaint does not allege that any New York defendant acted knowingly and willfully.

Section 1035 requires that a person “knowingly and willfully” make a materially false statement. In addition, because the allegations are subject to Rule 9(b), DOJ is required to “plead the factual basis which gives rise to a strong inference of fraudulent intent.” *McKesson*, 96 F.4th at 153 (citation omitted). The complaint does not come close to adequately pleading scienter here.

The federal government has acknowledged in briefing before the United States Supreme Court that “[t]o find that a defendant ‘willfully’ made a false statement in violation of Section 1035, a jury must conclude ‘that he acted with knowledge that his conduct was unlawful.’” Br. for the United States in Opposition, *Russell v. United States*, No. 13-7357, 2014 WL 1571932, at *6 (U.S. Mar. 10, 2014) (confessing error); *see id.* at 10 (noting different meaning of willfully in civil and criminal contexts with the criminal context requiring that the government show the defendant acted with knowledge that his conduct was unlawful).

Courts of appeals that have considered the issue have agreed that a defendant acts willfully only if the defendant acts with the knowledge that the conduct is unlawful. *See, e.g., United States v. Henderson*, 893 F.3d 1338, 1348 (11th Cir. 2018) (“A defendant acts willfully when he acts with ‘knowledge that his conduct was unlawful’ and acts knowingly if he acts with ‘knowledge of the facts that constitute the offense.’”); *see also United States v. Kukushkin*, 61 F.4th 327, 332 (2d Cir. 2023) (holding, in a case involving the Federal Election Campaign Act, that “in order to establish a willful violation of a statute, the Government must prove that the defendant acted with knowledge that his conduct was unlawful”). Alleging willfulness in a criminal context requires a showing of a “bad purpose,” meaning “a voluntary, intentional violation of a known legal duty.” *McKesson*, 96 F.4th at 154.

Here, the complaint is devoid of any factual allegations suggesting the New York defendants acted with knowledge that their conduct was unlawful. The only reference to the New York defendants acting “willfully” is in a rote recitation of the elements of a Section 1035 violation. *See* Compl. ¶ 136. But “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” cannot give rise to a plausible claim. *Iqbal*, 556 U.S. at 678.⁹ Indeed, even as to the requirement that a false statement be “knowing,” the complaint fails even to allege that Dr. McDonald knew the one purportedly false statement he is specifically alleged to have made is false, *see* Compl. ¶ 111, and provides no basis to infer that Mr. Bassiri knew any statements he allegedly made were false either.

The deficiency of the complaint’s allegations in this regard is particularly striking given Rule 9(b)’s requirement that the government plead facts giving rise to a strong inference of fraudulent intent. The Second Circuit has held that this standard can be met based on “‘motive and opportunity to commit fraud’ or ‘strong circumstantial evidence of conscious misbehavior or recklessness.’” *United States v. Strock*, 982 F.3d 51, 68 (2d Cir. 2020) (quoting *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 290-91 (2d Cir. 2006)). But the complaint provides no allegations whatsoever of any motive the New York defendants would have to further any alleged fraudulent conduct by PPL, nor does the complaint offer any allegations of conscious wrongdoing.

Finally, DOJ cannot attempt to rely on the knowledge of DOH as a whole. That could be proper, if ever, only if the official-capacity claims could be sustained and, as discussed, they are

⁹ The government alleges that “DOH acquired knowledge or was willfully blind to its knowledge that PPL was failing to abide by the promises in its bid submission.” Compl. ¶ 58. But willful blindness (or “conscious avoidance”) can be a way to demonstrate that a defendant acted knowingly, not that it acted willfully. *See United States v. Ferguson*, 676 F.3d 260, 277-78, n.16 (2d Cir. 2011). Even if the complaint contained allegations supporting an inference that the New York defendants were willfully blind to PPL assertedly failing to abide by its promises (and it does not), that would not suggest that they were acting with knowledge that their conduct was unlawful.

barred because Congress did not extend Section 1035 criminal liability to states. In addition, because there is no allegation that any agent of DOH had the requisite scienter that might be imputed to the agency, there is no basis to conclude that the entity itself somehow had this scienter. *See Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 909 (3d Cir. 1991) (discussing imputation of agent's intent to municipal corporation). As a court explained in the context of corporate liability, although “a corporation may be charged with the collective knowledge of its employees,” a plaintiff “may not use this principle to shore up a claim of essentially fraudulent conduct when it is unable to allege that any specific employee(s) had the requisite knowledge.” *Musalli Factory for Gold & Jewellery v. JPMorgan Chase Bank, N.A.*, 261 F.R.D. 13, 24 (S.D.N.Y. 2009) (citation omitted); *see also Silvercreek Mgmt., Inc. v. Citigroup, Inc.*, 248 F. Supp. 3d 428, 440 (S.D.N.Y. 2017) (“[U]nder Second Circuit precedent, it is not enough to separately allege misstatements by some individuals and knowledge belonging to some others where there is no strong inference that, in fact, there was a connection between the two.”).

3. The complaint does not allege that any supposed false statement was material.

Section 1035 criminalizes only the falsification or concealment of a “*material* fact” or the making of any “*materially* false, fictitious, or fraudulent statements or representations.” 18 U.S.C. § 1035 (emphasis added). In the context of Section 1035, that means a fact or statement material to a health care benefit program. The complaint fails to allege any such material false statement.

Congress enacted Section 1035 to prevent fraud perpetrated on insurance companies that drove up the costs of health insurance. *See United States v. Natale*, 719 F.3d 719, 733 (7th Cir. 2013). As the Seventh Circuit has explained, consistent with that purpose, the statute requires a statement to be material specifically to a “health care benefit program.” *See id.* at 735-37. That follows from comparing Section 1035 with 18 U.S.C. § 1001. Section 1001 criminalizes material

false statements in “any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States,” and courts have understood materiality for these purposes to require that a statement have ““a natural tendency to influence, or be capable of influencing, the decision of the decisionmaking body to which it was addressed”” referenced in this jurisdictional clause. *United States v. Aiello*, 118 F.4th 291, 304 (2d Cir. 2024) (quoting *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (brackets omitted)).

The analogous clause in Section 1035 specifies that a material false statement be made in “any matter involving a health care benefit program,” and the false statement thus must be capable of influencing the decisions of the health care benefit program, i.e., the payors for the relevant health care benefits, here the State’s Medicaid program. *See Natale*, 719 F.3d at 737; *see also, e.g., United States v. Alexander*, 170 F.4th 1303, 1312 (11th Cir. 2026) (determining, in reviewing sufficiency of evidence under Section 1035, that “the false statement was material to Medicare”).

Importantly, the statute’s separate requirement that a statement be made “in connection with the delivery of or payment for health care benefits, items, or services,” 18 U.S.C. § 1035, does not affect the materiality standard. The materiality requirement was initially incorporated as part of a Senate bill that more closely tracked Section 1001 and lacked the additional “in connection with” requirement (which was subsequently added in reconciling the Senate bill with a differently structured House bill). *Natale*, 719 F.3d at 737. The materiality requirement in the Senate bill therefore necessarily referred back to the requirement that a statement be material to a health care benefit program, and that understanding carried over when Congress adopted the materiality requirement from the Senate bill in the enacted law. *Id.*

As the Seventh Circuit has recognized, moreover, the requirement that materiality is tied to health care benefit programs specifically is also necessary to avoid “criminaliz[ing] a wide swath

of seemingly innocent ‘white lies’”—including such conduct as a patient who lies on a new patient intake form about lifestyle habits—that are far afield from the conduct motivating passage of the statute: “health care fraud that detracts health care payers.” *Natale*, 719 F.3d at 735 n.7, 737.

Consistent with this understanding of the statute, every previous Section 1035 case of which we are aware involves false statements in billing or medical records that were material to receiving payment from a health insurer or health insurance program. *See, e.g., United States v. Comprehensive Healthcare Mgmt. Servs. LLC*, 2026 WL 1961141, at *4 (3d Cir. July 7, 2026) (false nursing staffing records that a state agency used to evaluate compliance with Medicare and Medicaid regulations); *Henderson*, 893 F. 3d at 1346-47 (false statements relating to VA services); *United States v. Clay*, 832 F. 3d 1259, 1294-95 (11th Cir. 2016) (false Medicaid expense reports); *United States v. Medlock*, 792 F.3d 700, 703-05 (6th Cir. 2015) (false statements to Medicare regarding need for ambulance transport); *United States v. Louthian*, 756 F. 3d 295 (4th Cir. 2014) (false statements to support claims for payments from Medicare and private insurers); *United States v. Hunt*, 521 F.3d 636 (6th Cir. 2008) (false statements regarding medical necessity to obtain payments from private insurance).¹⁰

Here, DOJ has not alleged that any purported false statement by the New York defendants was capable of influencing payment decisions. Rather, the complaint alleges that the statements or omissions were material to “patients, caregivers, legislators, and the public,” not payors of health care benefits. Compl. ¶ 6; *see id.* ¶ 135(b). Section 1035 is not meant to cover government officials’

¹⁰ To the extent *United States v. Cox*, 2006 U.S. Dist. LEXIS 17181 (D. Vt. Mar. 28, 2006), is an exception, it is unpersuasive for the reasons discussed *infra*, at p. 34 n.11. The Third Circuit has questioned whether there is a textual basis for the requirement that a false statement be material to a health care benefit program, rather than a decisionmaker more generally, but it does not respond to the Seventh Circuit’s comparison of 18 U.S.C. § 1035 to 18 U.S.C. § 1001 or the statutory history the Seventh Circuit outlines. *Comprehensive Healthcare*, 2026 WL 1961141, at *4 n.12. And as noted, it did so in a case about false nurse staffing records. *Id.*

statements to the public regarding the transition to a new healthcare model untethered from any effort to receive reimbursement from a health care benefit program, much less historic evaluations about how well a transition did or did not go. Because the complaint fails to allege how any purported statements or omissions affected Medicaid's payments, it therefore fails to plead an essential element of the claim.

4. None of the alleged statements was “in connection with the delivery of or payment for health care benefits, items, or services.”

Section 1035 provides that the statement or representation must be made “in connection with the delivery of or payment for health care benefits, items, or services.” 18 U.S.C. § 1035(a). This element requires that statements be made “in the course of delivering health care services or trying to get paid for doing so.” *United States v. Mermelstein*, 487 F. Supp. 2d 242, 261 (E.D.N.Y. 2007). The court in this district therefore rejected an attempt by the federal government to argue that statements with some attenuated connection to the delivery of health care services—like statements that a doctor makes to DOH's Office of Professional Misconduct to conceal misconduct and thereby retain a license to practice medicine—can give rise to a Section 1035 violation. *Id.*

That understanding of the statute follows from the specific language Congress chose. Had Congress wished broadly to prohibit any false statements or material omissions made “in connection with a health care benefit program,” it could easily have done so by reiterating the provision's initial jurisdictional clause. Instead Congress adopted a narrower prohibition, prohibiting false statements or omissions made “in connection with the *delivery of or payment for* health care benefits, items, or services.” 18 U.S.C. § 1035 (emphasis added). Thus, Section 1035's text reaches only false statements that relate to the provision of medical services or to obtaining payment for such services. Here, the alleged false statements by the New York defendants regarding an RFP process, the transition to a statewide FI, and DOH's contractual relationship

with PPL, were not made in connection with delivering health care benefits, items or services, or obtaining payment for such benefits or services, and the claim fails for this reason as well.¹¹

D. The Complaint Does Not Allege A Violation Of 18 U.S.C. § 371.

The complaint separately rests the Section 1345 claim on the contention that the New York defendants violated a federal conspiracy statute, 18 U.S.C. § 371, by allegedly conspiring to violate 18 U.S.C. § 1035. The conspiracy claim should be dismissed for two reasons.

First, as a threshold matter, the official-capacity conspiracy claim must be dismissed because, as with the underlying substantive offense, 18 U.S.C. § 1035, there is no basis to conclude that 18 U.S.C. § 371 imposes criminal liability on a state. *See supra*, at pp. 15-18.

Second, the complaint fails to plausibly allege any basis for liability under Section 371 because it does not sufficiently allege any of the elements of a Section 371 violation: “(1) an agreement between the defendant and at least one other person to commit an offense; (2) that the defendant knowingly participated in the conspiracy with the specific intent to commit the illegal object of the conspiracy, and; (3) that during the conspiracy an overt act in furtherance of the illegal objective was committed by a member of the conspiracy.” *Mermelstein*, 487 F. Supp. 2d at 251; *see United States v. Pinckney*, 85 F.3d 4, 7 (2d Cir. 1996) (same).

The complaint states only that Defendants Dr. McDonald and Mr. Bassiri “have conspired to violate, are conspiring to violate, and are about to conspire to violate 18 U.S.C. § 1035.” Compl. ¶ 136. This allegation is entirely conclusory and fails to set forth any supposed facts plausibly demonstrating that: (1) the two defendants entered into an agreement, (2) knowingly participated

¹¹ To the extent the United States asserts that the court in *United States v. Cox*, 2006 U.S. Dist. LEXIS 17181 (D. Vt. Mar. 28, 2006), adopted a broader understanding of 18 U.S.C. § 1035’s “in connection with” requirement, that decision, which has never previously been cited, implausibly read this language to require the government only to “establish a clear connection to health care.” *Id.* at *24. That construction cannot be squared with the more limited language Congress chose.

in a conspiracy with the specific intent to commit the illegal object of the conspiracy, or (3) engaged in an overt act in furtherance of the conspiracy. *See Butcher v. Wendt*, 975 F.3d 236, 241 (2d Cir. 2020) (rejecting at the pleadings stage a “barebones claim of a conspiracy . . . unaccompanied by any factual allegation to support it”).

Certainly, the complaint contains no allegations supporting a plausible inference of any such illicit agreement between the New York defendants and PPL. *See Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 184 (2d Cir. 2012) (stating that, “[a]t the pleading stage, a complaint claiming conspiracy, to be plausible, must plead ‘enough factual matter (taken as true) to suggest that an agreement was made,’ i.e., it must provide ‘some factual context suggesting [that the parties reached an] agreement,’ not facts that would be ‘merely consistent’ with an agreement” (citation omitted)). Nor does it contain any allegations providing a basis to infer that a New York defendant even had a motive, much less specific intent, to further PPL’s alleged fraudulent conduct. *See Bowman v. Waterside Plaza, L.L.C.*, 2010 WL 2873051, at *8 (S.D.N.Y. July 21, 2010) (“[A]n unadorned allegation that [municipal defendants], for reasons unexplained, decided to promote discriminatory practices by [a] landlord, is self-evidently not a plausible allegation”).

The complaint conclusorily asserts that DOH conducted a “sham bid process” to select PPL as the statewide FI, *id.* ¶ 1, but, as discussed *supra*, at p. 19, the allegations do not provide any basis to conclude that the bidding process was subject to any improper influence, much less that it was as a consequence of some agreement between PPL and any New York defendant. The complaint’s “naked assertion of conspiracy” is plainly insufficient. *Twombly*, 550 U.S. at 557.

V. CONCLUSION

The claims against Dr. McDonald and Mr. Bassiri should be dismissed.

Respectfully submitted,

/s/ Arun G. Rao

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August 10, 2026

CERTIFICATE OF SERVICE

This will certify that, in accordance with the Honorable Court's individual practices and rules, I caused a true and correct copy of the foregoing document to be served via electronic mail on August 10, 2026.

/s/ Arun G. Rao

Arun G. Rao

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

United States of America,

Plaintiff,

v.

PUBLIC PARTNERSHIPS, LLC, a Delaware limited liability corporation; DR. JAMES MCDONALD, in his official capacity as Commissioner of the New York State Department of Health, and AMIR BASSIRI, individually and in his official capacity as Medicaid Director as the New York State Department of Health,

Defendants.

Case No.: 1:26-cv-3601 (OEM)

Hon. Orelia E. Merchant

**DECLARATION OF ARUN G. RAO
IN SUPPORT OF DR. JAMES MCDONALD'S AND AMIR BASSIRI'S
MOTION TO DISMISS**

I, Arun G. Rao, hereby declare:

I submit this declaration in support of Defendants Dr. James McDonald and Amir Bassiri for their Motion to Dismiss the Complaint of Plaintiff United States of America.

1. I am counsel for Defendants Dr. James McDonald and Amir Bassiri. I am a partner at Mayer Brown LLP. The facts in this declaration are based on my own personal knowledge and true to the best of my knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Technical Proposal Score Tool, Exhibit 13 to Affirmation of Amir Bassiri filed on December 24, 2024 in *Freedom Care LLC v. The New York State Department of Health, et al.*, Index No. 161036/2024 (N.Y. Sup. Ct. 2024).

3. Attached hereto as **Exhibit B** is a true and correct copy of the Supplemental Affirmation of Amir Bassiri filed on January 18, 2025 in *Freedom Care LLC v. The New York State Department of Health, et al.*, Index No. 161036/2024 (N.Y. Sup. Ct. 2024).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on August 10, 2026, at Washington, DC.

/s/ Arun G. Rao

Arun G. Rao

Exhibit A

EXHIBIT 13

TECHNICAL PROPOSAL SCORE TOOL
Computation of Bidder's Total Raw Technical Score

This Tool is to be completed by the Technical Evaluation Team Leader or Procurement Coordinator ONLY

BIDDER: Public Partnerships, LLC
RFP #20524

	Evaluation Item Section #	EVALUATOR RATINGS			Average Rating	Weight Factor	Total Raw Score	Section Subtotal	Max Points
		Cherlyn Fay	Trisha Schell- Guy	Amir Bassiri					
Required Fiscal Intermediary Scope of Work	6.2.F.1.1.a	4	4	3	3.7	2	7.3	88.00	120.00
	6.2.F.1.1.b	4	4	3	3.7	2	7.3		
	6.2.F.1.1.c	4	4	3	3.7	2	7.3		
	6.2.F.1.1.d	4	4	4	4.0	2	8.0		
	6.2.F.1.1.e	4	5	4	4.3	2	8.7		
	6.2.F.1.1.f	4	4	4	4.0	2	8.0		
	6.2.F.1.1.g	4	4	3	3.7	2	7.3		
	6.2.F.1.1.h	3	3	3	3.0	2	6.0		
	6.2.F.1.1.i	2	3	2	2.3	2	4.7		
	6.2.F.1.1.j	3	3	3	3.0	2	6.0		
	6.2.F.1.2	3	4	4	3.7	2	7.3		
	6.2.F.1.3	5	5	5	5.0	2	10.0		
Best Practices	6.2.F.2.1	4	5	4	4.3	17.5	75.8	75.83	87.50
Fiscal Intermediary Organizational Requirements	6.2.F.3.1	4	5	5	4.7	1	4.7	33.33	40.00
	6.2.F.3.2	4	4	4	4.0	1	4.0		
	6.2.F.3.3	4	5	4	4.3	1	4.3		
	6.2.F.3.4	4	3	5	4.0	1	4.0		
	6.2.F.3.5	3	4	4	3.7	1	3.7		
	6.2.F.3.6	4	3	4	3.7	1	3.7		
	6.2.F.3.7	5	5	4	4.7	1	4.7		
	6.2.F.3.8	3	5	5	4.3	1	4.3		
Fiscal Monitoring and Oversight	6.2.F.4.1.a	4	4	3	3.7	2.5	9.2	63.33	87.50
	6.2.F.4.1.b	4	3	3	3.3	2.5	8.3		
	6.2.F.4.1.c	3	5	3	3.7	2.5	9.2		
	6.2.F.4.1.d	3	4	3	3.3	2.5	8.3		
	6.2.F.4.1.e	4	5	4	4.3	2.5	10.8		
	6.2.F.4.1.f	3	5	3	3.7	2.5	9.2		
	6.2.F.4.2	3	3	4	3.3	2.5	8.3		
Quality Monitoring and Reporting	6.2.F.5.1	4	5	4	4.3	4.5	19.5	78.00	90.00
	6.2.F.5.2	5	5	4	4.7	4.5	21.0		
	6.2.F.5.3	5	4	4	4.3	4.5	19.5		
	6.2.F.5.4	4	4	4	4.0	4.5	18.0		
EVV System	6.2.F.6.a	5	5	4	4.7	2.5	11.7	71.67	87.50
	6.2.F.6.b	5	4	4	4.3	2.5	10.8		
	6.2.F.6.c	4	5	4	4.3	2.5	10.8		
	6.2.F.6.d	5	5	4	4.7	2.5	11.7		
	6.2.F.6.e	4	4	4	4.0	2.5	10.0		
	6.2.F.6.f	3	5	4	4.0	2.5	10.0		
	6.2.F.6.g	3	2	3	2.7	2.5	6.7		
Total Raw Score							410.17	512.50	

TEMPLATE INSTRUCTIONS ARE FOUND ON TAB WITHIN THIS EXCEL FILE

TECHNICAL PROPOSAL SCORE TOOL

Computation of Bidder's Total Raw Technical Score

This Tool is to be completed by the Technical Evaluation Team Leader or Procurement Coordinator ONLY

BIDDER:

FreedomCare LLC

RFP #20524

	Evaluation Item Section #	EVALUATOR RATINGS			Average Rating	Weight Factor	Total Raw Score	Section Subtotal	Max Points
		Cherlyn Fay	Trisha Schell-Guy	Amir Bassiri					
Required Fiscal Intermediary Scope of Work	6.2.F.1.1.a	3	3	3	3.0	2	6.0	71.33	120.00
	6.2.F.1.1.b	4	3	3	3.3	2	6.7		
	6.2.F.1.1.c	5	4	3	4.0	2	8.0		
	6.2.F.1.1.d	3	4	3	3.3	2	6.7		
	6.2.F.1.1.e	3	2	2	2.3	2	4.7		
	6.2.F.1.1.f	3	3	2	2.7	2	5.3		
	6.2.F.1.1.g	3	2	2	2.3	2	4.7		
	6.2.F.1.1.h	4	3	3	3.3	2	6.7		
	6.2.F.1.1.i	4	3	3	3.3	2	6.7		
	6.2.F.1.1.j	3	3	3	3.0	2	6.0		
	6.2.F.1.2	2	2	2	2.0	2	4.0		
	6.2.F.1.3	3	3	3	3.0	2	6.0		
Best Practices	6.2.F.2.1	4	5	3	4.0	17.5	70.0	70.00	87.50
Fiscal Intermediary Organizational Requirements	6.2.F.3.1	4	2	3	3.0	1	3.0	25.67	40.00
	6.2.F.3.2	3	3	3	3.0	1	3.0		
	6.2.F.3.3	4	4	2	3.3	1	3.3		
	6.2.F.3.4	3	3	2	2.7	1	2.7		
	6.2.F.3.5	4	4	2	3.3	1	3.3		
	6.2.F.3.6	3	3	3	3.0	1	3.0		
	6.2.F.3.7	3	4	3	3.3	1	3.3		
	6.2.F.3.8	5	4	3	4.0	1	4.0		
Fiscal Monitoring and Oversight	6.2.F.4.1.a	4	3	3	3.3	2.5	8.3	62.50	87.50
	6.2.F.4.1.b	3	3	3	3.0	2.5	7.5		
	6.2.F.4.1.c	4	5	3	4.0	2.5	10.0		
	6.2.F.4.1.d	4	4	2	3.3	2.5	8.3		
	6.2.F.4.1.e	5	5	3	4.3	2.5	10.8		
	6.2.F.4.1.f	5	4	3	4.0	2.5	10.0		
	6.2.F.4.2	4	3	2	3.0	2.5	7.5		
Quality Monitoring and Reporting	6.2.F.5.1	3	4	3	3.3	4.5	15.0	67.50	90.00
	6.2.F.5.2	5	5	4	4.7	4.5	21.0		
	6.2.F.5.3	5	3	3	3.7	4.5	16.5		
	6.2.F.5.4	3	4	3	3.3	4.5	15.0		
EVV System	6.2.F.6.a	4	4	3	3.7	2.5	9.2	60.00	87.50
	6.2.F.6.b	5	4	3	4.0	2.5	10.0		
	6.2.F.6.c	4	3	2	3.0	2.5	7.5		
	6.2.F.6.d	4	5	3	4.0	2.5	10.0		
	6.2.F.6.e	4	3	3	3.3	2.5	8.3		
	6.2.F.6.f	4	4	3	3.7	2.5	9.2		
	6.2.F.6.g	3	2	2	2.3	2.5	5.8		
							Total Raw Score	357.00	512.50

TEMPLATE INSTRUCTIONS ARE FOUND ON TAB WITHIN THIS EXCEL FILE

TECHNICAL PROPOSAL SCORE TOOL INSTRUCTIONS

- 1) All template areas in light blue must be populated.
Any information currently within the blue areas is for sample purposes and should be updated.
- 2) Do not enter or populate any cells that are grey or white in color

Column A - Technical Section/Rating Category Name needs to be populated with the corresponding Technical Section/Rating Category names of the RFP that are going to be evaluated and scored. The below are samples that should be replaced with exact corresponding Section/Rating Category names from the RFP it is representing.

Background, Experience & Capacity	Staffing	Training & Assistance	Confidentiality & Security	QC & Assurance	Reporting & Tracking	[Enter Rating Category]	[Enter Rating Category]	[Enter Rating Category]
-----------------------------------	----------	-----------------------	----------------------------	----------------	----------------------	-------------------------	-------------------------	-------------------------

Column B - Evaluation Item Section# needs to be populated with the corresponding Evaluation Item Section #'s of the RFP that are being evaluated and scored. The below Evaluation Item Section #'s all fall within the sample Rating Category Name of "Background, Experience and Capacity", however you must make sure that the Evaluation Item Section #'s walk to the corresponding Rating Category Name in Column A.

[A.1.]	[A.2.]	[A.3.]	[A.4.]	[A.5.]	[A.6.]
--------	--------	--------	--------	--------	--------

Column C, D & E - Evaluator Ratings needs to be populated with Evaluator Raw scores of [0-5] or the score range as detailed in the Evaluator Technical Evaluation Packet. This tool is setup for 0-5 score ranges per question and if that changes the tool will need to be adjusted.

Evaluator #1	Evaluator #2	Evaluator #3
3	4	5

These are sample Evaluator scores.

Column F - Average Rating will auto-populate and average the Evaluator Raw scores. Adding the three evaluator scores 3, 4 and 5, for example, the average rating auto-populates 4.

AverageRating
4.0

Column G - Weight Factor needs to be populated with the weight factors that have been determined for each Evaluation Item Section #. These weight factors should be determined based on relative importance of each item being evaluated and its impact on the relative weight of the section that these items are categorized under.

Column H - Total Raw Score will auto-populate and is determined by Weight Factor (Column G) multiplied by Average Rating (Column F) for each Individual Evaluation Item #.

Column I - Section Subtotal will auto-populate and is determined by the addition of each Total Raw Score (Column H) for each Technical Section/Rating Category. It is a summation of individual Item Section #'s for each Rating Category. For example, all of the A's (A.1, A.2, A.3...) are being totalled to give you Column I's Section A Subtotal. Looking down the excel file sheet you will also see all of the B's, C's D's that are being tabulated within Column I to present a Section Subtotal for each Section/Rating Category.
The total for Column I is highlighted in Yellow as it will be the Total Raw Score for that bidder.

Column J - Section Subtotal % will auto-populate and provides the % that has been earned for the entire Section/Rating Category. If this value is 80% for example, the bidder has earned 80% of the possible points for that Section/Rating Category.
The equation is: Section Subtotal (Column I) divided by the Max Points (Column K).

Column K - Max Points will auto-populate (5 point scale for individual question ONLY) the total number of points possible in each Section/Rating Category. The equation is: Summation of Weight Factors (Column G) x 5.
This is based on having all questions evaluated on a 5 point scale. If you have any eval questions scored on a different scale aside from 5 you will need to manually populate total points per section and overall total points.

Exhibit B

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

FREEDOM CARE LLC,

Petitioner,

for Judgment Pursuant to CPLR Article 78

- against -

THE NEW YORK STATE DEPARTMENT OF
HEALTH; JAMES V. MCDONALD, in his official
capacity as Commission of the New York State
Department of Health; and PUBLIC
PARNTERSHIPS LLC,

Respondents.

Index No. 161036/2024

(Hon. Verna L. Saunders)

IAS Part 36

**SUPPLEMENTAL
AFFIRMATION OF AMIR
BASSIRI**

AMIR BASSIRI, pursuant to New York CPLR 2106, hereby affirms under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in a proceeding in a court of law:

1) As set forth in my original affirmation submitted in this matter on December 24, 2024 (“12/24/24 Bassiri Aff.”),¹ I am the Deputy Commissioner of the Office of Health Insurance Programs (“OHIP”) at the New York State Department of Health (the “Department” or “DOH”) and I have been the New York State Medicaid Director since April 2022. As such, I am fully familiar with the Consumer Directed Personal Assistance Program (“CDPAP”) at issue in these proceedings.

2) I submit this supplemental affirmation in opposition to the Petition and Petitioner’s application for a preliminary injunction seeking, among other relief, to enjoin the Department from

¹ NYSECF #41.

implementing the award of a contract for the provision of statewide fiscal intermediary (“FI”) services to Public Partnerships LLC (“PPL”) pursuant to Request for Proposal (“RFP”) #20524, and in support of State Respondents’ Answer to the Petition. Specifically, I submit this supplemental affirmation to address certain new allegations or assertions set forth in Petitioner’s Reply papers filed on January 7, 2025.

I. THERE IS NO ACTUAL OR PERCEIVED CONFLICT OF INTEREST BASED UPON PCG’S PURPORTED MINORITY OWNERSHIP INTEREST IN A PPL PARENT COMPANY

3) In its Reply, Petitioner makes baseless assertions regarding the relationship between DOH and Public Consulting Group (“PCG”), one of thousands of vendors or contractors utilized by DOH, and then leaps to the equally baseless conclusion that PPL should have been disqualified due to an actual or perceived conflict of interest based on such relationship.

4) First, DOH has over 4,000 employees, of which approximately 2,307 work within the Medicaid program. To assist in DOH’s operations, DOH utilizes contract workers to fulfill certain roles. SSO, a PCG subsidiary, is one of the staffing companies DOH has used to fill various roles.

5) Only about 250 SSO employees work with DOH in the Medicaid program. Thus, the number of employees who were subcontracted from SSO, as relied upon by Petitioner, is insignificant. With the exception of SSO staff in our health plan contracting division who assist in email distribution of policies to managed care plans and contract managers, or complaint staff listening to weekly calls with health care plans, no SSO staff are involved with CDPAP. More importantly, none of the SSO employees working within DOH were involved in the development of RFP #20524 or its amendments, or the review and evaluation of the bid proposals and none had

access to the bid proposals or evaluation documents. The Department greatly appreciates SSO staff and recognizes the value they bring with their experience and assistance. However, SSO staff are not decision or policy makers within DOH and such duties are only handled by State employees.

6) With respect to the four individuals identified specifically by Petitioner in its Reply papers, *i.e.*, Brian Watkins, Diana Halstead, Jason Chura, and Alicia Segura, none worked on the development of RFP #20524 or its amendments, or the review and evaluation of the bid proposals. As described by Mr. Watkins in his Affirmation, he worked for a period of time in the Technical Assistance Center, supporting the Long-Term Care Unit within DOH. Watkins Aff. ¶ 3. Regardless of Mr. Watkins' estimate of how many SSO employees may have worked in his Unit "at certain times," none worked on the development of RFP #20524 or its amendments, or the review and evaluation of the bid proposals.

7) As to Petitioner's assertions regarding PCG's contracts with DOH, I note that in my role as Medicaid Director, I oversee the State's largest public health insurance program supporting nearly 8 million New Yorkers at over \$100 billion annually. Currently, DOH has thousands of active contracts. The contract values and durations vary, with the value of many individual contracts exceeding the \$500M aggregate ascribed by Petitioner to PCG. For example, DOH has entered into several contracts with Maximus US Services, Inc., including consulting contracts in amounts exceeding \$1.5 billion.²

8) PCG's active contracts with DOH total about \$255 million with ten-year terms. As

²

<https://wwe2.osc.state.ny.us/transparency/contracts/contractresults.cfm?a=DOH01&ac=&v=Maximus&vo=B&cn=&selOrigDateChoiceOperator=0&txtOrigFromDate=&txtOrigToDate=&selCTDateChoice=0&selCTDateChoiceOperator=0&txtCTFromDate=&txtCTToDate=&selContractAmountChoice=0&txtContractAmount1=&txtContractAmount2=&b=Search>

these totals reference the entire duration of the contracts, the amount paid to PCG each year fluctuates, but it averages a little over \$25 million—which is approximately 0.025% of overall yearly Medicaid spending. The suggestion that such contractual relationship signifies that PCG has “sway” or “influence” over CDPAP, including DOH’s selection of the Statewide FI mandated by the CDPAP Amendment, is untrue and simply absurd.

9) Also untrue is Petitioner’s assertion that PCG or PPL somehow selected FIs to participate in CDPAP pursuant to the procurement requirement enacted in 2019. As noted above, SSO staff are not decision or policy makers within DOH and such duties are only handled by State employees.

10) To the extent that Petitioner claims that PPL should have been disqualified from participating in RFP #20524 because it failed to disclose the purported relationship between PPL and PCG, Petitioner is simply wrong. According to Petitioner, PCG owns a small minority stake—16%—of a company that owns a second company that owns a third company that owns PPL. *See* NYSCEF No. 80 (redacted). Notably, Petitioner says nothing about the actual majority owner of this third-level affiliate. *Id.* And that is presumably because DOH does not have a contract with this majority owner,³ and as far as I am aware, has no relationship with it.

II. PPL WAS NOT THE “PRE-DETERMINED” CONTRACT AWARDEE AND ITS SELECTION AS STATEWIDE FI WAS BASED ON DOH’S CAREFUL EVALUATION OF THE BID SUBMISSIONS AND DETERMINATION OF PPL’S RESPONSIBILITY

11) As detailed in my 12/24/24 Affirmation, PPL was awarded the Contract for Statewide FI based on DOH’s careful evaluation of the bid submissions and determination of PPL’s responsibility. 12/24/24 Bassiri Aff. at pages 19-27. In its Reply, Petitioner asserts that

³ See <https://wwe2.osc.state.ny.us/transparency/contracts/contractresults.cfm?ID=13961>

PPL's purported posting of a job opening in New York, and its outreach to potential subcontractors during the procurement process, evinces PPL's knowledge that it had been pre-selected. While I have no knowledge as to whether and to what extent PPL took such steps (and did not have knowledge at the time), in my experience it is not unusual for a company hoping to be selected for a significant Contract award to take exploratory or initial steps to prepare for the possibility that it might be the awardee. This is particularly true in this situation, given the short schedule for implementation of the Contract, as mandated by the Legislature.

12) Contrary to Petitioner's contentions, my involvement as one of the members of the Technical Evaluation Committee concerning RFP #20524 is not unusual. In my various roles since joining the Department in 2019, I have participated as an evaluator in more than five bid procurement reviews.

13) In paragraph 95 of my 12/24/24 Affirmation, I made clear that I was unaware of any alleged attempts by PPL to influence the procurement during the restricted period and any such attempts would likely be brought to my attention given my role as Medicaid Director.⁴ The restricted period lasted from June 17, 2024 when DOH issued the RFP to September 27, 2024 when PPL was informed of the Contract Award.

14) Petitioner claims that DOH must have had improper communications between June 17, 2024 to August 17, 2024 because in my earlier affirmation, I stated that there was no communication between DOH and PPL from August 17, 2024 to September 27, 2024.⁵ Petitioner is wrong—there were no attempts to influence the procurement, as I already stated.

⁴ During the restricted period, there is a prohibition on any communication made "under circumstances where a reasonable person would infer that the communication was intended to influence this procurement." RFP § 5.1.

⁵ The date of PPL's bid is August 21, not August 17, 2024, as reflected in the Record.

15) Indeed, the only communication between DOH and PPL from June 17, 2024 to August 17, 2024 in relation to the RFP was a question emailed by PPL on July 1, 2024 to the authorized contact as set forth in the RFP, inquiring as to the “file size limitation for the email submission” of the bid proposals. *See* Q and A Document, Question 814, annexed as Ex. 4 to the Shapiro Aff. This communication, as reflected in the Record annexed to my 12/24/24 Affirmation, should have been mentioned in my original affirmation.

16) Petitioner claims that it was an irregularity for its bid to be scored after PPL’s because Petitioner’s bid was submitted first. Petitioner’s claim is baseless and lacking in context. As part of each bidder’s minimum qualifications they were required to complete and submit the Revised Attachment B, which, among other things, asked the bidder to provide the contact information for a state representative that could act as a reference for its experience in other states. In instances where a bidder’s experience was unclear, the Department would contact the bidder’s referenced state representative to clarify the situation. Upon review of Freedom Care’s bid, the included Revised Attachment 3 and associated narrative were unclear as to whether the referenced statewide FI experience in Nevada met the RFP’s requirements. The Department attempted to contact Petitioner’s reference to ensure this minimum qualification was met, but the reference took weeks to provide a response and resulted in a delay in verifying Petitioner’s bid such that it could proceed to the evaluation process. In no way did this delay impact the scoring of Petitioner’s bid. These evaluations were done independently, and the evaluation members did not have access to each other’s scoring tools.

17) To the extent that third parties, such as union members, press, legislators, or members of interest groups aligned with Petitioner, speculate that the selection of PPL as the

Contract awardee under the RFP was “in the bag,” or predetermined, they are simply wrong. Rather, PPL’s selection was the result of the review and evaluation described in my 12/24/24 Affirmation and herein.

III. ALL BIDDERS HAD ACCESS TO THE SAME INFORMATION REGARDING SUBMISSION OF COST PROPOSALS

18) In attempting to explain why its cost proposal was significantly higher than that of PPL, Petitioner insinuates that PPL had “inside information” about what expenses were to be included in the Administrative Per Member Per Month (“PMPM”) Fee required by the RFP. Again, Petitioner’s assertion is incorrect. Every bidder had access to the same information, *i.e.*, as set forth in the RFP and its amendments, and in the answers provided to the questions submitted by bidders. Q and A Document, Shapiro Ex. 4. PPL was not provided and did not receive any “inside information” or preferential treatment.

IV. PPL’S SUBCONTRACTOR SELECTION AND DOH’S APPROVAL ARE CONSISTENT WITH THE CDPAP AMENDMENT AND THE RFP

19) The CDPAP Amendment requires that PPL subcontract with at least one FI entity per rating setting region that has been providing FI services since 2012. SSL § 365-f(4-1)(a)(ii-b). This requirement helps ensure uninterrupted FI services and sufficient access statewide. (The CDPAP Amendment does not use the term “core” in this regard; rather, PPL used that term in its bid submission and in post-award communications.) All proposed subcontractors are subject to DOH review and approval.

20) As noted in my original affirmation, the RFP required that the awarded Statewide FI could not be an entity that is owned or controlled by a LHCSA in New York or that owns or holds a controlling interest in a LHCSA in New York. Any actual or perceived conflicts of interest

were to be addressed in the bidder's Administrative Proposal through a detailed narrative that focused on how the conflict would be mitigated.

21) To date, PPL has proposed and DOH has approved 31 subcontractors, as reflected on PPL's website. At least four of them—one in each region—meet the subcontractor requirements of the statute and RFP discussed above.

22) In my 12/24/24 Affirmation (§§ 53, 102), I stated in two sentences that the inclusion of any proposed subcontractor network in a bidder's proposal was not considered by DOH in the scoring process. That was inaccurate. In fact, in response to some questions, evaluators' comments referenced PPL's and Freedom Care's proposed subcontractor networks.

23) Although I now realize that my earlier affirmation erred on this point, given that it was filed long after the RFP process concluded and the Statewide FI was selected, naturally, no bidder relied on it. Accordingly, my inadvertent misstatement in my 12/24/24 Affirmation does not impact the Record upon which DOH's determination was made.

24) In contrast, the RFP that was relied on by all bidders makes clear that bidders "may propose the use of subcontractors consistent with this section," but that a bidder "is not required to identify all subcontracting arrangements in this response." RFP 5.7. The questions and answers for the RFP were consistent with this language that a bidder may propose subcontractors. In one answer, DOH noted "Bidders shall demonstrate in the proposal their or their subcontractors' experience and ability to engage with any consumer or personal assistant who speaks any language and in a culturally competent manner and to engage with consumers of all physical, developmental and neurological abilities including those that are hearing or visually impaired. How this is to be accomplished is at the bidder's discretion." Answer to Question 256, Q and A Document

(emphasis added). In short, all bidders, including PPL and Freedom Care, had the discretion under the RFP to set forth their network of proposed subcontractors.

V. PPL SATISFIED THE FINANCIAL REQUIREMENTS OF THE RFP

25) As previously set forth in my 12/24/24 Affirmation, PPL met all requirements of financial ability required by the RFP. The RFP requires that PPL maintain a revolving line of credit for at least \$100 million at all times to ensure sufficient liquidity to meet worker payroll obligations, including compliance with overtime and wage parity laws, without delays. *See* Exhibit 3 at 14–15.

26) Petitioner’s claim that PPL’s post-Award request for pre-payment by MCOs violates the RFP is without merit. The RFP did not bar the Statewide FI and MCOs from reaching agreements on payment terms, including pre-payment of direct care service costs. These types of financing arrangements are left to the contracting parties to negotiate. DOH is not involved in these negotiations and does not dictate their terms, and confirmed as such in response to Question 696, which asked: “Does the state mandate the MCOs provide an Advance Payment of Pre-Funding of gross payrolls plus employer taxes?” Q and A Document. In response, DOH stated: “Agreements between the Statewide Fiscal Intermediary and the MCOs will be negotiated by the parties.”

27) To my knowledge, prior to the CDPAP Amendment, New York was one of very few states, if not the only state, in which such MCO pre-payments were not routinely utilized.

WHEREFORE, it is respectfully requested that the Court deny Plaintiff's Petition, Motion for a Preliminary Injunction, and expedited discovery.

Dated: January 17, 2025



AMIR BASSIRI

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

United States of America,

Plaintiff,

v.

PUBLIC PARTNERSHIPS, LLC, a Delaware limited liability company; DR. JAMES MCDONALD, in his official capacity as Commissioner of the New York State Department of Health; and AMIR BASSIRI, individually and in his official capacity as Medicaid Director at the New York State Department of Health,

Defendants.

Case No: 1:26-cv-3601 (OEM)

Hon. Orelia E. Merchant

**REPLY IN SUPPORT OF
MOTION TO DISMISS OF DEFENDANTS
DR. JAMES MCDONALD AND AMIR BASSIRI**

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I. INTRODUCTION

Asserting that a state itself is subject to liability under federal criminal law is extraordinary. Accusing state officials of acting in their official capacity to defraud their own state, without alleging any facts to show they participated in such a scheme or had any motive to do so, is bizarre. And for the Department of Justice (“DOJ”) to do both while failing to grapple with the multiple legal barriers to its claims and advancing an interpretation of a criminal statute that DOJ has disavowed before the Supreme Court is alarming.

DOJ’s complaint fails at every level. *First*, DOJ sued for injunctive relief under a statute whose plain language requires ongoing or imminent violations but the complaint relies on supposedly false statements made over a year ago. *Second*, even though 18 U.S.C. § 1345 imposes liability only if there is a predicate criminal violation—meaning that DOJ can prevail only if one of the criminal laws cited in Section 1345 imposes criminal liability on states—DOJ asserts that the Court should ignore that statutory requirement because it seeks injunctive relief in a civil proceeding. *Third*, DOJ fails to allege any of the elements of the supposed offenses or facts to explain why the New York defendants did or would have participated in a scheme to defraud the State itself. And DOJ fails to provide any explanation why Mr. Bassiri is sued in both his personal and official capacities or what conduct is alleged to fall into either category.

For all these reasons, the claims against the New York defendants should be dismissed.

II. ARGUMENT

A. There Is No Basis For Injunctive Relief Under 18 U.S.C. § 1345.

To obtain injunctive relief under 18 U.S.C. § 1345, DOJ must demonstrate that defendants are “committing or about to commit a Federal health care offense.” *Id.* Yet DOJ admits (Opp. 6) that all of the statements alleged are more than a year old. DOJ gestures at other “ongoing false statements, omissions, and misrepresentations,” Opp. 7, but makes no effort to identify them or tie

them to the complaint’s allegations. Even if DOJ plausibly alleged past violations of Sections 1035 or 371, its historic allegations about the completed transition and last year’s direct care rates do not make out any *ongoing* violation.¹

Failing to allege any ongoing or imminent false statements, DOJ argues that the New York defendants joined, and are still part of, a conspiracy “to improperly install PPL as the CDPAP vendor,” “hide key aspects of the transition,” and “cover up all of this misconduct with false statements and omissions.” Opp. 5 (citations omitted). These claims are doubly flawed: they are implausible and purely historic; the transition is complete and nothing in the complaint suggests that the New York defendants are making or will make false statements relating to the transition.

DOJ alternatively asserts that the New York defendants have continued to “allow[] PPL’s unauthorized profit-taking and obfuscate[] that it is occurring.” Opp. 7. As discussed *infra* pp. 9-10, as to the New York defendants, this is not the conspiracy the complaint alleges, and it is not plausibly alleged in any event. DOJ cites only an allegation that Mr. Bassiri expressed concerns regarding PPL’s proposed direct care costs some time in “late fall 2024 and January 2025.” Compl. ¶¶ 64-65. This single assertion does not plausibly allege agreement to further PPL’s “unauthorized profit-taking” and certainly not ongoing participation in a conspiracy 20 months later.

Finally, DOJ cannot rely on cases concluding that, for statute of limitations purposes, a conspiracy continues until its goal is accomplished or a conspirator withdraws. *See* Opp. 6-7. The

¹ DOJ does not dispute that the 2025 rates on which the alleged false statements regarding savings are based are no longer operative. Instead, it asks (Opp. 7) the Court to ignore the 2026 rates. But the rates are published on a government website and are judicially-noticeable. *See, e.g., Mallett v. Town of Huntington*, 799 F. Supp. 3d 117, 122 (E.D.N.Y. 2025). DOJ also argues (Opp. 7) that the supposed problems in the 2025 rates affected the 2026 rates. But the complaint contains no allegations regarding the now operative 2026 rates and thus provides no basis to conclude that they are inflated or relate to any false statement. *See, e.g., Galiano v. Fid. Nat. Title Ins. Co.*, 684 F.3d 309, 314 (2d Cir. 2012) (rejecting “wholly conclusory and speculative” allegations).

question here is whether DOJ can obtain injunctive relief under Section 1345, which requires that a defendant *is* committing or about to commit a specified health care offense *and* “there exists a threat of continued perpetration.” *United States v. William Savran & Assocs., Inc.*, 755 F. Supp. 1165, 1178 (E.D.N.Y. 1991). DOJ alleges no ongoing threat of continued false statements here.²

B. Sections 1035 and 371 Do Not Apply To State Official-Capacity Defendants.

“By its terms, § 1345 is limited to cases in which the Government can show that the defendant is engaged or about to engage in criminal fraud.” *United States v. Fang*, 937 F. Supp. 1186, 1194 (D. Md. 1996). A suit against a state official-capacity defendant is a suit against the state. Mot. 15. Thus, DOJ can invoke Section 1345 only if the State of New York has or is about to violate a federal criminal law. Mot. 15-17.

DOJ does not meaningfully dispute that indicting state official-capacity defendants for violating federal criminal law would dramatically shift the state-federal balance, the very result barred absent explicit authorization. Mot. 17. DOJ suggests (Opp. 9-10) that because Section 1345 creates a civil action, the Court should broadly read the underlying criminal laws. That is incorrect. For example, a plaintiff may bring a civil action against a defendant engaged in a pattern of racketeering activity, which includes “only acts that are ‘indictable’” under specified criminal laws. *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 339 (2016). In that civil action, criminal law principles apply in interpreting the predicate offenses—because the plaintiff must prove a criminal violation. *Scheidler v. Nat’l Org. for Women, Inc.*, 537 U.S. 393, 409 (2003).

Therefore, DOJ’s Section 1345 suit against official-capacity defendants can be sustained only if the generic terms “whoever” or “person” in the two criminal-law predicates it cites can be

² DOJ appears to recognize that it cannot, consistent with the anti-commandeering doctrine, require the New York defendants to “restore the status quo” and limits its request to “ensuring basic compliance of two state officials with applicable federal laws regarding truth-telling.” Opp. 10.

interpreted to impose criminal liability on states. DOJ provides no basis for concluding that they can, and the long established general rule is that these generic terms do not include states, which are coequal sovereigns. Mot. 16. DOJ relies on a narrow exception to that general rule, where a civil suit against an official-capacity state defendant seeking to bar enforcement of a state law is not considered a suit against the state. Opp. 9; *see Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989) (citing *Ex parte Young*, 209 U.S. 123, 159-60 (1908)). But the *Ex parte Young* fiction has never been extended to the imposition of *criminal* liability against a state. Mot. 17. DOJ has no response to this argument and offers no rationale for expanding the doctrine here.

C. The Allegations Are Subject To Rule 9(b) And In Any Event Fail Rule 8.

DOJ argues (Opp. 11) that Rule 9(b)'s heightened pleading requirements do not apply because fraud is not an element of a Section 1035 violation. But the Second Circuit has held that Rule 9(b) can apply to claims that do not "require[] that plaintiffs allege the scienter or reliance elements of a fraud cause of action." *Rombach v. Chang*, 355 F.3d 164, 169 n.4 (2d Cir. 2004). The question is whether the allegations underlying the claims sound in fraud. *See id.* at 171.

The allegations here plainly do. DOJ's theory as now articulated in its opposition is that the New York defendants violated Sections 1035 and 371 by making false statements as part of a purported conspiracy to rig the bidding process in PPL's favor and to cover up PPL's "fraudulent exploitation" of CDPAP. Compl. ¶ 56. Although DOJ fails to provide any reason why the New York defendants would participate in a bizarre scheme to defraud their own state, these allegations still sound in fraud. The complaint charges serious misconduct on paltry allegations, and Rule 9(b)'s heightened pleading standard should apply "to safeguard [the defendants'] reputation from improvident charges of wrongdoing." *Rombach*, 355 F.3d at 171. Indeed, DOJ continues to assert Mr. Bassiri participated in this scheme and the other asserted misconduct in the complaint in both his official and individual capacities, without offering any rationale for doing so.

DOJ's complaint also fails under Rule 8. The New York defendants raised Rule 8 (*contra* Opp. 12) and argued at length that the complaint fails to state a plausible claim under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See* Mot. 10, 19-21, 34-35. The complaint should be dismissed under any applicable pleading standard.³

D. The Complaint Fails To Plead A Section 1035 Violation.

1. *Mens rea*. DOJ's complaint fails to allege any element of a Section 1035 violation. We begin with *mens rea* because DOJ has previously confessed error in the Supreme Court on this point. The failure to allege *mens rea* alone requires dismissal of the claim.

More than a decade ago, while confessing error in the Supreme Court, DOJ acknowledged that “[t]o find that a defendant ‘willfully’ made a false statement in violation of Section 1035, a jury must conclude ‘that he acted with knowledge that his conduct was unlawful.’” Br. for the United States in Opp., *Russell v. United States*, 2014 WL 1571932, at *6 (U.S. Mar. 10, 2014). The Supreme Court vacated the First Circuit's decision and an analogous Ninth Circuit decision for which DOJ also confessed error. *See Russell v. United States*, 572 U.S. 1056 (2014); *Ajoku v. United States*, 572 U.S. 1056 (2014). DOJ has stood by this reading of willfulness element, including in the Third Circuit earlier this year. *See* Consol. Resp. Br., *United States v. Comprehensive Healthcare Mgmt. Svcs., LLC*, 2026 WL 487922, at *40 (Feb. 13, 2026).

Now, DOJ makes the precise argument it disavowed before the Supreme Court, without acknowledgement. And DOJ ignores that the Second Circuit has held that, to establish criminal

³ DOJ asks (Opp. 24) for leave to amend if the complaint is dismissed under Rule 9(b). The complaint's serious pleading defects go well beyond failure to comply with Rule 9(b). DOJ has had ample opportunity to, for example, try to plead facts satisfying the *mens rea* standard it itself has previously acknowledged applies. *See infra* p. 5. Its vague request for leave to amend should be denied. *See, e.g., United States ex rel. Ladas v. Exelis, Inc.*, 824 F.3d 16, 28 (2d Cir. 2016) (noting district court's “broad discretion” resolving motions for leave to amend) (citation omitted).

willfulness, “the Government must prove that the defendant acted with knowledge that his conduct was unlawful.” *United States v. Kukushkin*, 61 F.4th 327, 332 (2d Cir. 2023) (quoting *Bryan v. United States*, 524 U.S. 184, 192 (1998)). DOJ’s previous confessions of error were correct. And because DOJ makes no effort to argue that the complaint satisfies the correct willfulness standard, its claim against the New York defendants must be dismissed for this reason alone.

DOJ also elides the Second Circuit’s recognition that Rule 9(b) requires a plaintiff to “plead the factual basis which gives rise to a strong inference of fraudulent intent.” Mot. 28 (quoting *United States ex rel. Hart v. McKesson Corp.*, 96 F.4th 145, 153 (2d Cir. 2024)). To be sure, “knowledge and willfulness can be generally pleaded.” Opp. 18. But “plaintiffs, including the government, still must plead the factual basis which gives rise to a strong inference of fraudulent intent.” *United States v. Strock*, 982 F.3d 51, 66 (2d Cir. 2020) (citation omitted). Again, DOJ does not argue the complaint satisfies the relevant standard, and it has forfeited any chance to do so. *See Gao v. Barr*, 968 F.3d 137, 141 (2d Cir. 2020) (arguments not made in briefing not preserved).⁴

2. Materiality. The complaint also fails to allege materiality. Mot. 30-33. The leading appellate decision on Section 1035 materiality makes clear that a statement must be material to a health care benefit program specifically. *United States v. Natale*, 719 F.3d 719, 742 (7th Cir. 2013); *see* Mot. 30. DOJ cites other aspects of *Natale*, but it never acknowledges the portion of *Natale* that dooms its Section 1035 claim. DOJ also argues that requiring materiality as to the health care benefit program would render Section 1035 indistinguishable from 18 U.S.C. § 1347. Opp. 21. This is incorrect. Section 1347 (health care fraud), unlike Section 1035 (false statements), requires a specific intent to deceive or mislead. *See Natale*, 719 F.3d at 742; *see* Opp. 11 (citing *Natale*).

⁴ DOJ also asserts that “DOH” generally acted knowingly and willfully. *E.g.*, Opp. 18-19. But DOJ ignores that it cannot rely on DOH’s collective knowledge to establish liability. Mot. 29-30.

DOJ has forfeited any argument that the complaint meets the correct materiality standard, *Gao*, 968 F.3d at 141, and its Section 1035 claim should be dismissed for this reason also.

3. False statements. The complaint does not allege any false statements or concealed facts.

a. The RFP Process. The complaint fails to allege that the RFP process violated any law or that the New York defendants made any specific false statements regarding this process. Mot. 18-21. DOJ responds by citing broad portions of the complaint purportedly alleging that the New York defendants “covered up the true extent of pre-RFP coordination.” Opp. 13 (citing Compl. ¶¶ 67-89; 108-113). But DOJ identifies no purportedly false statement in these allegations (many of which relate to PPL and not the New York defendants). DOJ also provides no basis to infer that Mr. Bassiri’s alleged pre-RFP communications were problematic, let alone unlawful. Mot. 19. Similarly, DOJ argues that Mr. Bassiri improperly disqualified certain other bidders on an “arbitrary” basis, Opp. 15, but this conclusory assertion fails even at the pleadings stage. *See* Mot. 19-20.⁵ DOJ also asserts that Mr. Bassiri scored PPL’s bid higher than other bids. But the scoring sheets—which are properly considered at this stage as either incorporated by reference or integral to the complaint, Mot. 8 n.2—show that the other scorers not accused of misconduct also scored PPL higher. Mot. Ex. A. DOJ provides no basis to infer that any New York defendant took part in any plot to rig the RFP process for PPL, or made a false statement in doing so.

b. Transition to a Statewide FI. DOJ asserts that the New York defendants recognized it would be “virtually impossible” for PPL to complete the transition on time and concealed that fact from the public. Opp. 15. But DOJ fails to identify any allegations supporting the assertion that any New York defendant came to such a conclusion and then concealed it. DOJ also appears to

⁵ DOJ appears to assert that Mr. Bassiri stated that PPL’s bid was not scored before DOH evaluated whether other bids were qualified. *See* Opp. 15 (citing Mot. Ex. B ¶¶ 11-16). This is not alleged in the complaint, and the declaration DOJ cites does not say what DOJ suggests. *See* Mot. Ex. B.

suggest (Opp. 13) that, by providing *any* information regarding the status of the transition, the New York defendants assumed a duty to disclose all potentially material facts. That is not the law. DOJ cites a case in which a person voluntarily agreed to speak to federal investigators and thus assumed a duty to answer questions truthfully. *See United States v. Stewart*, 433 F.3d 273, 318 (2d Cir. 2006). But even in responding to a government agent's questions, individuals do not have to "choose between saying everything and saying nothing." *United States v. Safavian*, 528 F.3d 957, 965 (D.C. Cir. 2008). And certainly, DOJ provides no support for the notion that by releasing one statistic to the public via a press statement, federal law imposes a duty on a state agency to release all other statistics on that topic that may later be deemed material. *See* Mot. 21-22.

c. Nature of DOH's Relationship with PPL and Resulting Savings. DOJ is unable to identify any purportedly false statement regarding DOH's relationship with PPL other than the parties' contract itself, and DOJ does not specify any assertedly false portion of the contract. Mot. 25-26. Instead, DOJ's response appears to be that the New York defendants made a false statement by acting inconsistently with "the purpose and meaning of the transition writ large" or the transition's "text and purpose," whatever that means. Opp. 16. It does not identify any contractual provision that could plausibly be deemed a false statement or even that was supposedly violated. DOJ's belief that DOH should have enforced unspecified provisions of the contract with PPL differently falls well short of plausibly alleging a specific false statement. *See* Mot. 26.

Finally, DOJ seeks to bolster its allegation that the New York defendants made false statements relating to cost savings by asserting that they knew PPL's costs were "higher-than-expected." Opp. 17-18. But it does not in fact allege that any DOH official determined that PPL's rates were unexpectedly high and then made false statements regarding the rates. Rather, they highlight allegations that DOH officials expressed concerns during PPL's rate negotiations without

tying those concerns to any assertedly false statement. *See* Mot. 25. And it faults the New York defendants' statements of expected savings based on PPL's lower PMPM fee without identifying a basis to conclude the statements were false or not honestly held when made. Mot. 27.

4. “In connection with.” The New York defendants explained (Mot. 33-34) that Section 1035's “in connection with the delivery of or payment for health care benefits, items, or services” language requires that a statement be made “in the course of delivering health care services or trying to get paid for doing so.” *United States v. Mermelstein*, 487 F. Supp. 2d 242, 261 (E.D.N.Y. 2007). DOJ does not even address *Mermelstein*. Instead, it relies exclusively on a single unpublished, uncited case, *United States v. Cox*, 2006 U.S. Dist. LEXIS 17181 (D. Vt. Mar. 28, 2006), to argue this statutory requirement “should be broadly construed to effectuate its purpose.” Opp. 21. *Cox* cannot be squared with Section 1035's text or the in-district case law. *See* MTD 33-34 & n.11. DOJ has no response and no argument that it met this element as correctly construed.

E. The Complaint Fails To Plead A Section 371 Violation.

DOJ fails to show that Section 371 imposes criminal liability on a state or that the complaint's conclusory assertions plausibly allege a conspiracy. Mot. 34-35. And the fact that DOJ's complaint fails to allege that any New York defendant had the requisite *mens rea* to violate Section 1035 also dooms its effort to allege that they conspired to violate this provision. *See, e.g., United States v. Vozzella*, 124 F.3d 389, 391 n.1 (2d Cir. 1997) (“To establish a conspiratorial agreement, the Government must demonstrate that the conspirators possessed at least the degree of criminal intent necessary for the substantive offense itself.” (citation and alteration omitted)).

DOJ asserts that the complaint's barebones conspiracy allegation is linked to allegations that the New York defendants participated in a sham bid process to select PPL, “personally allowed” PPL to take more money than it was owed, and misrepresented the costs of PPL's bid. Opp. 23. Notably, the complaint did not characterize the conspiracy claim in this manner. DOJ

now suggests that the New York defendants conspired with PPL to violate 18 U.S.C. § 1347, rather than 18 U.S.C. § 1035 as originally alleged. *See* Compl. ¶ 136. But even as reframed, DOJ relies on allegations including the asserted pre-RFP communications that do not support a plausible inference that the actions were improper much less reflected an unlawful agreement. *See supra* p. 7. DOJ also cites (Opp. 23) allegations that DOH made up-front transition cost payments to PPL, Compl. ¶¶ 58-60, and that Mr. Bassiri and other DOH officials expressed concerns regarding PPL's rate negotiations with MCOs, Compl. ¶¶ 63, 65. None of these allegations remotely suggests that a New York defendant "personally allowed" PPL to obtain money it was not allowed or conspired with PPL to do so. If anything, those alleged concerns further obviate any inference that the New York defendants had a specific intent to further the bizarre, motiveless conspiracy alleged. *See* Mot. 35. DOJ's assertion that the New York defendants made false statements regarding their expected savings are meritless for the reasons explained *supra*, but in any event do not suggest any "coordination and agreement with PPL." Opp. 23; *see also* Mot. 26-27.

Finally, DOJ alleges that a conspiracy may be inferred because, in April 2024, before New York enacted the CDPAP amendment, a PPL executive unilaterally stated that PPL was treating communications about PPL potentially serving as the SFI as "highly confidential." Compl. ¶23. There is no allegation that any New York defendant agreed to this unilateral statement or any other "factual context suggesting that the parties reached an agreement." *Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 184 (2d Cir. 2012) (brackets omitted).

At bottom, the complaint's only conspiracy-related allegation is the "naked assertion" reflected in paragraph 136. Mot. 35. That is plainly not enough, and this claim should be dismissed.

III. CONCLUSION

The claims against Dr. McDonald and Mr. Bassiri should be dismissed.

Respectfully submitted,

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September 11, 2026

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document was forwarded by electronic transmission to all registered ECF users appearing in the case on September 11, 2026.

/s/ Arun G. Rao
Arun G. Rao

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This will certify that the foregoing document complies with the length limitations in the Hon. Orelia Merchant's Individual Practices And Rules III(F).

/s/ Arun G. Rao
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