

UNITED STATES DISTRICT COURT
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

**MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT PUBLIC PARTNERSHIPS, LLC'S MOTION TO DISMISS**

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INTRODUCTION

New York operates a Medicaid program that receives federal funds to provide home healthcare to around 250,000 New Yorkers through lay caregivers, many of whom are friends or family members of the patients. Last year, New York transitioned the administration of this program to Defendant Public Partnerships, LLC (“PPL”) in a process that was filled with problems. Both patients and caregivers have suffered and continue to suffer as a result of the flawed transition, including through loss of care and loss of wages. As alleged in detail in the complaint, the problems with the transition were not unavoidable mishaps: rather, they were the product of intentional, fraudulent conduct and misrepresentations on the part of Defendant PPL and others. Not only was the process by which New York awarded the billion-dollar contract to PPL riddled with misrepresentations and misconduct, Defendants’ misconduct extended to the transition and implementation of the contract as well—this not only left vulnerable patients without care and caregivers without pay, but also resulted in PPL receiving millions of dollars of public money it was not entitled to receive under its contract. PPL and New York also both made misstatements to cover up their wrongdoing.

Facing these allegations, PPL filed a motion to dismiss. Because the motion raises arguments that are both legally and factually flawed, they should be rejected and the motion denied. **First**, PPL urges the court to write into 18 U.S.C. § 1345 a new condition: that a parallel criminal investigation be at least pending. This requirement is found nowhere in the statute; indeed, it contradicts the statute’s plain language. **Second**, PPL invokes *Burford* abstention to argue that the Court should decline to exercise jurisdiction here because the subject matter supposedly concerns questions of state policy. But the lawsuit seeks to enjoin the federal-law violations that Defendants have engaged in; *Burford* abstention is a “disfavored” doctrine that does not apply in such a circumstance.

Third, PPL claims that the complaint’s allegations of fraud are insufficient. In doing so, PPL selectively reads (or ignores) the Complaint, which contains copious detailed and plausible allegations regarding how PPL repeatedly made false statements on a number of material topics, knowing they were false, and engaged in a fraudulent scheme to earn money from the contract that was not authorized. The allegations described in the complaint, which concern an extensive, ongoing fraudulent scheme, provide more than fair notice of the wrongdoing alleged. *Fourth*, PPL’s argument that the conspiracy counts are barred by the intra-corporate doctrine is a strawman based on a misreading of the complaint: the complaint does not allege PPL conspired with itself, but rather with employees of the New York State Department of Health and others. *Fifth* and finally, the government’s request for a receiver is expressly authorized by statute, so there is no basis to strike the requested remedy at this stage.

FACTUAL BACKGROUND

A. New York’s Consumer Directed Personal Assistance Program

New York’s Consumer Directed Personal Assistance Program (“CDPAP”) provides home care through lay caregivers to New York Medicaid patients with disabilities or significant medical needs. Compl. (Dkt. 1) ¶ 14. The program allows patients to employ personal caregivers (including family or friends) in their own homes. *Id.* CDPAP is managed by the state of New York, and it is one of New York’s largest health benefit programs. *Id.* ¶ 15. As of fall 2024, there were more than 250,000 patients and 300,000 caregivers enrolled in the program. *Id.* The program is paid for in large part by federal tax dollars through Medicaid reimbursements, *id.*, and is a “health care benefit program” under federal law. *See* 18 U.S.C. § 24(b).

Before the transition at issue in this case in 2025, payments to CDPAP caregivers for their services flowed from (1) the state of New York; to (2) Managed Care Organizations (“MCOs”) (*i.e.*, health insurance companies that enrolled CDPAP patients); to (3) around 600 Fiscal

Intermediaries (“FIs”), who acted as the employer of record for CDPAP caregivers and handled the necessary employment paperwork and payroll; to (4) the approximately 300,000 CDPAP caregivers. Compl. ¶ 16. Under this traditional system, payments from the state of New York to MCOs were capitated payments (*i.e.*, a fixed amount per individual), while payments from MCOs to FIs were an hourly rate per hour of care provided. *Id.* Payments from FIs to CDPAP caregivers were also generally an hourly rate per hour of care provided, plus additional benefits according to New York law. *Id.*

Under that prior regime, FIs generally billed an hourly rate to the MCOs that was slightly higher than the value of the compensation package FIs provided to the CDPAP caregivers. *Id.* ¶¶ 16, 37. Under this system, the difference in these two rates (*i.e.*, the “spread”) was the sole revenue stream FIs earned for administering CDPAP; this amount covered the costs of administering the program and included a small margin for the FIs. *Id.* ¶ 37.

B. Transition to Single Statewide FI

In the spring of 2024, the New York legislature began to consider designating a single entity as the only authorized FI for CDPAP. *Id.* ¶¶ 18–20. An early draft of the legislation included language designating PPL as the new statewide FI. *Id.* ¶ 19. That language was eventually removed, and the legislation instead required that a competitive procurement process be used to select the new FI. *Id.* ¶ 20. Before the legislation to implement this change was finalized (and months before a competitive bid process was announced to select the new statewide FI), PPL and officials from the New York Department of Health (“DOH”) met and engaged in communications regarding PPL’s “implementation plan” for the CDPAP transition. *Id.* ¶¶ 22–23. In response to a request from DOH, PPL went so far as to send PPL’s formal “implementation plan” to DOH in April 2024. *Id.* ¶ 22. PPL took steps to keep these communications private, telling DOH later that month that PPL “will not discuss the matter [CDPAP transition] with outside parties.” *Id.* ¶ 23.

C. The RFP and Award of the FI Contract to PPL

In June 2024, New York released a Request for Proposal (“RFP”) for bidders interested in becoming the new statewide FI for CDPAP. *Id.* ¶ 24. The RFP required both (1) a technical proposal covering how the bidder would perform FI services and transition the CDPAP program; and (2) a cost proposal addressing the costs New York would pay the bidder to administer the program. *Id.* The RFP stated that the cost proposal should describe the applicant’s proposed costs on a per-member, per-month (“PMPM”) basis, and made clear that this cost proposal would be the only compensation for the FI for the costs of administering CDPAP. *Id.* ¶¶ 24, 38–39.

For instance, in August 2024 DOH responded to questions from prospective bidders about the RFP; in response to a question whether the FI would be permitted to negotiate payment rates with MCOs and whether such rates would include compensation for administrative costs, DOH responded: “The administrative costs will be compensated via the contracted PMPM established under this RFP exclusively.” *Id.* ¶ 39. In response to another question, DOH reiterated that “Administration will exclusively be paid through the PMPM established under this contract.” *Id.* DOH further explained that costs for direct care to patients—as distinct from administrative costs for operating CDPAP—“will be paid through existing means [*i.e.*, a billed rate to MCOs for direct care] with the expectation it flows to the worker.” *Id.*

Also in August, New York issued an amendment to the RFP (Amendment #3) that added a revenue stream for the first twelve months of the contract to support initial transition costs. *See* Def. PPL’s Brief in Support of Motion to Dismiss (“Br.”) 7. This revenue stream was also on a PMPM basis and intended to be an “all-inclusive price to complete all Initial Transition activities” (as defined in the RFP). *Id.* While providing for additional payment to the FI for a specific purpose (transition activities) and for a limited time period (12 months), the amendment did not change the fundamental payment structure of the contract—that the compensation for the FI for administering

CDPAP would solely come from the proposed PMPM: “The Contractor will not be reimbursed separately by NYS or any other entity for any Administrative Services outside of its Proposed PMPM for Administrative Costs and the proposed PMPM for Initial Transition Costs bid under this RFP.” Br. Ex. C at § 5.4.

PPL submitted its bid in response to the RFP on August 21, 2024, which included a \$68.50 PMPM proposal. *Id.* ¶¶ 25–26. Other bidders proposed much higher PMPMs in their proposals. *Id.* ¶¶ 40, 55. As detailed in the complaint, PPL’s bid submissions contained numerous material misstatements (including about the PMPM), and PPL subsequently engaged (and continues to engage) in a fraudulent scheme to earn profits not allowed by the contract, under the guise of “direct care” costs. *Id.* ¶¶ 31–66, 117–120.

After disqualifying over 100 bidders, some for pretextual reasons, *id.* ¶¶ 28–29, New York eventually selected PPL as the winning bidder. PPL signed a contract with DOH to be the sole FI for CDPAP on December 20, 2024. *Id.* ¶ 57.

D. PPL’s Fraudulent Misrepresentations and Scheme to Earn Profits Forbidden by the Contract

The new system contemplated by the RFP and resulting contract dramatically altered the compensation structure for administering CDPAP. Rather than receiving funds from MCOs and earning profits from the “spread,” the single statewide FI would receive a PMPM payment directly from New York as compensation for administering the CDPAP program. *Id.* ¶ 38. The RFP and subsequent contract did contemplate that the FI would also bill MCOs for direct-care costs, but the RFP and resulting contract made clear those costs were for just that—providing care to CDPAP patients—and should go to the CDPAP caregivers. *Id.* ¶¶ 38–39.

In its RFP response, PPL made critical misrepresentations regarding the amounts it would charge to administer CDPAP. In particular, PPL falsely certified that it would not be reimbursed by any source other than the PMPM for administrative services, and that the PMPM cost proposal

provided an “accurate reflection” and a “good faith representation” of the cost of the project. *Id.* ¶¶ 41–42. Contrary to these representations, both before and after PPL submitted its bid, PPL internally modeled and discussed a concealed plan to earn significant, unauthorized profits from the bill rate (*i.e.*, the hourly rate it negotiated with MCOs and that was supposed to represent the costs of providing care). *Id.* ¶¶ 44–47. At this point, PPL did not know what its actual costs for administering CDPAP would be. *Id.* ¶¶ 48, 52. Although the bill rate was, as contemplated by the CDPAP contract, supposed to be for direct-care costs that flowed to caregivers, PPL intended to convert it into a pipeline for generating additional revenue, partly to make up for the misleading PMPM fee it had anchored its official RFP bid in and that, in its own words, was “recklessly low.” *Id.* ¶¶ 42–43, 48–52. PPL even boasted internally that it would have favorable negotiating power over the MCOs to obtain a higher bill rate because of its status as the sole FI for the state. *Id.* ¶¶ 43–45. Having secured the CDPAP contract by touting a deceptively low PMPM, PPL separately planned to lock in profits through manipulation of CDPAP’s non-PMPM revenue stream via the direct-care bill rate.

Once awarded the contract, and contrary to the contract documents and PPL’s own representations in its bid submission, PPL then secured a revenue stream from the “spread” by billing MCOs at a rate higher than the cost of compensating CDPAP caregivers for their services. *Id.* ¶¶ 64–66. This was *on top of* the new PMPM payment from the State. In fact, PPL did not just retain a revenue stream from the “spread,” but PPL actually tried to negotiate direct-care rates to MCOs that were *higher* than what the FIs had charged under the traditional system, *id.* ¶ 64, thus earning a greater margin for itself than what prior FIs had earned. The retention of a higher margin from the “spread,” in addition to the new PMPM payment from the State (which did not exist under the prior system other than in more limited circumstances) has led to an unauthorized windfall for PPL that continues to this day. *Id.* ¶ 66.

E. PPL's Other False Statements

PPL made, and continues to make, numerous other false and/or misleading statements relating to the CDPAP transition, including the following:

Misstatements During the RFP Process. In addition to fraudulent misstatements about the PMPM, PPL also made numerous misrepresentations concerning its ability to effectively execute the transition. PPL represented that it planned to hire qualified professionals with years of relevant experience, but PPL actually intended to (and did) hire temporary call center workers who lacked adequate experience and knowledge of how CDPAP worked. *Id.* ¶¶ 32–33, 90, 92–101. PPL also falsely represented that its in-house web platform PPL@Home provides a “streamlined business flow” that would enable a “seamless experience for all New Yorkers,” but in reality, PPL@Home did not even exist at the time of PPL’s bid submission and was therefore an unknown and untested platform. *Id.* ¶ 35. And PPL falsely represented it had a “financial capital structure plan” sufficient to cover the startup costs for the transition, when in reality it knew its finances were insufficient given its limited cash reserves. *Id.* ¶ 36. PPL had to seek private equity financing and also received large upfront payments from the state of New York and MCOs that were not contemplated by the contract in order to fund the transition costs. *Id.* ¶¶ 59–61, 117.

Misstatements About the Impact of the Transition and Changes to Caregiver Pay. After winning the contract, PPL falsely told the public and patients that patients’ access to care and eligibility would not change, and they would be able to keep their chosen caregivers. *Id.* ¶¶ 72–74. PPL also told caregivers that their eligibility and work requirements would not change. *Id.* ¶ 73. PPL knew these statements were false because PPL tracked registration data closely and knew that the transition was not proceeding according to the timeline necessary to effectuate a smooth transition. *Id.* ¶¶ 74–89. PPL also made broad assurances during the transition period that PPL would not alter the benefits packages for caregivers, even though PPL hid the specifics of caregiver

pay when individual caregivers asked about it during the enrollment period, telling caregivers that exact information would not be provided until after they enrolled. *Id.* ¶¶ 104–07.

Misstatements to MCOs about Bill Rates. While negotiating the bill rates with MCOs, PPL falsely claimed that DOH had formally approved the bill rates that PPL proposed to MCOs. *Id.* ¶¶ 64, 125c. PPL also falsely presented bill rates to MCOs as direct-care costs even though they were not actually direct-care costs flowing to caregivers, but included CDPAP administrative costs, and PPL did not know what many of the direct-care costs that it presented to MCOs actually would be. *Id.* ¶¶ 43–48, 52, 64–65, 125d.

Misstatements about Pre-Bid Communications. After the transition was completed, PPL made false statements at a public hearing, denying that PPL and DOH had any pre-bid discussions relating to the CDPAP contract. *Id.* ¶¶ 109–10. Although that testimony was later revised, the revised testimony was still misleading because it failed to clarify the extent of the pre-bid award communications. *Id.*

LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), the complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009). When considering a motion to dismiss, courts must accept all factual allegations stated in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Iqbal*, 556 U.S. at 679; *LaFaro v. New York Cardiothoracic Grp., PLLC*, 570 F.3d 471, 475 (2d Cir. 2009).

ARGUMENT

I. Section 1345 Does Not Require a Parallel Criminal Proceeding

Section 1345 authorizes the Attorney General to “commence a civil action in any Federal court” to “enjoin” the commission of “a Federal health care offense.” 18 U.S.C. § 1345(a)(1). This

is a civil action in which the United States seeks an injunction against PPL’s continued violations of 18 U.S.C. §§ 1035 and 1347, federal health care offenses. *See* 18 U.S.C. § 24. Therefore, Section 1345 is available here.¹

PPL argues that Section 1345 applies only where there is a parallel criminal proceeding pending or contemplated. Br. 16–19. The text of Section 1345 refutes that argument. The statute provides that a proceeding under Section 1345 “is governed by the Federal Rules of Civil Procedure, except that, ***if an indictment has been returned against the respondent***, discovery is governed by the Federal Rules of Criminal Procedure.” 18 U.S.C. § 1345(b) (emphasis added). Congress thus clearly contemplated that anti-fraud injunction suits may be brought and litigated against entities that are ***not*** under criminal indictment or part of a parallel criminal proceeding. Consistent with the plain language of Section 1345, the Department routinely brings anti-fraud standalone civil injunction actions under Section 1345—just like this one. *See, e.g., United States v. Palumbo*, 448 F. Supp. 3d 257, 263 (E.D.N.Y. 2020); *United States v. Rare Breed Triggers LLC*, 690 F. Supp. 3d 51, 123 (E.D.N.Y. 2023).

PPL’s arguments against the statutory language are unpersuasive, and its reliance on *United States v. Fang*, 937 F. Supp. 1186 (D. Md. 1996), is misplaced. In that case, the court—in an opinion granting a preliminary injunction and asset freeze—stated in a footnote that there could be a “theoretical problem” regarding a permanent injunction issued under Section 1345 freezing funds that was not followed by a criminal trial. *Id.* at 1197 n.11. Although that court apparently believed that a permanent asset freeze would be problematic, it did not consider or address the

¹ PPL states that it joins the other defendants’ argument that injunctive relief is not available because the government has not alleged ongoing or imminent injury. Br. 21 n.20. PPL’s attempt to incorporate additional, undeveloped arguments should be rejected as to PPL because they were presented in a cursory fashion. An argument presented in such a cursory fashion is “inadequate” to raise an issue. *Ide v. British Airways PLC*, 529 F. Supp. 3d 73, 82 (S.D.N.Y. 2021). In any event, the government respectfully refers to Argument Section A in its brief opposing the motion filed by the New York Defendants.

question at issue here: whether a criminal proceeding must be pending before an injunction suit under Section 1345 can be brought at all. The *Fang* court’s marginal, 30-year-old dicta on a hypothetical scenario that was not before it (and is not before this Court at present either) has nothing to do with what the statutory text here plainly authorizes.² Otherwise, PPL relies on cases discussing Section 1345 that presume the existence of a parallel criminal investigation, *see* Br. 17, but none of these decisions actually holds that Section 1345 is unavailable unless a criminal case is also pending.

Ultimately, PPL appears to concede that a civil proceeding under Section 1345 may be brought even if no indictment is *ever* filed, so long as there is a “criminal investigation” that is “contemplated.” Br. 21 (emphasis omitted). But PPL offers no reason why a *civil* remedy would be available only if a *criminal* investigation is initiated (even if no further action is taken). And if PPL believes that an investigation must advance to a certain point before the Department may utilize Section 1345, it offers no clue where the line is or how a court is supposed to adjudicate such a claim. Ultimately, PPL’s interpretation would require the Department to reveal nonpublic and largely privileged information about criminal investigations in order to make civil remedies under Section 1345 available. And it would require the Department to violate longstanding policy against revealing or commenting on the existence of criminal investigations prior to indictment in order to avail itself of Section 1345’s civil remedy. *See* Justice Manual, Section 1-7.400. The Court should not adopt a reading of the statute that requires such odd results.

PPL’s fearmongering about the “misuse” of Section 1345 without constitutional protections afforded to criminal defendants, *see* Br. 18–19, misses the mark. Constitutional safeguards available to criminal defendants are not required to enforce civil remedies in a civil

² Moreover, the solution to the problem identified in *Fang* would not be to dismiss the entire case at the outset, but instead to structure the relief differently.

proceeding—which carry a different set of due process safeguards, such as civil discovery. *See United States v. Brown*, 988 F.2d 658, 663 (6th Cir. 1993) (“Actions under section 1345 are civil prosecutions, rather than criminal prosecutions.”). Here, PPL has not been charged with any crime, Br. 18, so it is not facing the prospect of a criminal conviction or loss of liberty in this proceeding. Indeed, PPL’s entire argument on the availability of Section 1345 depends on the *absence* of any criminal proceedings against it. This is a civil action governed by the Federal Rules of Civil Procedure, which afford PPL all the procedural protections it is entitled to.

Ultimately, even if the court adopted PPL’s extra-textual reading of Section 1345 requiring that a “criminal investigation” have been “contemplated,” Br. 21, such an argument would be a factual defense relying on matters outside the complaint, which cannot be adjudicated on a motion to dismiss. And even if it were adjudicated, PPL’s motion pleads itself out of court on its own terms: It admits that the subpoena issued to PPL in February 2025 was “issued pursuant to DOJ’s authority set forth in 18 U.S.C. § 3486 of the Health Insurance Portability and Privacy Act (“HIPAA”).” Br. 14. But the only offenses that are part of DOJ’s authority to send a subpoena under Section 3486 are Title 18 offenses. 18 U.S.C. § 3486. PPL was therefore on notice from the outset of the investigation that it could have resulted in criminal enforcement. It is hard to understand PPL’s contrived argument that, despite the fact that PPL received a subpoena from a DOJ official investigating federal healthcare offenses under Title 18, a criminal investigation was never “contemplated.”³

II. The *Burford* Doctrine Is Inapplicable to Claims to Enjoin Violations of Federal Law

PPL next argues that this federal action asserting violations of federal law is barred by *Burford* abstention. That doctrine—which is “disfavored” even in cases in which it might apply,

³ PPL is not immune from criminal prosecution, *see* Br. 20, as it points to no source of such immunity.

Grace Ranch, L.L.C. v. BP Am. Prod. Co., 989 F.3d 301, 314 (5th Cir. 2021)—has no application or relevance here. PPL does not even attempt to explain how *Burford* applies to enforcement actions brought by the United States pursuant to a federal statute, 18 U.S.C. § 1345, over which Congress has given this Court original jurisdiction pursuant to another statute, 28 U.S.C. § 1345. PPL gets *Burford* abstention wrong by suggesting that the existence of a moderately complicated state regulatory scheme automatically precludes federal jurisdiction, but that is not the rule: “The task in abstention cases is not to find some substantial reason for the *exercise* of federal jurisdiction by the district court but rather to ascertain whether there exist ‘exceptional’ circumstances that can justify the *surrender* of that jurisdiction.” *United States v. Philip Morris USA*, 319 F. Supp. 2d 9, 13 (D.D.C. 2004).

No such exceptional circumstances even come close to existing in this case, primarily because “the presence of federal law issues must always be a major consideration weighing against abstention.” *Id.* This complaint was brought by the federal government as an enforcement action based solely on *federal* law and alleging ongoing violations in a *federal*-state healthcare program funded by *federal* tax dollars. Indeed, “[t]his case involves enforcement of a federal statute protecting the United States’ paramount sovereign interests, which New York’s administrative scheme does not address.” *Id.* And the Court should not adopt a theory of abstention that immunizes million-dollar fraud in programs funded by federal tax dollars.

Because *Burford* abstention cannot prevent the federal government from bringing enforcement actions based on federal law against private entities like PPL who are engaged in fraud schemes against federal programs—notably, the New York defendants do not even ask this Court to abstain under *Burford*—this Court need not even consider the *Burford* factors. However, those factors strongly favor the government here. *Burford* asks courts to consider whether there is an alternative state forum available and “[1] the degree of specificity of the state regulatory

scheme, [2] the necessity of discretionary interpretation of state statutes, and [3] whether the subject matter of the litigation is traditionally one of state concern.” *Planned Parenthood of Dutchess-Ulster, Inc. v. Steinhilber*, 60 F.3d 122, 127 (2d Cir. 1995).

Here, PPL fails at the outset because it does not identify a state adjudicative forum available for the federal government to bring this Section 1345 suit or anything like it. Indeed, the text of Section 1345 says that these actions are brought in federal court. 18 U.S.C. § 1345(a)(1). “*Burford* abstention requires the existence of a state administrative proceeding to which the federal court could defer.” *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 145 F.3d 238, 242 (5th Cir. 1998).

Regarding the first two numbered factors, the Government’s complaint does not ask the court to make (or interfere with) state policy or a state regulatory scheme, such as to determine what reasonable state reimbursement rates are, or to interpret state statutes. Rather, the case requires a determination, pursuant to applicable federal laws, regarding whether PPL is engaged in a scheme to defraud CDPAP—a program funded in large part by federal tax dollars. The required judicial determinations here do not depend on questions of state law or policy, even if the alleged misrepresentations and fraud happen to concern a state-run health benefit program and state contract. *See, e.g., Planned Parenthood of Dutchess-Ulster*, 60 F.3d 122 at 127; *Allstate Ins. Co. v. Elzanaty*, 916 F. Supp. 2d 273 (E.D.N.Y. 2013) (in insurance fraud case, finding that *Burford* abstention was not appropriate where the plaintiff was “not challenging any regulatory determinations or administrative action,” but rather was challenging a defendant’s “fraudulent conduct and its ability to receive no-fault reimbursement from the plaintiff”). The complaint in this case simply requires determinations as to whether PPL’s acts have violated generally applicable federal anti-fraud laws governing federally-funded health care programs.⁴

⁴ Unlike in *Bethphage Lutheran Serv., Inc. v. Weicker* (cited at Br. 22–23), the complaint here is not a rate dispute under state law. Despite PPL’s invective, the complaint does not seek to unwind the award of the CDPAP contract to PPL or for the court to establish rates for CDPAP.

Regarding the third factor, the subject matter of the litigation—fraud and misstatements involving a federally-funded healthcare program—is undoubtedly one of *federal* concern, not state. Far from seeking to prevent this Court from tackling difficult questions of state law—none of which are actually substantively implicated in Plaintiff’s claims—PPL seeks to transform *Burford* into a windfall that would shield PPL from liability.

III. The Complaint’s Fraud Allegations Are Sufficient

A. The Complaint Sufficiently Alleges Fraud in PPL’s RFP Response

The complaint sufficiently and plausibly alleges that PPL made numerous fraudulent statements in its RFP response. These statements concerned the profits PPL intended to make from the contract and PPL’s ability to carry out the transition. *See supra* Background §§ D, E. At the motion-to-dismiss stage, all reasonable inferences must be drawn in favor of the non-moving party. *LaFaro*, 570 F.3d at 475.

PPL’s sole argument regarding the sufficiency of these allegations is that the complaint does not plead “any factual allegations evidencing *a lack of intent to perform*,” Br. 24 (emphasis added), but instead merely alleges a “failure to perform,” *id.* at 27. That is false: the complaint alleges intentional and knowing false statements and misrepresentations that allowed PPL to secure and maintain the contract—regarding such core matters as PPL’s overall staffing plan, Compl. ¶¶ 32–33, technology infrastructure, *id.* ¶¶ 34–35, actually-expected completion timeframe for transitioning the program, *id.* ¶¶ 68–70, 74–76, and profit model for the transition, *id.* ¶¶ 40–44. Although this case involves a contract, it is not a breach-of-contract case. It is, at bottom, a garden-variety fraud case based on misrepresentations made to secure, maintain, and make money from a large public contract.

Bid Representations as to Costs: The complaint plausibly alleges that PPL falsely stated (and even certified) that the PMPM was its source of compensation for the contract, that it would

not be reimbursed by any other source for its services, and that the direct care costs would flow to the CDPAP caregivers. *See id.* ¶¶ 40–42. The complaint then proceeds to allege in substantial detail how—both before and after the RFP response was submitted—PPL was in fact internally modeling how it would earn profit from the bill rate to MCOs—which was inconsistent with the representations it made in the RFP response and contract. *See, e.g., id.* ¶ 43 (describing July 2024 PPL presentation that discussed “recklessly low bid” on PMPM and how PPL would need to earn “profit on the billable rate”); *id.* ¶ 46 (describing “[o]ther contemporaneous evidence” that supports plan to earn profits from the billable rate, including modeling in October 2024).

PPL argues these allegations fail because they are based on a “mistaken interpretation” of the RFP and contract. Br. 24–26. But this revisionary framework contradicts the complaint’s well-pled allegations that—according to the contract documents, *see, e.g.,* Compl. ¶¶ 38–39, DOH’s explicit intent, and the understanding of all other prospective bidders and industry observers, as well as PPL’s bid certification, *id.* ¶ 41—the FI was specifically foreclosed from using the bill rate to generate profits or cover its administrative costs, because the bill rate was supposed to provide reimbursement for “direct care” to the caregivers. *Id.* ¶¶ 38–40, 62–66. Likewise, the complaint plausibly alleges that PPL’s secret plan to exploit significant marginal profits from the CDPAP bill rate spread flouted the major fiscal premise of the new FI reimbursement system, as reflected in the contract documents—which expressly delineated a bright line between the PMPM and direct-care costs. *See id.*

The complaint plausibly alleges that, contrary to its representations in its RFP bid submission, PPL in fact schemed to exploit the direct-care rate by planning to extract prohibited profits from the billed rate, *id.* ¶¶ 43–47, and by engaging in speculative and contrived cost-accounting regarding the billable rate, *id.* ¶¶ 48–49, to further bolster PPL’s ability to cover its own administrative costs and generate profits.

Rather than pointing out a material contract provision that the government has somehow overlooked, PPL's self-serving arguments seek to supplant well-pled allegations of financial fraud and misstatements with a revisionary account of what the contract authorized. The court cannot dismiss the case at this juncture based on these arguments, because the court must draw inferences in favor of the government at this stage. *Iqbal*, 556 U.S. at 663–64; *Twombly*, 550 U.S. at 555–56; *LaFaro*, 570 F.3d at 475. DOH's contemporaneous, internal discussions criticizing PPL's apparent excess profit-seeking and questionable cost-accounting and classification tactics, *see* Compl. ¶¶ 63–65, are consonant with the complaint's allegations. That is, DOH employees internally sounded the alarm that PPL was attempting to do exactly what it was not permitted to do. *Id.* PPL offers a bombastic alternate version of these events, but those are factual disputes that need to be adjudicated on their merits, not on a motion to dismiss.

In any event, even if PPL had been contractually permitted to earn some marginal profit from the direct-care bill rate, the complaint would still state claims because it plausibly alleges that, in the context of the direct-care rate, PPL lied about what its costs of providing direct care actually were. *Id.* ¶¶ 48–49, 52. That is an even simpler fraud: PPL essentially told the MCOs and the State that it needed to bill a certain amount to cover a service, but the service actually cost PPL less than that. *Id.* In other words, PPL inflated the bills.

PPL's Other False Bid Representations: The complaint also plausibly alleges that PPL lied about its intentions with respect to other statements in its RFP response:

- PPL represented it would hire experienced professionals to staff the transition when “PPL ***planned*** to hire [call center temp workers] to actually conduct the transition.” *Id.* ¶ 33 (emphasis added); *see also id.* ¶ 125b(iii).
- PPL represented in its bid submission that its software platform would provide a “streamlined business process flow” even though the software “***did not even exist when PPL submitted its bid,***” and was instead “built . . . from scratch beginning in September 2024.” *Id.* ¶¶ 34–35 (emphasis added); *see also id.* ¶ 125b(i)

- PPL represented that its financial capital structure would support the necessary startup costs, even though “in reality, PPL *knew* that its finances were insufficient to launch or competently execute the contract on day one.” *Id.* ¶ 36 (emphasis added); *see also id.* ¶¶ 59–60, 125b(ii).

With respect to the misrepresentations about PPL’s financial readiness to perform the contract, the complaint alleges that, in October 2024, as reflected in a board presentation, PPL anticipated year-end cash reserves of only \$8.4 million and thus needed to pursue private equity financing to fund the CDPAP contract transition. *Id.* ¶ 36. PPL discounts this presentation because it post-dates the bid submission and because, according to PPL, the presentation actually shows it intended to fulfill the representations in its RFP response by, *e.g.*, discussing the capital needed to staff the transition. Br. 26. As an initial matter, the government does not claim that PPL had *no* intention of attempting to complete the transition to become the sole FI. Rather, the government alleges PPL made specific misrepresentations in its RFP response about its capabilities and specific aspects of its transition plan that it *knew* were not true. In any event, in urging the Court to adopt PPL’s self-serving gloss on the October 2024 presentation, PPL effectively asks the Court to weigh the evidence and find facts in its favor, which is not appropriate on a motion to dismiss. *LaFaro*, 570 F.3d at 475; *see also Iqbal*, 556 U.S. at 663–64; *Twombly*, 550 U.S. at 555–56.

Rather, at this stage, the Court must accept factual allegations in the complaint as true and draw reasonable inferences in the plaintiff’s favor. The complaint alleges that, within two months of representing in its RFP response that PPL had an adequate capital structure to fund the transition, PPL in fact was discussing how its limited, anticipated end-of-year cash necessitated equity financing. Compl. ¶ 36. The complaint further alleges that within three months of the bid submission, PPL requested upfront cash payments from the state of New York and MCOs that were not anticipated by the contract, for costs that were previously known to PPL. *Id.* ¶¶ 60–61, 117, 125b(ii). Based on these allegations and drawing inferences in favor of the government, the complaint adequately pleads that PPL fraudulently misrepresented its financial condition at the

time of the bid submission. *Iqbal*, 556 U.S. at 663–64; *Twombly*, 550 U.S. at 555–56; *LaFaro*, 570 F.3d at 475.

B. The Government’s Allegations Provide Fair Notice of an Ongoing Fraudulent Scheme and Thereby Satisfy Rule 9(b)

PPL next claims that the allegations that it made fraudulent statements during the CDPAP contract are too vague. Br. 27. “Rule 9(b) does not call for Plaintiffs to plead every conceivable fact about the claims they allege were fraudulent, or to prove its claims at the pleading stage.” *Marino v. Coach, Inc.*, 264 F. Supp. 3d 558, 568 (S.D.N.Y. 2017). Importantly, “Rule 9(b) does not require that each specific misrepresentation be identified where an ongoing fraudulent scheme is alleged.” *State Farm Mut. Auto. Ins. Co. v. James M. Liguori, M.D., P.C.*, 589 F. Supp. 2d 221, 237 (E.D.N.Y. 2008). In a case of such a “scheme to defraud,” a “detailed description of the underlying scheme” is all that is necessary to satisfy Rule 9(b). *Calabrese v. CSC Holdings, Inc.*, 283 F. Supp. 2d 797, 808 (E.D.N.Y. 2003).

The government has amply met its burden under Rule 9(b) to provide a detailed description of the underlying scheme, and PPL has fair notice of the Government’s claim. Where a fraudulent scheme is alleged over a period of time—as here—it is black-letter law that a detailed description of the overarching scheme is sufficient under Rule 9(b). In *State Farm*, the plaintiff, an insurance company, alleged that the defendant had submitted fraudulent billing claims for payment pursuant to the plaintiff’s insurance policies. The complaint included allegations about various categories of fraudulent billing and provided specific examples for each category. The court found that the allegations were sufficient under Rule 9(b) because the complaint “alleges the fraudulent statements, the speaker, and why the statements were allegedly fraudulent,” even if the “time and place of each statement[] is not clearly stated for each fraudulent claim.” 589 F. Supp. 2d at 237. The court reasoned that “[w]hile the complaint lists some but not all of the individual claims that

it alleges fall within the above-described categories . . . Rule 9(b) does not require that each specific misrepresentation be identified where an ongoing fraudulent scheme is alleged.” *Id.*

Here too, the complaint provides examples of the categories of the alleged fraudulent statements PPL made, includes the time periods in which they were stated, and explains why they were fraudulent:

- The complaint alleges that throughout late fall 2024 and January 2025, PPL engaged in negotiations with MCOs about direct-care bill rates and falsely told MCOs that DOH had approved the higher bill rates PPL proposed to MCOs, even though DOH had not approved the rates and the rates were in fact prohibited by contract. Compl. ¶¶ 64, 125c. The complaint also alleges that PPL falsely represented to MCOs that the bill rates PPL proposed represented its direct care costs, even though the proposed bill rates were not actually direct care costs flowing to caregivers and instead included CDPAP administrative costs and PPL did not actually know what many of the costs it presented to MCOs actually would be. *Id.* ¶¶ 64, 125c.
- The complaint alleges that between January and April 2025, PPL falsely and repeatedly told CDPAP patients, caregivers, and the public that patients’ care would not change, as evidenced by formal scripts and internal planning documents, even though PPL knew that the transition was not going well and could not be accomplished in three months, and would in fact result in disruptions to patient care. *Id.* ¶¶ 72–74, 125e.
- The complaint alleges that a PPL representative falsely testified under oath at a New York State Senate hearing in August 2025 that there were no pre-bid award discussions between PPL and DOH). *Id.* ¶¶ 110, 125d. The complaint further alleges that PPL then attempted to correct the statement but instead made another misrepresentation “that PPL had engaged in ‘general’ communications about CDPAP with New York.” *Id.* ¶ 125d.

It is unavailing for PPL to argue that “DOJ does not attribute a single fraudulent statement to any particular person at PPL.” Br. 27. The complaint identifies with precision multiple alleged fraudulent statements that PPL and its employees have made, including, for instance, the specific paragraph in a signed document where such statements have been made. *See, e.g.*, Compl. ¶¶ 40–42 (alleging PPL’s signed and certified PMPM bid was an actionable, fraudulent statement). Similarly, the complaint identifies with precision specific PPL employees who are implicated in relevant misrepresentations. *See, e.g.*, Compl. ¶ 35 (alleging that specific representation about PPL’s software in its bid submission was a fraudulent statement, as evidenced by a PPL executive

stating that the technology should not be emphasized, because it was a “brand new system”); *id.* ¶ 51 (citing a PPL CFO implicated in PPL’s discussions with potential lenders regarding PPL’s plan to pursue additional profit margins from the bill rate spread). These allegations are unlike those in the cases PPL cites, which involved hazy insinuations that someone, somewhere, has made a fraudulent statement yet lacking any more precise identification of the statements in question or who said them. Br. 27–28; *see, e.g., Negrete v. Citibank, N.A.*, 237 F. Supp. 3d 112, 122–23 (S.D.N.Y. 2017) (holding that vague attribution of fraudulent statement to entity without identification of specific statement did not satisfy Rule 9(b)).

Here, the complaint does not identify some names of individual speakers of the alleged fraudulent statements because those individual people have not been formally accused of wrongdoing by the government. However, the complaint identifies with particularity what the alleged misstatements were, whose employee made them, why they were false, the general time period in which they were made, and other relevant details—*i.e.*, a witness at a particular hearing in August 2025, individuals at PPL who were engaged in negotiations with MCOs regarding the bill rate in the fall of 2024 and early 2025, and individuals at PPL who engaged with the public regarding the status and effect of the transition in January through April 2025. From these allegations, PPL cannot possibly claim it does not understand the nature of the government’s claims or does not have fair notice of the wrongdoing alleged. *United States v. Wells Fargo Bank, N.A.*, 972 F. Supp. 2d 593, 615 (S.D.N.Y. 2013) (purpose of Rule 9(b) is to give “fair notice of a plaintiff’s claim and adequate information to frame a response”).

C. The Government Sufficiently Alleges Fraudulent Intent

PPL claims that the complaint does not allege facts demonstrating fraudulent intent. Br. 30–32. To survive a motion to dismiss, intent can be alleged generally. Fed. R. Civ. P. 9(b) (“Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”);

see also Iqbal, 556 U.S. at 686–87 (allegations regarding state of mind are subject to the “general short and plain statement of the claim mandate in Rule 8(a)”) (quotations and citation omitted). The complaint here satisfies the pleading requirements of Rule 9(b) because it plausibly alleges that PPL made statements to outside parties (MCOs, caregivers, patients, and the public) that it *knew* were false.

For instance, the complaint plausibly alleges that PPL made false statements to caregivers that there would be no changes to caregiver pay and benefits. Compl. ¶¶ 104–7. PPL argues that the complaint does not contain “facts supporting an inference [of] fraudulent intent” with respect to these statements. Br. 30–31. But the opposite is true. Specifically, the complaint alleges that PPL intentionally withheld specific information about pay from CDPAP caregivers prior to enrollment and told caregivers who called the call center that they could not be provided with precise information about pay rates until after enrollment. Compl. ¶ 105. At the same time, the complaint alleges PPL made broad assurances to caregivers (and patients) that there would be no changes to pay and thus no disruptions to care. *Id.* ¶ 106. By alleging PPL intentionally obfuscated when asked about caregiver pay from individual callers, the logical inference is that PPL knew (or was willfully blind to the fact that) its broad, generalized assurances that there would be *no* changes to caregiver pay were false.

With respect to the transition timeline, PPL claims that the complaint contains “no evidence, no facts” alleging that PPL knew its transition effort was “dead in the water.” Br. 31. But the government alleges that as early as late 2024, PPL knew completing the transition in April 2025 was likely impossible and that an extension would be needed to avoid disruptions to patient care. Compl. ¶ 68. The complaint includes detailed allegations about how PPL tracked granular enrollment data from January through March 2025, and was therefore well aware that the transition could not be completed on the intended schedule. *Id.* ¶¶ 75–89. Thus, the complaint plausibly

alleges PPL knew that there *would* be disruptions to patient care but made repeated false statements to the contrary, including by continuously obfuscating what its own rigorous internal data showed.

With respect to Defendant’s false statements as to its PMPM, PPL claims that the complaint lacks allegations that PPL knew the PMPM was false. Br. 31–32. But again, the complaint describes in detail (with quotations and screenshots) how PPL was well aware that the PMPM was “recklessly low” due to competition from other bidders, that the PMPM it proposed was *not* the sole source of profits it would seek from CDPAP, and instead intended to earn costs and profits from the direct-care rates it would bill to MCOs. Compl. ¶¶ 37–56.

As stated above, the complaint plausibly alleges PPL knew the proposed PMPM rate was “recklessly low” and that PPL was contemporaneously modeling how it would earn money from the bill rate to make up for it. *Id.* ¶¶ 43–46. These plausible allegations are the classic ingredients of a garden-variety public contracting scheme—win the contract by keeping costs artificially low “on paper” while making money in other, impermissible, less transparent ways. PPL’s scheme as alleged comprises both substantive fraud (to obtain hidden profits) and is strongly indicative of its scienter (to misrepresent and obscure the actual sources of its income). PPL’s reliance on a variety of factual matters to claim that the government has misinterpreted the contract are factual disputes that would require the Court to construe the complaint and the contract in PPL’s favor, not the government’s, which the Court cannot do on a motion to dismiss. *Iqbal*, 556 U.S. at 663–64; *Twombly*, 550 U.S. at 555–56; *LaFaro*, 570 F.3d at 475.

D. The Government Sufficiently Alleges Material Misstatements in Violation of Section 1035

PPL argues that the pervasive, significant lies and misrepresentations PPL is alleged to have made about the CDPAP contract are not actionable simply because DOH has been paying PPL. Br. 32–33. PPL is wrong. Although courts considering False Claims Act claims have looked

to whether the government knew certain requirements were violated and paid a claim anyway, *see* Br. 33, those cases are simply inapt here.

The FCA specifically prohibits false claims for *payment*; and thus, materiality in the context of the FCA focuses on what is material to the government’s decision to pay a claim. *See* 31 U.S.C. § 3729. But this is not an FCA case. Materiality under Section 1035 considers whether the statement has a “natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to which it is addressed.” *United States v. Alexander*, 270 F.4th 1303, 1312 (11th Cir. 2026) (citation and quotation omitted). A false statement can be material even if the decisionmaker knew or should have known the statement was false, as long as the statement was capable of influencing the decisionmaker. *Id.*; *United States v. Gaudin*, 515 U.S. 506, 509 (1995); *United States v. Whab*, 355 F.3d 155, 163 (2d Cir. 2004).

Here, the government has plausibly alleged PPL made numerous material misstatements, including as to the costs it would charge for its services (which was material to the RFP bid process), and as to the transition timeline and disruptions to patient care (which was undoubtedly material to both caregivers and patients). *See supra* Section III.A, III.B. To take one example, PPL’s PMPM bid of \$68.50 was the cornerstone of its bid submission, Compl. ¶¶ 40–41, and PPL’s internal discussions show that it understood that this PMPM figure would be a pivotal factor in how the bid would be scored, *id.* ¶¶ 40–43, 53–55—indeed, as alleged, this materiality is precisely why PPL underbid the PMPM while secretly scheming to generate profits through other methods. *Id.*

PPL’s materiality argument is misguided for at least two additional reasons. First, the complaint plausibly alleges that PPL’s fraud scheme has resulted in the misappropriation of many millions of tax dollars. That *New York* may have failed to date to rein in PPL’s misconduct vis-à-vis these federal funds can hardly be taken to demonstrate that the federal government has

acquiesced to, and so somehow authorized, the misconduct. (And it would be a strange and novel legal argument to contend that a state has the authority to bless violation of federal laws in this manner.) Second, the complaint plausibly alleges numerous ways in which PPL has intentionally misled New York through misstatements, including in concealing or falsifying material aspects of its CDPAP plan in exchanges with New York. *See, e.g., id.* ¶¶ 32–35, 74–76. Similarly, the complaint alleges that PPL has misrepresented its accounting of its actual direct-care costs to DOH and MCOs as a way to reverse engineer its way to greater profits. *Id.* ¶¶ 52, 54. DOH’s failures to date to crack down on the misconduct can hardly be taken to preclude this lawsuit. Two wrongs do not make a right—a private contractor cannot scheme with a state health department to raid a Medicaid program, and then point to the health department’s complicity in the scheme to argue that the lies were not material. And again, PPL’s arguments on this score would require the Court to construe the complaint in its favor and make factual findings, which the court cannot do on a motion to dismiss. *LaFaro*, 570 F.3d at 475.

IV. The Government Sufficiently Alleges a Conspiracy

PPL’s argument about the intra-corporate conspiracy doctrine is incorrect and is based on a misreading of the complaint. The complaint alleges a conspiracy between PPL and other individuals (including those within the New York state government)—*not* only between PPL and its own employees. *See generally* Compl. pages 8–45 (alleging in detail the “PPL-DOH Scheme”).

With respect to Count I (Section 1035 conspiracy), the complaint plausibly alleges that PPL conspired with DOH officials to make falsifications of material facts and/or false statements relating to CDPAP, including, *inter alia*, about the progress of the transition to PPL as the sole FI and the impact on patient care. *See, e.g., id.* ¶¶ 67–75, 80, 86–89. Similarly, with respect to Count II (Section 1349 conspiracy), the complaint alleges PPL conspired with individuals in the New York state government to be awarded the contract, defraud CDPAP, and/or obtain revenue from

the CDPAP program by means of false representations. For instance, the complaint alleges that DOH did not hold PPL to the terms of the contract and thus was complicit in PPL's fraudulent conduct to obtain unauthorized profits via the bill rate to MCOs. *See, e.g., id.* ¶¶ 62–66. And DOH employees were further complicit in providing PPL with upfront payments and transition assistance that were not contemplated by the contract. *Id.* ¶¶ 59–60, 131d, 131e. Moreover, the complaint alleges a classic example of conspiracy: PPL promised to keep its pre-bid coordination with New York a secret, *id.* ¶ 23, and then followed through on its unlawful agreement by falsely telling the New York State Senate that it had no communications with DOH prior to the bid, *id.* ¶ 110. Such an agreement is the hallmark of a conspiracy, and is plausibly pleaded.

V. The Government's Request for a Receiver Is Supported by the Statute

Section 1345 specifically authorizes a receiver to be appointed. 18 U.S.C. § 1345(a)(2)(B). In claiming that a receiver would be an “extraordinary remedy,” Br. 34, PPL relies on a case outside of the context of Section 1345, where the court's authority to appoint a receiver was based on its “historical equity powers” rather than statutory authorization. But here, there is a specific statutory authorization for this relief. If the government proves by a preponderance of the evidence, as it intends to, that PPL defrauded Medicaid, the government would be entitled to the appointment of a receiver. Such receivers have been repeatedly appointed in Section 1345 cases. *See, e.g., United States v. Khan*, No. 23-24497-CIV, 2023 WL 8711602, at *4 (S.D. Fla. Dec. 14, 2023). PPL identifies no authority for dismissing a request supported by a statutory authorization.

CONCLUSION

The Court should deny PPL's motion to dismiss in its entirety. However, if the Court finds that the pleading fails to satisfy Rule 9(b), the United States respectfully requests leave to amend its Complaint pursuant to Rule 15. “Complaints dismissed under Rule 9(b) are ‘almost always’ dismissed with leave to amend.” *Luce v. Edelstein*, 802 F.2d 49, 56 (2d Cir. 1986).

Dated: August 31, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, I caused the foregoing document to be served on all counsel of record through electronic mail.