



STATE OF NEW YORK  
SUPREME COURT CHAMBERS  
ALBANY COUNTY COURTHOUSE  
16 EAGLE STREET - ROOM 411  
ALBANY, NEW YORK 12207  
TELEPHONE: (518) 285-8597  
FACSIMILE: (518) 285-8215

E-MAIL: OCONNORCHAMBERS@NYCOURTS.GOV

HON. KIMBERLY A. O'CONNOR  
JUDGE

JUSTINA CINTRÓN PERINO, ESQ.  
LAW CLERK

DIANE K. DEYO  
SECRETARY

November 7, 2019

Cornelius D. Murray, Esq.  
O'Connell & Aronowitz  
54 State Street  
Albany, New York 12207

Re: *LeadingAge New York, Inc. v. Zucker, et al.*  
Index No.: 7319-19

Dear Counselor:

Enclosed is a signed Decision and Order in the above-referenced matter. The original is being forwarded to you for filing with the Albany County Clerk's Office.

Very truly yours,

Hon. Kimberly A. O'Connor  
Acting Supreme Court Justice

Enclosure

cc: David T. Luntz, Esq., David B. Morgen, Esq.  
David P. Johnson, Esq.  
Hinman Straub, PC  
121 State Street  
Albany, New York 12207

C. Harris Dague, Esq.  
Office of the Attorney General  
The Capital  
Albany, New York 12224

*In the Matter of the Application of*

LEADINGAGE NEW YORK, INC.; NEW YORK STATE HEALTH FACILITIES ASSOCIATION, INC.; SOUTHERN NEW YORK ASSOCIATION, INC.; GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION, INC.; HEALTHCARE ASSOCIATION OF NEW YORK STATE, INC.; CONTINUING CARE LEADERSHIP COALITION, INC.; BETHEL NURSING & REHABILITATION CENTER; CLOVE LAKES HEALTH AND REHABILITATION CENTER; BETHEL NURSING HOME COMPANY INC.; DAUGHTERS OF SARAH NURSING CENTER; EGER HEALTH CARE AND REHABILITATION CENTER; ISLAND NURSING AND REHAB CENTER; VICTORIA HOME; KIRKHAVEN; ISABELLA GERIATRIC CENTER; JEWISH HOME OF ROCHESTER; THE NEW JEWISH HOME, MANHATTAN; THE NEW JEWISH HOME, SARAH NEUMAN; PARKER JEWISH INSTITUTE FOR HEALTH CARE & REHAB; GURWIN JEWISH NURSING & REHABILITATION CENTER; RIVERLEDGE HEALTH CARE AND REHABILITATION CENTER; MAPLEWOOD HEALTH CARE AND REHABILITATION CENTER; ST. ANNS COMMUNITY; ST. CABRINI NURSING HOME; SAINTS JOACHIM & ANNE NURSING AND REHABILITATION CENTER; ST JOHNS HEALTH CARE CORPORATION; THE FRIENDLY HOME; THE VALLEY VIEW CENTER FOR NURSING CARE AND REHABILITATION; GLENDALE HOME-SCHDY CNTY DEPT SOCIAL SERVICES; WYOMING COUNTY COMMUNITY HOSPITAL SNF; BETHANY NURSING HOME & HEALTH RELATED FACILITY INC.; HILLSIDE MANOR REHABILITATION AND EXTENDED CARE CENTER; WINGATE AT ULSTER; CREST MANOR LIVING AND REHABILITATION CENTER; MIDDLETOWN PARK REHABILITATION AND HEALTH CARE CENTER; PUTNAM NURSING AND REHABILITATION CENTER; SKY VIEW REHABILITATION AND HEALTH CARE CENTER; WATERVIEW HILLS REHABILITATION AND NURSING CENTER; SALEM HILLS NURSING AND REHABILITATION CENTER; DIAMOND HILL NURSING AND REHABILITATION CENTER; SEAGATE NURSING AND REHABILITATION CENTER; THE NEW FRANKLIN REHABILITATION AND HEALTH CARE FACILITY;

**DECISION AND ORDER**

Index No.: 7319-19

RJI No.: 01-19-ST0658

SPLIT ROCK REHABILITATION AND HEALTH CARE CENTER; FORT TRYON REHABILITATION AND HEALTH CARE FACILITY; THE MAPLEWOOD NURSING HOME; WEDGEWOOD CARE CENTER, INC., d/b/a HIGHFIELD GARDENS CARE CENTER; THE CHATEAU AT BROOKLYN REHABILITATION AND NURSING CENTER; CORTLANDT HEALTH CARE; THE ENCLAVE AT PORT CHESTER REHABILITATION AND NURSING CENTER; THE GLENGARIFF HEALTH CARE CENTER; THE GRAND PAVILLION FOR REHABILITATION AND NURSING AT ROCKVILLE CENTRE; THE GROVE AT VALHALLA REHAB AND NURSING CENTER; THE HAMMOND REHABILITATION AND HEALTH CARE CENTER AT NESCONSET; THE PHOENIX NURSING AND REHABILITATION CENTER; THE RIVERSIDE; THE ROCKVILLE SKILL NURSING AND REHABILITATION CENTRE; THE SANS SOUCI REHABILITATION AND NURSING CENTER; ST. JAMES REHABILITATION AND HEALTH CARE CENTER; WATERS EDGE AT PORT JEFFERSON; SILVER LAKE SPECIALIZED REHABILITATION AND CARE CENTER; FOREST HILLS CARE CENTER; NEW EAST SIDE NURSING HOME; BERKSHIRE NURSING HOME; NEWFANE REHABILITATION AND HEALTH CARE CENTER; WINGATE AT DUTCHESS; BEDFORD CENTER FOR NURSING AND REHABILITATION; CROWN HEIGHTS CENTER FOR NURSING AND REHABILITATION; GREATER HARLEM/HARLEM CENTER; HAMILTON PARK NURSING AND REHABILITATION CENTER; LINDEN CENTER FOR NURSING AND REHABILITATION; BEACH GARDEN REHABILITATION AND NURSING CENTER; BROOKLYN GARDENS NURSING AND REHABILITATION CENTER; CATON PARK NURSING AND REHABILITATION CENTER; HEMPSTEAD PARK NURSING HOME; PARK NURSING HOME; TARRYTOWN HEALTH CARE CENTER; ALPINE REHABILITATION AND NURSING CENTER; NORWICH REHABILITATION AND NURSING CENTER; HIGHLAND REHABILITATION AND NURSING CENTER; UTICA REHABILITATION AND NURSING CENTER; SODUS REHABILITATION AND NURSING CENTER; AUBURN REHABILITATION AND NURSING CENTER; ORCHARD REHABILITATION AND NURSING CENTER; GOWANDA REHABILITATION AND NURSING CENTER; EDEN REHABILITATION AND NURSING CENTER; DUNKIRK REHABILITATION AND NURSING CENTER; HOUGHTON REHABILITATION AND NURSING CENTER;

YORKTOWN REHABILITATION AND NURSING CENTER; COSDEN LLC d/b/a PALATINE NURSING HOME; BROOKHAVEN REHABILITATION AND HEALTH CARE CENTER; NORTHERN MANHATTAN REHABILITATION AND NURSING CENTER; REGENCY EXTENDED CARE CENTER; ROCKAWAY CARE CENTER; YONKERS GARDENS CENTER FOR NURSING & REHABILITATION; SCHOFIELD RESIDENCE; PONTIAC NURSING HOME; BLOSSOM CENTER FOR NURSING AND REHABILITATION; FISHKILL CENTER FOR NURSING AND REHABILITATION; SAPPHIRE NURSING AND REHABILITATION CENTER AT GOSHEN; SAPPHIRE NURSING AT MEADOWHILL; SAPPHIRE REHABILITATION OF NORTHTOWNS; PARK GARDENS REHABILITATION AND NURSING CENTER; SAPPHIRE CENTER FOR NURSING AND REHABILITATION OF CENTRAL QUEENS; SAPPHIRE REHABILITATION OF SMITHTOWNS; SAPPHIRE NURSING OF WAPPINGER FALLS; WILLIAMSVILLE SUBURBAN SAPPHIRE NURSING AND REHABILITATION CENTER; CEDAR MANOR NURSING AND REHABILITATION CENTER; BETSY ROSS NURSING AND REHABILITATION CENTER; DUMONT CENTER FOR NURSING AND REHABILITATION; FRIEDWALD CENTER FOR REHABILITATION AND NURSING; KINGS HARBOR MULTICARE CENTER; HORIZON CARE CENTER; NEW SURFSIDE NURSING HOME d/b/a CORNING FAMILY NURSING AND REHABILITATION CENTER; NORTHWOODS REHABILITATION AND NURSING CARE CENTER AT MORAVIA; MEDFORD MULTI-CARE CENTER; MANHATTANVILLE HEALTH CARE CENTER; RESORT NURSING HOME; DRY HARBOR NURSING HOME; FOREST VIEW CENTER FOR REHABILITATION AND NURSING; WOODCREST REHABILITATION AND RESIDENTIAL HEALTH CARE FACILITY; WEST LAWRENCE CARE CENTER, LLC; AVON NURSING HOME; THE BRIGHTONIAN NURSING HOME; HAMILTON MANOR NURSING HOME; HORNELL GARDENS, LLC; THE HURLBUT NURSING HOME; THE LATTA ROAD NURSING HOME EAST; LATTA ROAD NURSING HOME WEST; NEWARK MANOR NURSING HOME; PENFIELD PLACE NURSING HOME; SENECA NURSING AND REHABILITATION CENTER; THE SHORE WINDS NURSING HOME; BAINBRIDGE NURSING & REHABILITATION CENTER; EAST HAVEN NURSING & REHABILITATION CENTER; MOSHOLU PARKWAY NURSING AND REHABILITATION CENTER; WAYNE

CENTER FOR NURSING AND REHABILITATION; THE GRAND REHABILITATION AND NURSING AT BARNWELL; THE GRAND REHABILITATION AND NURSING AT GUILDERLAND; THE GRAND REHABILITATION AND NURSING AT UTICA; THE GRAND REHABILITATION AND NURSING AT PAWLING; THE GRAND REHABILITATION AND NURSING AT QUEENS; THE GRAND REHABILITATION AND NURSING AT ROME; CHESTNUT PARK REHABILITATION AND NURSING CENTER; BUFFALO COMMUNITY HEALTHCARE CENTER; THE GRAND REHABILITATION AND NURSING AT SOUTH POINT; PARK TERRACE CARE CENTER; QUEENS NASSAU NURSING HOME; ADIRA AT RIVERSIDE REHAB & NURSING; BENSONHURST CENTER FOR REHABILITATION & HEALTHCARE; HILAIRE REHAB & NURSING; SMITHTOWN CENTER FOR REHAB & NURSING CARE; SPRAIN BROOK MANOR REHAB; GREENE MEADOWS NURSING & REHABILITATION CENTER; PREMIER GENESEE; LEROY VILLAGE GREEN RESIDENTIAL HEALTH CF INC.; PINE HAVEN HOME; BELLHAVEN CENTER FOR REHAB. & NURSING; WHITTIER REHAB. & SKILLED NURSING CENTER; BEACH GARDENS REHABILITATION AND NURSING CENTER; BRONX GARDEN REHABILITATION AND NURSING CENTER; THE PLAZA REHABILITATION AND NURSING CENTER; GRANDELL REHABILITATION AND NURSING CENTER; OCEANSIDE CARE CENTER; BEACH TERRACE CARE CENTER; ABSOLUT CARE AT ORCHARD PARK; ABSOLUT CARE OF WESTFIELD; ABSOLUT CARE OF ALLEGANY; ABSOLUT CARE OF AURORA PARK; ABSOLUT CARE OF GASPORT; MEADOWBROOK CARE CENTER; MEADOWBROOK HEALTHCARE; NEW YORK CENTER FOR REHABILITATION AND NURSING; EAST ROCKAWAY CARE CENTER D/B/A LYNBROOK RESTORATIVE THERAPY AND NURSING; EXCEL AT WOODBURY FOR REHABILITATION AND NURSING; FOREST MANOR CARE CENTER D/B/A GLEN COVE CENTER FOR NURSING AND REHABILITATION; LONG ISLAND CARE CENTER; MONTCLAIR CARE CENTER D/B/A EMERGE NURSING AND REHABILITATION CENTER; OASIS REHABILITATION AND CARE CENTER; QUANTUM REHABILITATION AND NURSING CENTER; SUFFOLK RESTORATIVE CARE AND NURSING CENTER D/B/A MOMENTUM AT SOUTH BAY; HAYM SOLOMON HOME FOR THE AGED; HIGHLAND CARE CENTER; OXFORD

NURSING HOME INC.; NEW CARLTON REHAB NURSING CENTER; LACONIA NURSING HOME; SCHERVIER NURSING CARE CENTER; BROOKSIDE MULTICARE CENTER; LITTLE NECK CARE CENTER; WHITE PLAINS CENTER FOR NURSING; ELCOR NURSING AND REHABILITATION CENTER; HUDSON VALLEY REHABILITATION AND EXTENDED CARE FACILITY; REGEIS CARE CENTER; WESTCHESTER CENTER FOR REHABILITATION AND NURSING; SPRING CREEK REHABILITATION & NURSING CARE CENTER; BUENA VIDA CONTINUING CARE AND REHABILITATION CENTER; BEZALEL REHABILITATION & NURSING CENTER; BEACON REHABILITATION AND NURSING CENTER; PELHAM PARKWAY NURSING CARE AND REHABILITATION FACILITY LLC; LAWRENCE NURSING CARE CENTER, INC.; WESTHAMPTON CARE CENTER; and ST. LUKE RESIDENTIAL HEALTH CARE FACILITY INC.,

Petitioners-Plaintiffs,

*for a Judgment Pursuant to Article 78 of the CPLR, and for Declaratory and Injunctive Relief*

-against-

HOWARD A. ZUCKER, M.D., J.D., as COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK; and THE NEW YORK STATE DEPARTMENT OF HEALTH,

Respondents-Defendants.

(Supreme Court, Albany County, Special Term)

---

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: O'CONNELL & ARONOWITZ  
*Attorneys for Petitioners-Plaintiffs*  
(Cornelius D. Murray, Esq., of Counsel)  
54 State Street  
Albany, New York 12207

HINMAN STRAUB P.C.  
*Attorneys for Petitioners-Plaintiffs*

(David T. Luntz, Esq., David B. Morgen, Esq.,  
and David P. Johnson, Esq., of Counsel)  
121 State Street  
Albany, New York 12207

HON. LETITIA JAMES  
Attorney General of the State of New York  
*Attorney for Respondents-Defendants*  
(C. Harris Dague, Esq., Assistant Attorney  
General, of Counsel)  
The Capitol  
Albany, New York 12224-0341

O'CONNOR, J.:

Petitioners-plaintiffs LeadingAge New York, Inc., New York State Health Facilities Association, Inc., Southern New York Association, Inc., Greater New York Health Care Facilities Association, Inc., Healthcare Association of New York State, Inc., and Continuing Care Leadership Coalition, Inc. are associations that represent the interests of a substantial number of the approximately 600 residential health care facilities (“nursing homes) in New York State, and petitioners-plaintiffs Bethel Nursing and Rehabilitation Center, Clove Lakes Health and Rehabilitation Center, Bethel Nursing Home Company Inc., Daughters of Sarah Nursing Center, Eger Health Care and Rehabilitation, et al. comprise over 100 nursing homes that receive Medicaid reimbursement to cover the cost of care for eligible individuals who reside in their facilities<sup>1</sup> (collectively “petitioners-plaintiffs”). Respondents-defendants Howard A. Zucker, M.D., J.D., Commissioner of Health of the State of New York, and New State Department of Health (“DOH”) (collectively “respondents-defendants”), are charged with administering New York State’s Medicaid Program and setting the Medicaid reimbursement rates for nursing homes.

Petitioners-plaintiffs commenced this hybrid CPLR Article 78 proceeding and declaratory judgment action to challenge a change in respondents-defendants’ methodology for adjusting

---

<sup>1</sup> The caption includes a complete list of the provider petitioners-plaintiffs in this proceeding and action.



nursing home Medicaid reimbursement rates, commonly known as the “case mix adjustment,” which was announced on October 9, 2019. Petitioners-plaintiffs have brought an Order to Show Cause (O’Connor, J.), dated October 24, 2019, seeking a preliminary injunction enjoining respondents-defendants, pursuant to CPLR § 7805 and § 6301, and pending a determination of this proceeding and action, from implementing the new case mix adjustment methodology they adopted effective July 1, 2019 and, instead, directing respondents-defendants to continue to use the method for calculating petitioners-plaintiffs’ Medicaid reimbursement rates that was in effect as of June 30, 2019. Respondents-defendants oppose the motion. Petitioners-plaintiffs have replied to the opposition.

Pursuant to CPLR § 7805, a court, on the motion of any party or on its own initiative, may stay the enforcement of an administrative determination under review pending the outcome of an Article 78 proceeding. Further, CPLR § 6301 provides that

[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

Notably, the fundamental purpose of a preliminary injunction is to preserve the status quo in an action and/or proceeding pending resolution of the merits of the underlying dispute (*see Bonnieview Holdings v. Allinger*, 263 A.D.2d 933, 934 [3d Dep’t 1999]; *Matter pf Heisler v. Gingras*, 238 A.D.2d 702, 703 [3d Dep’t 1997]; *see also Matter of Elmore v. Mills*, 296 A.D.2d 704, 705 [3d Dep’t 2002]), “and not to determine the ultimate rights of the parties” (*Cong. Machon Chana v. Machon Chana Women’s Inst., Inc.*, 162 A.D.3d 635, 637 [2d Dep’t 2018]).

“The decision to grant or deny a request for a preliminary injunction [is] committed to the sound discretion of the trial court” (*Schulz v. State of New York Executive*, 108 A.D.3d 56, 857 [3d

Dep't 2013]). The party seeking such relief must demonstrate: (1) a likelihood of ultimate success on the merits of the underlying action; (2) danger of irreparable injury in the absence of injunctive relief; and (3) a balance of equities in the party's favor (*see Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 [2005]; *Doe v. Axelrod*, 73 N.Y.2d at 750; *Laker v. Ass'n of Prop. Owners of Sleepy Hollow Lake, Inc.*, 172 A.D.3d 1660, 1663 [3d Dep't 2019]; *Biles v. Whisher*, 160 A.D.3d 1159, 1160 [3d Dep't 2018]; CPLR § 6301).

Upon a review of the record and after hearing oral argument on the motion, the Court finds that petitioners-plaintiffs have made the requisite showing for a preliminary injunction.

*Likelihood of Success on the Merits*

Petitioners-plaintiffs contend that the new Medicaid reimbursement methodology is arbitrary, capricious, and contrary to law because, among other things, respondents-defendants acted in violation of, and failed to comply with, the instructions provided by the Legislature in L. 2019, ch. 57, part G, § 9 (“workgroup mandate”) in implementing the change to the case mix adjustment effective July 1, 2019. Specifically, petitioners-plaintiffs assert that the respondents-defendants failed to provide the industry stakeholder workgroup with “recent case mix data and recent analyses conducted by the [DOH] with respect to the [DOH]’s implementation of the July 1, 2019 change in methodology, the [DOH]’s minimum data set collection process, and case mix adjustments authorized under [Public Health Law § 2808(2-b)(b)(ii)]” for its review prior making changes to the methodology. Furthermore, petitioners-plaintiffs submit that certain considerations the Legislature deemed relevant to any methodological change, i.e., to “promote a higher degree of accuracy in the minimum data set,” “target abuse,” and “ensure that the collection process and case mix adjustment recognizes the appropriate acuity for residential healthcare residents” are not addressed by the new methodology. Moreover, petitioners-plaintiffs maintain that it is apparent from the express language of the workgroup mandate and the accelerated timeframe for the

workgroup to report its findings that the Legislature intended for the workgroup to review the methodology and provide recommendations prior to a final determination by respondents-defendants of the methodology to be utilized; however, respondents-defendants moved forward to implement the new methodology without considering the recommendations of the workgroup.

Respondents-defendants assert that the Legislature did not impose a stakeholder workgroup veto upon the DOH or in any way require the workgroup's approval before DOH moved forward with implementing the new case mix calculation. Respondents-defendants further argue that the legislative workgroup mandate expressly acknowledges that the July 1, 2019 implementation of the new case mix calculation was already done, and that the workgroup was tasked with reviewing data after the change took place. Moreover, respondents-defendants submit that L. 2019, ch. 57, part G, § 9 "is rife with discretionary language."

A reading of the workgroup mandate together with the letters from the Senate Majority, the Chair of the Assembly Committee on Health, and the Assembly Minority Leader to the Governor and/or Director of the Budget, expressing concern with the implementation of the Medicaid reimbursement rate change without analysis and/or input from the workgroup, lend support to petitioners-plaintiffs' claim that respondents-defendants acted in violation of, and failed to comply with, the instructions provided by the Legislature in L. 2019, ch. 57, part G, § 9 in implementing the new case mix adjustment methodology adopted effective July 1, 2019. Thus, petitioners-plaintiffs have demonstrated a likelihood of success on the merits, and the Court need not reach their additional arguments in this regard.

#### *Irreparable Harm*

Next, petitioners-plaintiffs argue that the petitioner-plaintiff facilities and association member facilities along with their residents and employees will suffer immediate and irreparable injury absent the granting of injunctive relief. Respondents-defendants maintain that petitioners-

plaintiffs’ “irreparable harm is based solely on conclusory allegations of pecuniary loss and theoretical potentialities regarding service cuts and facility closures.”

“Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient” (*Di Fabio v. Omnipoint Communications, Inc.*, 66 A.D.3d 635, 636-637 [2d Dep’t 2009]). Furthermore, “[t]he prospect of irreparable harm must be ‘imminent, not remote or speculative’” (*White v. F.F. Thompson Health Sys., Inc.*, 75 A.D.3d 1075, 1077 [4th Dep’t 2010], quoting *Golden v. Steam Heat*, 216 A.D.2d 440, 442 [2d Dep’t 1995]). Notably, irreparable injury may be demonstrated by the loss of “important employees” (*see generally, Urban Archaeology Ltd. v. Dencorp Investments, Inc.*, 12 A.D.3d 96, 105 [4th Dep’t 2004]), or the “inability to continue paying the salaries of . . . staff” (*Gambar Enters. v. Kelly Servs.*, 69 A.D.2d 297, 307-308 [4th Dep’t 1979]). Additionally, being “forced to close down [an] . . . operation entirely” and the loss of “established clients” constitutes irreparable harm (*Quinones v. Bd. of Mgrs. of Regalwalk Condominium I*, 242 A.D.2d 52, 57 [2d Dep’t 1998]).

In support of their motion, petitioners-plaintiffs have proffered, among other things, the sworn affidavits of eighteen petitioner-plaintiff facility administrators explaining, in detail, the impact the \$246 million Medicaid reimbursement rate cut will have on their operations, including the reduction of staff, the elimination of programs and services, the inability to meet obligations to creditors, and, in at least one case, facility closure, all of which will adversely affect and compromise the delivery and quality of care provided to their residents. Petitioner-plaintiffs have also submitted the sworn affidavits of the Executive Director and President and Chief Operating Officer of two petitioner-plaintiff associations averring that their member facilities will be unable to meet collectively bargained wage and benefit increases if the rate cut is implemented, one of which took effect on October 1, 2019 and another of which is to take effect on December 1, 2019. Contrary to respondents-defendants claims, such harm is not simply pecuniary in nature, or remote

and speculative. As such, petitioners-plaintiffs have sustained their burden of showing irreparable injury in the absence of injunctive relief.

*Balancing of the Equities*

Finally, a balancing of the equities “involves an inquiry whether the irreparable injury to be sustained . . . is more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction” (*Felix v. Brand Serv. Group LLC*, 101 A.D.3d 1724, 1726 [4th Dep’t 2012])[internal quotation marks and citation omitted]. Although respondents-defendants argue that enjoining implementation of the new case mix adjustment methodology “will permit potential fraud and waste . . . to persist to the detriment of New York’s taxpayers of potentially tens of millions of dollars,” protection of the public fisc is already afforded by the Office of the Medicaid Inspector General (“OMIG”), under the Public Health Law and DOH’s regulations. Indeed, the OMIG was created specifically to prevent, detect and investigate fraud and abuse within the Medicaid Program (*see* Public Health Law § 31[1]), and is empowered to address abuse in the case mix system through its audit function (*see* 10 NYCRR § 86-2.40[m]). Moreover, weighing the harm caused to petitioners-plaintiffs by implementing the new case adjustment methodology against protecting New York taxpayers from potential fraud, the Court finds that the equities favor granting the injunction to maintain the status quo pending a final determination of this proceeding and action.

For these reasons, petitioners-plaintiffs’ motion is granted. Any remaining arguments not specifically addressed herein have been considered and found to be lacking in merit, or need not be reached in light of this determination.

Accordingly, it is hereby

**ORDERED**, that petitioners-plaintiffs’ motion is granted; and it is further

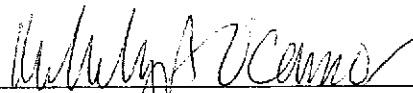
**ORDERED**, that pending a final determination of this proceeding and action, respondents-defendants are enjoined from implementing the new case mix adjustment methodology they adopted effective July 1, 2019, and are directed to continue to use the method for calculating petitioners-plaintiffs' Medicaid reimbursement rates that was in effect as of June 30, 2019.

This memorandum constitutes the Decision and Order of the Court. The original Decision and Order is being forwarded to the attorneys for petitioners-plaintiffs for filing. A copy of the Decision and Order is being forwarded to the Office of the Albany County Clerk. All papers are being retained by the Court pending a final determination. The signing of this Decision and Order and delivery of a copy of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule with respect to filing, entry, and notice of entry of the original Decision and Order.

**SO ORDERED.**

**ENTER.**

Dated: November 7, 2019  
Albany, New York



---

HON. KIMBERLY A. O'CONNOR  
Acting Supreme Court Justice

Papers Considered:

1. Order to Show Cause (O'Connor, J.), October 24, 2019; Summons and Notice of Petition, dated October 24, 2019; Verified Petition and Complaint, dated October 24, 2019, with Exhibits A-G annexed; Affidavit in Support of Order to Show Cause of Stephen B. Hanse, sworn to October 24, 2019, with Exhibits A-J annexed; Affidavit of Carl Pucci, sworn to October 23, 2019, with Exhibits A-B annexed; Affidavit of Neil Heyman, sworn to October 22, 2019; Affidavit of Michael Balboni, sworn to October 23, 2019; Affidavit of Anastasios Markopoulos on behalf of Petitioner-Plaintiff Bethel Nursing & Rehabilitation Center, sworn to October 22, 2019, with Exhibits A-H annexed; Affidavit of Anastasios Markopoulos on behalf of Petitioner-Plaintiff Bethel Nursing Home Company, sworn to October 22, 2019, with Exhibits A-H annexed; Affidavit of Mark L. Koblenz on behalf of Petitioner-Plaintiff Daughters of Sara Nursing Center, sworn to October 22, 2019, with Exhibits A-B annexed; Affidavit/Affirmation of David Rose on behalf of Petitioner-Plaintiff Eger Health Care

- and Rehabilitation Center, sworn to October 22, 2019, with Exhibits A-H annexed; Affidavit of David Fridkin on behalf of Petitioner-Plaintiff Island Nursing and Rehabilitation Center, sworn to October 22, 2019, with Exhibits A-H annexed; Affidavit of Anne R. Gallese on behalf of Petitioner-Plaintiff Kirkhaven, sworn to October 21, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Alexander Balko on behalf of Petitioner-Plaintiff Isabella Geriatric Center, sworn to October 23, 2019, with Exhibits A-H annexed; Affidavit of Michael S. King on behalf of Petitioner-Plaintiff Jewish Home of Rochester, sworn to October 21, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Marie Rosenthal on behalf of Petitioner-Plaintiff Jewish Home Lifecare, Manhattan, sworn to October 23, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Sandra Mundy on behalf of Petitioner-Plaintiff Jewish Home Lifecare Sara Neuman Center, Westchester, sworn to October 23, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Michael N. Rosenblut on behalf of Plaintiff Parker Jewish Institute for Health Care and Rehabilitation, sworn to October 21, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Stuart B. Almer on behalf of Petitioner-Plaintiff Gurwin Jewish Nursing & Rehabilitation Center, sworn to October 22, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Bonita Burke on behalf of Petitioner-Plaintiff Cabrini of Westchester d/b/a St. Cabrini Nursing Home, sworn to October 23, 2019, with Exhibits A-H annexed; Affidavit of Charles K. Runyon on behalf of Petitioner-Plaintiff St. John's Health Care Corporation, sworn to October 22, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of Laurence LaDue on behalf of Petitioner-Plaintiff The Valley View Center for Nursing and Rehabilitation, sworn to October 23, 2019, with Exhibits A-H annexed; Affidavit of Terrence Gorman on behalf of Petitioner-Plaintiff St. Luke Residential Health Care Facility Inc., sworn to October 21, 2019, with Exhibits A-E annexed; Affidavit/Affirmation of CEO Stephen E. Knight on behalf of Petitioner-Plaintiff United Helpers Canton Nursing Home Inc. (Maplewood Health Care and Rehabilitation Center), sworn to October 21, 2019, with Exhibits A-H annexed; Affidavit/Affirmation of CEO Stephen E. Knight on behalf of Petitioner-Plaintiff United Helpers Nursing Home Inc. (Riverledge Health Care and Rehabilitation Center), sworn to October 21, 2019, with Exhibits A-H annexed; Memorandum of Law in Support of Motion for Preliminary Injunction and in Support of Verified Petition and Complaint, dated October 24, 2019;
2. Affirmation of C. Harris Dague, Esq., dated October 30, 2019, with Exhibit 1 annexed; Memorandum of Law in Opposition to Motion for Preliminary Injunction, dated October 30, 2019, with Exhibit 1 annexed; *and*
  3. Reply Memorandum of Law in Further Support of Motion for Preliminary Injunction, dated October 31, 2019.