APL-2019-00172

To be argued by:
ERIC LEE
15 minutes requested

Court of Appeals
State of New York

In the Matter of the Application of

PEOPLE CARE INCORPORATED d/b/a ASSISTED CARE,

Petitioner-Respondent,

against

THE CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION; and ROBERT DOAR, in his official capacity as Administrator of the City of New York Human Resources Administration and Commissioner of Social Services,

Respondents-Appellants.

REPLY BRIEF

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PRELIMINARY STATEMENT

People Care's brief confirms over and over again that the majority below erred in annulling HRA's audit. As DOH's agent, HRA had the authority to audit and recoup on DOH's behalf the $7 million in Medicaid funds disbursed under the parties' contract, because the contract, which DOH approved, expressly empowered HRA to do so.

Nevertheless, People Care attempts to square a circle, arguing that HRA indeed has broad authority to audit and recoup Medicaid funds, just not the Medicaid funds at issue here. But in doing so, People Care fails to address, much less correct, the flaws in the majority's decision below. The company points to nothing in the contract that restricts HRA's authority. Nor does the company explain why it accepted HRA's oversight and even allowed HRA to audit the funds in dispute, until it tried to avoid scrutiny of a planned financial maneuver that later landed the company in hot water with federal investigators.

People Care thus hangs its hat on distorting the statute that appropriated the disputed funds and a related memorandum of understanding between DOH and HRA. Putting aside the oddity of People Care lecturing the agencies about an agreement that they

crafted and a statute entrusted to DOH to administer, neither the statute nor the memorandum of understanding supports the company's position. The statute underscores that the Legislature sought to stave off providers like People Care from profiting from the funds meant strictly for workers, while preserving DOH's discretion and HRA's existing authority to root out such behavior. And the memorandum of understanding is consistent with this legislative intent.

Under the guise of defending DOH's authority from an allegedly wayward HRA, People Care invokes a contrived formalism to stymie the agencies' coordinated efforts to defend Medicaid's fisc instead. People Care does not care about the niceties of Medicaid administration; the company is simply trying its best to evade accountability and keep the money that it would otherwise have to repay. Adopting People Care's arguments would inflict lasting damage to how DOH and HRA hold Medicaid providers accountable. This Court should reverse.

ARGUMENT

POINT I

AS AN AGENT OF DOH, HRA POSSESSES THE AUTHORITY TO AUDIT AND RECOUP THE MEDICAID FUNDS IN DISPUTE

A. The parties' contract, which DOH approved, empowers HRA to act.

Despite People Care's attempts to sow confusion, this case is straightforward. This Court has long recognized that local social services districts like HRA "act on behalf of and as agents for the State" in the administration of public assistance. *Beaudoin v. Toia*, 45 N.Y.2d 343, 347 (1978); Soc. Serv. L. (SSL) § 56; N.Y.C. Charter § 603. For decades, as a way to curb Medicaid fraud and ensure cost-effective care, DOH has authorized HRA to use its contracting process to set tailored payment rates for each of its 60 or so Medicaid providers of personal care services (R65, 145-52). This rate-setting authority consists of two functions: setting a fixed, cost-based profit margin and enforcing that margin through diligent oversight (*id.*). Accordingly, under its contracts with its providers, HRA may audit and recoup any unspent or misspent funds on DOH's behalf (R71-79, 93, 97, 104-05, 107).

Here, HRA disbursed the $7 million in disputed funds to People Care as a revised payment rate under their contract (R55-56, 157). In anticipation of its audit, HRA instructed People Care how to account for the funds in its books (R57, 159-65). In response, People Care not only accepted the new rate, but also sent HRA certified financial statements regarding the funds for the very audit at issue here (R57, 77, 896, 933, 970, 1007, 1041, 1074, 1107, 1143).

People Care has never disputed these basic, dispositive facts because it can't. Yet rather than accept the obvious—that funds disbursed under a contract granting HRA the authority to audit and recoup are subject to that authority—People Care has chosen to hide the ball instead.

Tellingly, People Care mostly skips over the parties' contract (Resp. Br. 4-20). People Care also carefully elides how the funds in dispute were disbursed (*id.*). And People Care entirely neglects to explain its own damning course of conduct, where it consented to HRA's oversight, as it always had, from the moment it received the funds and

through the audit, until doing so threatened to expose its ill-conceived plans for the money (*id.*).[1]

As a result, People Care musters just three-and-a-half pages of evasive and puzzling arguments on the contract, even though the contract squarely governs this dispute (Resp. Br. 29-32). The company's poor showing isn't surprising. Because People Care concedes that HRA possesses broad authority to audit and recoup under the contract (R1291-92), the company is forced to contend that the funds in dispute, although disbursed under the contract, should be carved out as an exception. None of its arguments in support of this strained contention withstand scrutiny.

First, the record belies People Care's argument that the funds were not a part of the contract's payment rate (Resp. Br. 29-31). When the funds became available, HRA notified People Care in writing, in accordance with their contract, that its rate had been recalculated, but that the formula (based on the agency's DOH-approved alternative rate

[1] At the very end of its brief, People Care obliquely references this issue by insisting that it didn't waive its objections to the audit (Resp. Br. 37-38). But the chief import of People Care's actions is that its objections are contrived: the company's audit preparations showed its acceptance of HRA's authority.

methodology) remained the same (A77, 157). HRA explained that the rate's two labor components—one for direct wages and the other for indirect labor costs—would increase, but that the profit component would stay the same because Public Health Law (PHL) § 2807-v, the statute appropriating the funds, barred providers like People Care from profiting from the funds in any way (*id.*). People Care did not object to the new rate, and the rate became final and binding upon notification (R77).

People Care's insistence that the contract predates PHL § 2807-v thus misses the point, because the contract laid out a process (that HRA followed) by which its rate could change. Had People Care truly believed that the funds should not have been disbursed under the contract, it would (and should) have immediately objected, as the contract permitted it to do (R77), when HRA explained the change, or at the very least, when HRA first paid the funds.

Second, People Care's cursory argument that the funds can't be audited because they weren't included in the company's budget is similarly meritless (Resp. Br. 29-30). Contrary to People Care's assertion, the contract doesn't limit HRA's auditing and recoupment

authority to funds in People Care's budget. Instead, as part of the audit process, once HRA determines which costs are reasonable, necessary, and in line with the contract, HRA may audit and recoup any payments made to People Care in excess of the allowable costs (R71, 75-76).

People Care's crabbed understanding of HRA's authority makes no sense, particularly when the contract separately provides that HRA is entitled to audit and recoup any misspent "[f]unds"—defined broadly as money or anything of value given to People Care by either DOH or HRA (R72). For example, HRA may audit and recoup funds used for any expenses not incurred in the company's performance of its contractual obligations (R78-79, 97, 98, 99, 105, 107, and 126). HRA may also audit and recoup funds used for any expenses that violate the contract, including when "[f]unds received through the component" of direct labor costs—the bulk of the funds in dispute here—are used for purposes other than direct labor costs (*id.*).

Third, People Care has now adopted the Appellate Division majority's argument that HRA was deprived of its authority to audit and recoup the funds because DOH purportedly changed its "method of reimbursement," or how People Care would be paid, after the

Legislature appropriated the funds (Resp. Br. 31-32). But as we pointed out in our opening brief (App. Br. 42-45), this argument, invented out of whole cloth, suffers from multiple flaws, none of which People Care even attempts to address.

Significantly, this argument stumbles at the starting gate. There was no change in the method of reimbursement: the contract provides that the "method of reimbursement" is "through MMIS," the State's claims management and payment system for Medicaid providers (R47-48, 73-74), and when informing People Care about the rate increase, HRA confirmed that DOH would continue to reimburse the company through MMIS (R157). But even if one assumes that DOH had suddenly changed its claims management system, such a change wouldn't have "exempt[ed] [the funds] from HRA's contractual audit and recoupment authority" (R1292). By requiring the additional funds be disbursed through a provider's contractual rate, PHL § 2807-v merely allowed People Care to pay its frontline workers more (which the company unfortunately failed to do). The rate increase did not change the parties' fundamental contractual arrangement in any way, no matter how the funds may have been processed at the back end by DOH.

Finally, in a single, brief paragraph, People Care half-heartedly argues that if this Court were to find its contractual arguments lacking (and they are), this Court should adopt, as an "alternative ground," Supreme Court's suggestion that the contract is unenforceable because it purportedly contravenes PHL § 2807-v by depriving DOH of its auditing and recoupment authority (Resp. Br. 32). But as we explained in our opening brief (App. Br. 36-38), the common law doctrine invoked by Supreme Court is designed to prevent the judicial system from enforcing criminal contracts, which makes it utterly irrelevant here. Nor would upholding the contract deprive DOH of its auditing and recoupment authority, because the contract has only ever provided HRA with concurrent authority alongside the authority of DOH. By seeking to nullify a decades-old administrative and regulatory arrangement, it is People Care that seeks to override and constrain DOH's chosen methods for protecting the public fisc.

People Care's arguments about the contract are ultimately unconvincing because they can't be squared with the facts: the contract's terms, the broader regulatory backdrop DOH created that shaped the contract, HRA's course of conduct, and the company's very

own. Because DOH channeled, HRA disbursed, and People Care accepted the disputed funds under the contract, the agency had every right—under the same contract—to audit and recoup those funds.

B. People Care's reliance on Public Health Law § 2807-v and the memorandum of understanding is unavailing.

To salvage its case, People Care is quick to turn to PHL § 2807-v and the memorandum of understanding. Yet neither can bear the weight that People Care places on them.

1. The statute does not prohibit HRA from auditing and recouping the disputed funds.

People Care insists that "DOH has power to audit and recoup" the Medicaid worker retention funds earmarked under PHL § 2807-v (Resp. Br. 24). But of course DOH does. The relevant question is instead something else: whether the Legislature intended to displace the longstanding regime of parallel state and local authority, by barring DOH from allowing its local agents, such as HRA, to exercise their pre-existing concurrent authority under their own DOH-approved contracts with providers. Nothing People Care points to demonstrates that the Legislature intended such a disruptive result.

Critically, DOH, whose regulatory turf People Care purports to be protecting, has repeatedly endorsed HRA's interpretation of the statute. In 2009, when People Care first reversed its position on the audit's legality, DOH informed HRA that because the statute provided that earmarked funds were "Medicaid payments to Medicaid providers" disbursed under HRA's contracts, the funds were subject to HRA's existing and longstanding auditing and recoupment process (R176). In 2017, the State's Chief Financial Officer for Medicaid reaffirmed that position in a sworn affidavit, explaining that the DOH's authority under the statute ran concurrently with HRA's rate-setting authority (granted by DOH under the personal care services regulations), which inherently includes the power to audit and recoup (R59, 217).[2] In fact, DOH has not only accepted the untold millions of dollars in earmarked and other Medicaid funds that HRA has recouped from its providers every year,

[2] People Care argues that these statements can't be treated as DOH's "official agency position" because the employee who first confirmed HRA's authority was a mere "associate attorney," and the Chief Financial Officer who later reaffirmed it lacked legal training (Resp. Br. 35). The company is grasping at straws. The Chief Financial Officer's involvement alone speaks for itself, which is why People Care doesn't question his authority, but chooses to go after his qualifications instead.

but has recognized HRA's authority by declining to separately audit any of HRA's providers (R65, 217).

People Care nevertheless argues that the Legislature's failure to amend the statute in response to the Appellate Division's earlier decision in 2011 suggests that the Legislature agrees with the company (Resp. Br. 22-23). But People Care is wrong, and its decision to rely on legislative inaction, "a weak reed [to lean on] in determining legislative intent," is revealing. *People v. Thomas*, 33 N.Y.3d 1, 12 n.9 (2019) (citation and internal quotation marks omitted).

For one, the Appellate Division in 2011 never resolved whether HRA had the authority to audit and recoup the earmarked Medicaid funds. Instead, the court held that Supreme Court erred in dismissing the petition on procedural grounds and thus remanded the matter for further proceedings. *See Matter of People Care Inc. v. City of New York Human Resources Admin.*, 89 A.D.3d 515, 516 (1st Dep't 2011).

This case is also unlike the cases cited by People Care, where good reason existed to consider legislative inaction (Resp. Br. 22-23). Here, there is nothing to suggest that the Legislature was even aware of the Appellate Division's 2011 decision. *Cf. Orinoco Realty Co. v. Bandler*,

233 N.Y. 24, 31 (1922). Nor did the Legislature fail to act on a specific proposal that would have changed a well-settled interpretation adopted uniformly across the State or by this Court. *Cf. Desrosiers v. Perry Ellis Menswear, LLC*, 30 N.Y.3d 488, 497 (2017); *Knight-Ridder Broadcasting Co. v. Greenberg*, 70 N.Y.2d 151, 157 (1987).

Upon closer inspection, the three amendments to the statute that People Care references actually support our position: that this Court should be wary of relying on "legislative silence to infer significant alterations of existing law." *Cruz v. TD Bank, N.A.*, 22 N.Y.3d 61, 72 (2013). PHL § 2807-v, a nearly 20,000-word statute entitled "Tobacco control and insurance initiatives pool distributions," simply enumerates how, and in what amounts, the Legislature spends money from that pool. Since the Appellate Division's 2011 decision, the Legislature has continued to use the statute this way.

It thus defies belief that the Legislature, in a laundry list of appropriations, intended to work a major change in Medicaid administration by upsetting DOH's well-established procedure of carrying out its auditing and recoupment responsibilities through HRA, its local agent in the City. After all, DOH has long had the ability to

delegate to its local social services districts. *See Beaudoin*, 45 N.Y.2d at 347; *see, e.g.,* SSL §§ 17(a), 20(2)(b), 20(3)(a), 34(3)(d). Indeed, People Care concedes that HRA has the authority to audit and recoup all other Medicaid funds distributed under their contract, even though state statutes are silent as to whether local districts have such authority.[3] People Care's reliance on "the failure of the Legislature" to add a "provision expressly authorizing" local districts to audit and recoup is thus "unpersuasive," which is precisely why courts put little stock in legislative inaction in the first place. *New York State Ass'n of Life Underwriters v. New York State Banking Dep't*, 83 N.Y.2d 353, 363 (1994).

Moreover, because People Care invites us to do so (Resp. Br. 31), it is worth considering the consequences of its proposed interpretation of

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[3] Similarly, despite People Care's insinuation otherwise (Resp. Br. 28), finding for HRA wouldn't require this Court to override DOH's auditing and recoupment regulations. Those regulations recognize that local agencies like HRA can have concurrent authority to audit and recoup. *See* 18 NYCRR § 517.1(b) (noting that "[a]udits and reviews conducted pursuant to this Part do not preclude the department or any other authorized governmental body or agency from taking any other action with respect to the provider," including other audits and recoupment efforts); *id.* § 518.1(d) (noting that recovery of overpayments "may be made in connection with an audit, review or investigation under Part 515 or 517 of this Title, or in connection with other reviews or audits by authorized local, State or Federal agencies available to the department").

PHL § 2807-v and whether they accurately reflect the statute's intent and purpose. *See Matter of Anonymous v. Molik*, 32 N.Y.3d 30, 37-41 (2018) (reversing because the Legislature could not have intended an "absurd result"); *N.Y. State Ass'n of Crim. Def. Lawyers v. Kaye*, 96 N.Y.2d 512, 519 (2001) (noting that "courts have repeatedly rejected" statutory interpretations "antithetical to legislative objectives"). They do not.

Judging by its consequences, People Care's interpretation of PHL § 2807-v would undercut legislative intent. This Court has recognized that DOH has the "inherent authority" to protect the Medicaid program because "the public must be assured" that funds "for providing medical services to the needy will not be fraudulently diverted into the hands of an untrustworthy provider." *Medicon Diagnostic Labs., Inc. v. Perales*, 74 N.Y.2d 539, 545 (1989). PHL § 2807-v(1)(bb)(iii) reflects this paramount concern, as it specifically provides that any DOH recoupment "shall be in addition to any other penalties provided by law." Adopting People Care's interpretation would hamper DOH's ability to enforce the statute. It would sideline HRA, the agency equipped to scrutinize its providers' spending, while forcing DOH to

conduct one-off audits of certain funds (calculated and disbursed by HRA under HRA's own formula), despite DOH's unfamiliarity with the full context of a provider's operations.

Make no mistake: needlessly bifurcated audits for each of the 60 or so providers in the City are exactly what People Care is pitching on appeal. People Care's contention that PHL § 2807-v must be read to exclude the disputed funds from HRA's audits of Medicaid funds is all the more absurd when one considers DOH's relationship to the disputed funds. According to People Care, DOH can't audit the disputed funds *under its own regulations* because the funds weren't appropriated under a statute codified in the Social Services Law (Resp. Br. 26). And People Care insists that DOH can't audit the rest of the funds received under the contract because they weren't distributed under DOH's statewide formula, but under HRA's local formula (Resp. Br. 27).

Nothing in the statute warrants this bizarre interpretation: that DOH can only protect (1) the funds in dispute solely on its own in an ad hoc matter and (2) the rest of the funds solely through HRA under HRA's procedures. *See People v. Santi*, 3 N.Y.3d 234, 242 (2004). The Legislature would never deliberately create such a rigid, hermetically

sealed system of oversight, in a general appropriations statute no less, when the Legislature expressly limited the use of the earmarked funds to bar providers from abusing the money.

Finally, People Care's mention of the Homecare Worker Demonstration Program is a red herring (Resp. Br. 24-25). Unlike the disputed funds here, which were paid under HRA's formula in the parties' contract, the Demonstration Program funds were paid under a separate agreement, between just DOH and People Care (R56-57, 217-18). Because HRA was not a party to that agreement and played no role in administering those funds, HRA ultimately declined to audit them, a decision DOH endorsed (R179, 217-18). Not surprisingly, the Demonstration Program statute, unlike PHL § 2807-v, makes no mention of "other penalties" in addition to DOH recoupment. *See* SSL § 367-o.

At the end of the day, this Court has long recognized that the authority to audit is inherent in the Legislature's designation of DOH as the chief administrator of Medicaid, and that DOH has wide latitude to exercise that authority when determining which "standards and procedures" are most suitable to achieve its goals. *Mercy Hosp. of*

Watertown v. New York State Dep't of Social Servs., 79 N.Y.2d 197, 204 (1992). HRA's and DOH's interpretation of PHL § 2807-v is consistent with that understanding. By contrast, People Care seeks to rewrite the statute and upset decades of accepted administrative practices by insisting that the auditing and recoupment of the funds in dispute can only ever be done by DOH and DOH alone, when the statute says no such thing.

2. The memorandum of understanding does not deny HRA the necessary auditing and recoupment authority.

People Care's cursory arguments about the memorandum of understanding fare no better. The company concedes that the memorandum addresses the computation and distribution of the earmarked funds (Resp. Br. 32). Yet, seizing on a whereas clause in the memorandum that states DOH "may audit" HRA's providers (R154), People Care insists that the memorandum overrode HRA's existing auditing and recoupment authority, even as the company admits that the whereas clause isn't a binding contractual term (Resp. Br. 33-34). People Care also alludes to the memorandum's merger clause for

support (*id.* at 34), even though that clause supports only HRA's position.

Once again, People Care overworks the text. The memorandum states the obvious: that DOH, if it wishes, may audit the earmarked funds (R154). It hardly purports to preclude HRA from exercising its delegated auditing and recoupment authority, upsetting the decades-old arrangement between the two agencies. And the merger clause poses no obstacle either. Because the memorandum simply covers computation and distribution, HRA audits and recoupments don't (and can't) "affect or interfere" with DOH's or HRA's "full compliance" with the memorandum (R154).

The record makes plain that, consistent with PHL § 2807-v, the memorandum served the limited purpose of explaining how the earmarked funds would be parceled out to HRA's providers (R153-55). Even so, People Care evidently believes that because two Social Services statutes permit DOH to delegate auditing power by interagency agreement, the absence of such a delegation from this particular memorandum signals DOH's intention to deprive HRA of auditing power delegated through other avenues (Resp. Br. 28-29).

Putting aside that what DOH can do and what DOH did here are two different things, and that People Care believes the earmarked funds aren't part of the Social Services legal universe (Resp. Br. 26), the statutes that People Care cites are inapplicable. As explained in our opening brief (App. Br. 45), those statutes address how DOH works with other state agencies, not how DOH manages its matters with its own local agents, a fact that People Care simply ignores. Indeed, the company admits that HRA has had the authority to audit Medicaid funds without a formal memorandum of understanding, much less one executed in accordance with those statutes.

* * *

Because the Legislature appropriated the earmarked funds to increase HRA's contractual Medicaid rates for its personal care services providers, HRA had the authority—under a contract approved by DOH—to audit and recoup the funds from People Care. The statute appropriating the funds and the memorandum of understanding between DOH and HRA cohere, rather than clash, with this reality. The statute expressly provides that the funds are for HRA's "Medicaid rates of payment." PHL § 2807-v(1)(bb)(i). And the memorandum of

understanding repeatedly states that the funds constitute "Medicaid rate adjustments" for HRA's providers (R153-55). Neither curtailed HRA's authority to audit and recoup, which is why DOH has repeatedly endorsed and ratified the fruits of that authority year after year, and why even People Care accepted HRA's authority without question for this audit until it was no longer expedient to do so.

POINT II

HRA RATIONALLY SOUGHT TO RECOUP THE DISPUTED FUNDS FROM PEOPLE CARE

People Care doesn't dispute that if this Court correctly concludes that HRA had the authority to act, any substantive challenge to the audit can only be heard under the dispute resolution procedures agreed to by the parties in the contract (Resp. Br. 34-38; App. Br. 47; R119-23). Because People Care never invoked those procedures, this Court should reverse and dismiss the petition (R1296).

In any event, even if this Court were to consider the details of the audit in question, HRA acted rationally in seeking to recoup the $7 million. Crucially, People Care also doesn't dispute that HRA's decision to audit and recoup the funds as part of its annual audit cycle was

rational (Resp. Br. 34-38). After all, DOH and HRA administer the personal care services program under Medicaid on an annual basis (App. Br. 47-48). And the statute in no way restricts how or when the government can audit these funds, a decision well within agency discretion. *See Mercy Hosp.*, 79 N.Y.2d at 204.

Thus, in a noticeable retreat, People Care resorts to swiping at the audit in its statement of facts, suggesting that HRA fumbled the audit because the company received a portion of the funds in question some months late (into the next fiscal year) (Resp. Br. 14). This complaint is baseless. HRA has consistently audited *well after* the calendar year when Medicaid funds were disbursed and the fiscal year subject to audit. In fact, HRA conducted the audit here, for the 2003 and 2004 fiscal years, in 2008, years after People Care had received the $7 million in earmarked funds in full (R167-74). Accordingly, HRA has never required providers to spend money that "they have not yet received" (Resp. Br. 14).

Finally, People Care concedes that it spent the disputed funds on an employee stock ownership plan, but insists that its decision to do so should have no bearing here because HRA raised this issue after the

audit, and the facts about the employee stock ownership plan are outside of the record (*id.* at 36-37). These procedural arguments are meritless.

To be clear, HRA had every right under its rate-setting authority to demand that the $7 million be returned as part of its regular auditing and recoupment procedures, even before HRA learned about People Care's scheme to divert the money into an employee stock ownership plan. People Care held onto the funds for years, without using them in the years that they were allocated to help the company's frontline personal care services workers (R167-74). By doing so, People Care violated PHL § 2807-v and the contract, both of which barred the company from treating the funds as its own income or profit.

But how People Care eventually spent the $7 million is relevant here because it reinforces why HRA properly treated the funds as it treats all Medicaid funds, which must be accounted for or returned on an annual basis to stave off mischief and abuse. Instead of using the funds for higher wages and concrete benefits as the Legislature intended, People Care used the funds, along with millions of additional earmarked funds every year since, so its former owners could sell the

company for $80 million to an employee stock ownership plan (R208-09; *see* App. Br. 49-50). *See Douglin v. GreatBanc Trust Co.*, 115 F. Supp. 3d 404, 408 (S.D.N.Y. 2015), *adopted by* 115 F. Supp. 3d 404 (S.D.N.Y. 2015).

Notably, it was People Care, not HRA, who first made this an issue. In its article 78 petition, People Care defended its decision to hoard the $7 million on the grounds that it was planning to use the funds, well after the years they were allocated, to underwrite an employee stock ownership plan (R208-09). Because People Care completed this questionable transaction "years after the audit" (Resp. Br. 3), HRA had no reason to raise it during the audit as an additional basis to justify the recoupment.

Although People Care continues to pretend that the employee stock ownership plan truly served the workers and was designed with only their best interests in mind (Resp. Br. 37), the publicly known facts about this financial maneuver, which People Care doesn't dispute and this Court can take judicial notice of, suggest otherwise (App. Br. 49-50). People Care also conveniently fails to mention that when it sought another Medicaid contract and HRA inquired about the employee stock

ownership plan and the related federal investigation to ensure responsible procurement, the company sued to enjoin the agency from learning more.[4] When People Care lost, it chose to withdraw its bid rather than answer HRA's questions, actions that hardly signify confidence about the propriety of the transaction or what the federal government uncovered.

HRA acted rationally in seeking to audit and recoup the $7 million on DOH's behalf because the agency has long known that requiring its providers to account for their funds and ordering them to return any unused funds through annual audits is the best way to ensure that taxpayers' dollars are properly spent or reallocated to good use. Here, People Care never used the funds, in the years they were allocated, for the exclusive benefit of its frontline workers as it had promised and as the Legislature had decreed. This Court should sustain HRA's audit and require People Care to return the $7 million in Medicaid funds.

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[4] *See* Decision filed on May 20, 2015, by Justice Mills, in *Matter of People Care v. City of New York Human Resources Admin.*, New York County Supreme Court Index No. 100501/15.

CONCLUSION

This Court should reverse the Appellate Division's order, deny People Care's article 78 petition, vacate the injunction, and dismiss the proceeding.

Dated: New York, NY
April 22, 2020

Respectfully submitted,

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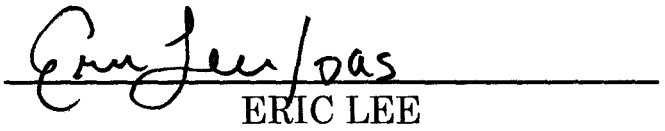
CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word 2010, and according to that software, it contains 4,897 words, not including the table of contents, the table of cases and authorities, the statement of questions presented, this certificate, and the cover.



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