

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

SAFE HAVEN HOME CARE, INC.,	)	
EVERGREEN HOMECARE SERVICE	)	
OF NY INC., ELIM HOME CARE	)	
AGENCY, LLC, DHCARE	)	Civil Action No.:
HOMEHEALTH, INC., SILVER LINING	)	
HOMECARE AGENCY, AND ANGEL	)	
CARE, INC.	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
XAVIER BECERRA, in his official	)	
capacity as Secretary of the United States	)	
Department of Health and Human Services,	)	
UNITED STATES CENTERS FOR	)	
MEDICARE & MEDICAID SERVICES,	)	
CHIQUITA BROOKS-LASURE, in her	)	
official capacity as Administrator of the	)	
U.S. Centers for Medicare and Medicaid	)	
Services, NEW YORK STATE	)	
DEPARTMENT OF HEALTH, MARY T.	)	
BASSETT, in her official capacity as	)	
Commissioner of the New York State	)	
Department of Health, BRETT R.	)	
FRIEDMAN, in his official capacity as	)	
Medicaid Director of the New York State	)	
Department of Health	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs are Licensed Home Care Services Agencies (“LHCSAs”) providing home care services to Medicaid beneficiaries residing in New York State and bring this complaint for declaratory and injunctive relief against Defendants United States Department of Health and Human Services (“HHS”), United States Centers for Medicare & Medicaid Services (“CMS”),

New York State Department of Health (“NYSDOH”), and associated officials. In support thereof, Plaintiffs state the following:

### INTRODUCTION

1. As part of the American Rescue Plan Act, Congress provided additional funding for Medicaid Home and Community-Based Services (“HCBS”) during the COVID-19 emergency.

2. New York State’s Medicaid Program estimates that this funding represents \$2.15 billion of additional federal funds to support Medicaid HCBS in New York.

3. The NYSDOH is tasked with implementing these funds, which must also be matched by equivalent New York State funds. Its spending plan, as well as specific directed-payments it makes under its spending plan, must be pre-approved by Defendant CMS.

4. The NYSDOH’s first directed payment request to CMS was to approve \$361 million to be distributed among LHCSAs providing Medicaid services in New York.

5. Rather than distribute the funds equitably among providers, however, the NYSDOH decided to give *all* the money to 212 specific LHCSAs out of approximately 800 LHCSAs, based solely on one factor—which were the biggest.

6. Some LHCSAs were even big enough to receive multiple awards, as there are 235 awards for the 212 LHCSAs, an average of more than \$1.7 million per LHCSA.

7. CMS approved the NYSDOH’s request and the funding is set to go out on March 31, 2022 to the managed care plans, to be handed over to the 212 LHCSAs in April.

8. CMS’ approval of the NYSDOH’s first directed payment is in violation of the Medicaid Statute as the payment is not “made on an actuarially sound basis,” *see* 42 U.S.C. § 1396b(m)(2)(A)(iii), and is also contrary to CMS’ own regulations which require, among other

things, that directed payments be made “equally, and using the same terms of performance, for a *class of providers* proving the service under the contract.” 42 C.F.R. § 438.6(c)(2)(ii)(B) (emphasis added).

9. If these funds are distributed as planned, the largest providers in New York—those already winning the market share battle—will be given hundreds of millions of dollars to “fund recruitment, retention, and training for personal care aides, home health aides, and nurses,” all but assuring that many smaller providers (who often cater to culturally, racially, and ethnically diverse populations) will be put out of business.

10. This lawsuit seeks to stop that from happening.

### **JURISDICTION AND VENUE**

11. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 as this action arises under the American Rescue Plan Act, Pub. L. No. 117-2, the Medicaid Statute, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702 and 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. The Court has personal jurisdiction over all Defendants because they are exercising their challenged official duties in this District.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (e).

### **PARTIES**

13. Plaintiffs are home care services agencies that are licensed pursuant to New York Public Health Law § 3605.

14. Plaintiff Safe Haven Home Care, Inc. is a LHCSA, located at 105-26 Flatlands 1<sup>st</sup> Street, Brooklyn, New York 11236. It was organized as a corporation in the State of New York

in October of 2008, and it provides services in the following counties: Bronx, Kings, New York, Queens, and Richmond.

15. Plaintiff Evergreen Homecare Service of NY Inc. is a LHCSA, located at 149<sup>th</sup> Pl, Flushing, New York 11354. It was organized as a corporation in the State of New York in May of 2014 and it provides services in the following counties: Bronx, Kings, New York, Queens, Richmond, and Westchester.

16. Plaintiff Elim Home Care Agency, LLC is a LHCSA, located at 4131 163<sup>rd</sup> St Fl 1, Flushing, New York 11358. It was organized as a corporation in the State of New York in January of 2013 and it provides services in the following counties: Bronx, Kings, Nassau, and Queens.

17. Plaintiff DHCare Homehealth, Inc. is a LHCSA, located at 172-15 Hillside Ave, Jamaica, NY 11432. It was organized as a corporation in the State of New York in October of 2014 and it provides services in the following counties: Bronx, Kings, Nassau, New York, Queens, and Richmond.

18. Plaintiff Silver Lining Home Care Inc. is a LHCSA, located at 1115 Avenue U, Brooklyn, New York 11223. It was formed as a corporation in the State of New York in October of 2012, and it provides services in the following counties: Bronx, Kings, Nassau, New York, Queens, and Richmond.

19. Plaintiff Angel Care, Inc. is a LHCSA, located at 1580 Dahill Road, 2<sup>nd</sup> Floor, Brooklyn, New York 11204. It was organized as a corporation in the State of New York in February of 2010, and it provides services in the following counties: Bronx, Kings, Nassau, New York, Queens, and Richmond.

20. Defendant United States Department of Health and Human Services is a federal cabinet-level department tasked with administering federal healthcare statutes. It is headquartered at 200 Independent Avenue, S.W., Washington, DC, 20201.

21. Defendant Xavier Becerra is Secretary of HHS and is sued in his official capacity. Secretary Becerra's office is maintained at HHS headquarters in Washington, DC.

22. Defendant United States Centers for Medicare & Medicaid Services is an agency within HHS that is responsible for administration of the Medicare and Medicaid programs. It is headquartered at 7500 Security Boulevard, Baltimore, Maryland, 21244.

23. Defendant Chiquita Brooks-Lasure is Administrator of CMS and is sued in her official capacity. Administrator Brooks-Lasure's office is maintained at CMS headquarters in Baltimore, Maryland.

24. Defendant New York State Department of Health is the single-state agency in New York responsible for administering New York's Medicaid program. It is headquartered at Corning Tower, Empire State Plaza, Albany, NY 12237.

25. Defendant Mary T. Bassett is the Commissioner of the NYSDOH and is sued in her official capacity. Commissioner Bassett maintains her office at NYSDOH's headquarters in Albany, NY.

26. Defendant Brett R. Friedman is the Medicaid Director of the NYSDOH and is sued in his official capacity. Director Friedman maintains his office at NYSDOH's headquarters in Albany, NY and submitted NYSDOH's request to CMS for approval of NYSDOH's first directed payment.

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