

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
ANTITRUST BUREAU

In the Matter of

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of  
Affordable Senior Care of New York LLC;  
Laszlo Friedman, Respondents.**

Assurance No. 23-009

**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation, pursuant to Section 343 of the New York General Business Law and Section 63(12) of the New York State Executive Law, into potentially anticompetitive conduct in the homecare industry. As part of its investigation, the OAG, among other things, interviewed numerous market participants, gathered and analyzed relevant market data, and reviewed documents and information produced by market participants.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by Affordable Senior Care of New York LLC (“Affordable”) and Laszlo Friedman (“Friedman”), and the OAG (collectively “Parties”).

**OAG’S FINDINGS**

1. Affordable Senior Care of New York LLC is engaged in the homecare business as a Fiscal Intermediary within the Consumer Directed Personal Assistance Program (“CDPAP”). Affordable has its principal place of business in Brooklyn, New York.
2. Laszlo Friedman is the owner of Affordable and resides in Brooklyn, New York.

3. Many chronically ill, and/or physically disabled patients who need care may prefer to be taken care of in the comfort and familiarity of their own home. They may also have trusted and caring family members or friends that look after them. Many of these patients that need long-term care participate in a Medicaid program that allows a patient's family member or a close friend to serve as a caregiver at the patient's home and be compensated for their time.

4. The Consumer Directed Personal Assistance Program is a New York State Medicaid program that enables chronically ill or physically disabled patients who have a medical need for assistance with activities of daily living or skilled nursing services to choose their caregivers, enabling those caregivers to receive wages paid out of Medicaid funds.

5. As part of CDPAP, patients who want to hire a family member or friend to take care of them work with Fiscal Intermediaries (defined below) to accomplish this. In a competitive market, patients can choose among several different Fiscal Intermediaries to work with based on the services and compensation provided to a patient and their caregiver.

6. A Fiscal Intermediary plays an important role in the care and well-being of chronically ill or physically disabled patients within the Consumer Directed Personal Assistance Program ("CDPAP"). A Fiscal Intermediary is an entity that handles the timesheet processing, payments to a patient's caregivers, and other administrative functions on behalf of patients.

7. Fiscal Intermediaries compete with each other by trying to recruit and retain patients and their selected caregivers. This allows the Fiscal Intermediary to collect payments from Managed Care Organizations to pay the patient's caregiver and use the margin for administrative costs and profit. Fiscal Intermediaries differentiate themselves principally by the effective hourly wages paid to a patient's caregiver. In a competitive market, a patient would be

incentivized to move to a competing Fiscal Intermediary that pays the caregiver a higher hourly wage.

8. Affordable and Fiscal Intermediary 2 (“FI-2”) are competing Fiscal Intermediaries in the homecare industry that work with and have their own sets of patients and patient caregivers that participate in Medicaid funded homecare services.

9. On or about and between January, 2018 and at least until September, 2018, Laszlo Friedman on behalf of Affordable Senior Care, and FI-2, agreed that neither company would take each other’s existing patients, i.e., if a patient from Affordable requested a transfer to FI-2, FI-2 would reject that patient and vice versa.

10. Agents of Affordable and FI-2, carried out the unlawful agreement using telephone calls and text messages.

11. As a result of this unlawful agreement, certain vulnerable long-term care patients and their selected caregivers were rejected when they tried to move to a competing Fiscal Intermediary. Affordable and FI-2 denied certain vulnerable patients and their caregivers the ability to choose alternative services and/or higher wages.

12. Affordable and FI-2 also exchanged information about the hourly rates they were paying caregivers.

13. The OAG finds that Affordable and Laszlo Friedman, through the above-described conduct, entered into a contract, agreement, arrangement or combination restraining competition in violation of General Business Law § 340 *et seq.* (the “Donnelly Act”) and Executive Law § 63(12).

**PROSPECTIVE RELIEF**

WHEREAS, each of Affordable and Laszlo Friedman neither admit nor deny the OAG's Findings in paragraphs (1)-(13) above;

WHEREAS, Affordable and Laszlo Friedman provided meaningful cooperation to the OAG during the course of the investigation;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation; and

WHEREAS, Affordable, Laszlo Friedman, and the OAG each believe that the obligations imposed by this Assurance are prudent and appropriate:

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Affordable, Laszlo Friedman, and the OAG that:

14. Affordable and Laszlo Friedman shall not engage in unlawful collusive or anticompetitive conduct.

15. Affordable and Laszlo Friedman shall not enter or attempt to enter into any unlawful collusive or anticompetitive agreements with a competitor, including, but not limited to, unlawful agreements to refrain from competing for patient/caregiver clients.

16. Affordable and Laszlo Friedman shall not exchange any competitively sensitive information with a competitor, including, but not limited to, information about wages or benefits paid to caregivers, absent a non-pretextual legitimate business justification for doing so.

17. Affordable shall implement an antitrust compliance program consisting of the following:

a. Within ten (10) calendar days of execution of this Assurance, Affordable shall communicate with all its management and executive personnel to (i) inform them

that Affordable has executed this Assurance and (ii) outline the conduct prohibited by this Assurance.

b. Within thirty (30) calendar days of execution of this Assurance, Affordable shall develop, implement, and administer an antitrust compliance program for its management and executive personnel to ensure compliance with the terms and conditions of this Assurance. The antitrust compliance program shall include at least an annual training. The training program shall be conducted by outside counsel or an outside consultant, as appropriate, at the expense of Affordable.

c. Within sixty (60) calendar days of execution of this Assurance, Affordable shall provide the OAG with a sworn statement confirming that it has taken the steps required to comply with this Assurance and describing the substance of the antitrust compliance program (the "Certification"). The Certification shall include the information contained in the communications to management and executive personnel and a copy of the antitrust compliance program materials.

d. For each of the five years following the execution of this Assurance, on the anniversary of the date of this Assurance, Affordable shall provide the OAG with an annual report of the status of its antitrust compliance program.

18. For each of the five years following the execution of this Assurance, on the anniversary of the date of this Assurance, Affordable and Laszlo Friedman shall each provide the OAG with a written certification affirming under penalty of perjury, their compliance with the requirements set forth in this Assurance ("Assurance Certification"), signed by Laszlo Friedman and an executive from Affordable for their respective certifications.

19. Affordable expressly agrees and acknowledges that a default in the performance of any obligation in paragraph 17 is a violation of the Assurance, and that the OAG thereafter may commence any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 37, pursuant to Executive Law § 63(15).

20. Affordable shall submit itself to antitrust oversight by the OAG as follows:

a. Affordable shall retain all records relating to its obligations under this Assurance, including copies of all correspondence, emails, and memoranda communicating to all its management and executive personnel its obligations pursuant to this Assurance. Affordable shall, upon thirty (30) days' written notice from the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

b. Affordable shall, upon request by the OAG, permit the OAG to interview, either informally or on the record, Affordable's officers, owners, employees, or agents, who may have their individual counsel present, regarding compliance with this Assurance. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Affordable.

21. Affordable agrees that it will pay by wire transfer, payable to the State of New York, a Monetary Relief Sum of Three Hundred Fifty Thousand Dollars (\$350,000) in penalties, no later than 10 (ten) business days from the effective date of this Assurance, or as otherwise agreed to in writing by the Parties.

22. Laszlo Friedman agrees that he will pay by wire transfer, payable to the State of New York, a Monetary Relief Sum of Fifty Thousand Dollars (\$50,000) in penalties, no later

than 10 (ten) business days from the effective date of this Assurance, or as otherwise agreed to in writing by the Parties.

23. Any payments and all correspondence related to this Assurance must reference Assurance # 23-009. The OAG shall provide wiring instructions to Affordable and Laszlo Friedman on or before the date the OAG countersigns this Assurance.

### **MISCELLANEOUS PROVISIONS**

24. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Affordable and Laszlo Friedman and their counsel and the OAG's own factual investigation as set forth in Findings (1)-(13) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

25. If the Assurance is voided or breached, Affordable and Laszlo Friedman agree that any civil statute of limitations or other time-related defenses applicable to the subject of the Assurance and any civil claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Affordable and Laszlo Friedman expressly agree and acknowledge that this Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Affordable and/or Laszlo Friedman, or from using in any way any statements, documents or other materials produced or provided by Affordable prior to or after the date of execution of this Assurance.

26. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Affordable or Laszlo Friedman in agreeing to this Assurance.

27. Affordable and Laszlo Friedman acknowledge that they have entered into this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

28. To the extent further investigation or litigation relating to the Findings of the OAG (paragraphs (1)-(13) above), proceeds against individuals or entities that are not Parties to or released by this Agreement, Affordable and Laszlo Friedman agree to be available, upon reasonable notice, to meet with attorneys or other representatives of the OAG either in person, by telephone, or by video, and to answer questions related to issues pertaining to the investigation or litigation relating to the Findings of the OAG (paragraphs (1)-(13) above). Affordable agrees that to the extent such investigation or litigation proceeds, if so requested or demanded by the OAG, Affordable will make its current officers, owners, employees, and agents available to testify in subpoena hearings, depositions, and/or at trial, upon reasonable notice. Affordable also agrees to make available to the OAG, upon reasonable notice, documents or other materials relevant to any such investigation or litigation.

29. Unless a term limit for compliance is otherwise specified within this Assurance, Affordable and Laszlo Friedman's obligations under this Assurance are enduring. Nothing in this Assurance shall relieve Affordable and Laszlo Friedman of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

30. Affordable and Laszlo Friedman shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Affordable and Laszlo Friedman's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not



intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Affordable or Laszlo Friedman.

31. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.

32. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Affordable. Affordable shall cause this Assurance to be adopted in any such successor, assignee, or transfer agreement. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written notice to the OAG with a copy of any succession, assignment or transfer agreement evidencing the adoption of all terms and conditions of this Assurance by any successor, assignee, or transferee of Affordable.

33. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

34. To the extent not already provided under this Assurance, Affordable and Laszlo Friedman shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

35. All notices, reports, requests, and other communication to any party pursuant to this Assurance shall be in writing by first class mail and/or electronic mail and shall be directed as follows:

If to Affordable Senior Care of New York LLC and Laszlo Friedman, to:

Affordable Senior Care of New York LLC  
Laszlo Friedman  
c/o Charles Caranicas, Esq.  
The Kaplan Law Office  
30 Wall Street, 8th Floor  
New York, NY 10005  
caranicas@lawkaplan.com  
(347) 432-1463

c/o William Brodsky, Esq.  
Fox, Horan & Camerini LLP  
885 Third Avenue, 17th Floor  
New York, NY 10022  
wmbrodsky@foxlex.com  
(212) 480-4800

If to the OAG, to:

Bureau Chief, Antitrust Bureau  
New York State Office of the Attorney General  
28 Liberty Street, 20th Floor  
New York, NY 10005  
[Antitrust.Bureau@ag.ny.gov](mailto:Antitrust.Bureau@ag.ny.gov)

36. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Affordable and Laszlo Friedman shall make no representation to the contrary.

37. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

38. If a court of competent jurisdiction determines that Affordable or Laszlo Friedman has breached this Assurance, Affordable and Laszlo Friedman shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation, legal fees, expenses, and court costs.

39. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Section 63(15) of the Executive Law, in lieu of commencing a statutory proceeding against Affordable and/or Laszlo Friedman.

40. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

41. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

42. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

43. This Assurance shall be effective on the date of execution of this Assurance by the Parties.

IN WITNESS WHEREOF, this Assurance is executed by the Parties hereto on February 17, 2023.

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, New York 10005

By:

  
James Yoon, Esq.  
Assistant Attorney General, Antitrust Bureau

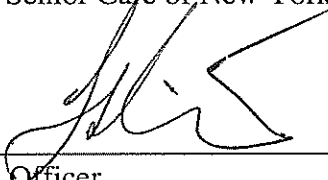
Michael Jo, Esq.  
Assistant Attorney General, Antitrust Bureau

Elinor R. Hoffmann, Esq.  
Chief, Antitrust Bureau

Christopher D'Angelo, Esq.  
Executive Deputy Attorney General for Economic Justice

Affordable Senior Care of New York LLC

By:

  
\_\_\_\_\_  
Authorized Officer  
Laszlo Friedman

By:

  
\_\_\_\_\_  
Laszlo Friedman