

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

AGENCIES FOR CHILDREN'S THERAPY SERVICES,
INC., ACCESS THERAPY GROUP, PT, OT, SLP and
PSYCHOLOGY SERVICES PLLC, and BIG MINDS TINY
HANDS LLC,

NOTICE OF ENTRY

Petitioners,

Index No. 911095-25

v.

NEW YORK STATE DEPARTMENT OF HEALTH and
JAMES V. MCDONALD, in his official capacity as
Commissioner of the New York State Department of Health,

Respondents.

*For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules.*

PLEASE TAKE NOTICE that the enclosed is a true and correct copy of a Decision and Order/Judgment signed by the Hon. William T. Little, Supreme Court Justice, on October 14, 2026, and duly entered in the Albany County Clerk's office on October 14, 2026 (NYSCEF Doc. No. 41).

Dated: October 15, 2026

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-against-

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APPEARANCES: BOND, SCHOENECK & KING, PLLC
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LITTLE, J.:

Petitioners brought this action pursuant to Article 78 against respondents, challenging the July 2025 reimbursement rates for providers in New York State's Early Intervention Program (hereinafter EIP). Respondents were heard in opposition and petitioners were heard in reply. The parties were thereafter heard at oral argument before this Court.

Petitioner, Agencies for Children's Therapy Services, Inc., is a non-profit corporation made up of multiple EIP providers. Petitioners, Access Therapy Group, Psychology Services and Big Mind Tiny Hands, are EIP providers and/or approved by respondent, Department of Health (hereinafter DOH), to provide EIP services. EIP was established in New York in 1993 and provides services "designed to meet a child's developmental needs" including that of physical development, cognitive development and social or emotional development (Public Health Law § 2541 [7]). These services are provided to families at no cost, regardless of income through private agencies which contract with the respondent DOH. DOH is authorized to "adopt regulations necessary to carry out the provisions of [the Early Intervention Program] . . . and [i]n promulgating such regulations, the commissioner shall incorporate coordinated standards and procedure" (Public Health Law § 2559-b). As relevant here, DOH "shall annually determine the rates for approved early intervention services and evaluations provided to eligible children, subject to the approval of the Director of the Budget" (10 NYCRR § 69-4.30 [a]).

In July 2025, respondent issued new EIP rates as it relates to telehealth services (Exhibit A to Respondent's Verified Answer). These rates differ based on the county of service as well as based upon the type of service (e.g., screening or physician evaluation) (Exhibit A to Respondent's Verified Answer). The new rates reflected a reduction of telehealth rates for all counties – including a 22% reduction for providers in New York City, Westchester, Poughkeepsie and Long Island, as well as a 10% reduction for providers in the rest of the state (*compare* Exhibit A to Respondent's Verified Answer with Exhibit B of Respondent's Attorney Affirmation).

Petitioners' complaint requests that the Court (1) enjoin respondents from implementing their July 3, 2025 reimbursement rates, (2) invalidate their adoption of same and (3) direct the DOH to issue revised rates. They are requesting the Court find their rates contrary to law (First

Cause of Action) and arbitrary and capricious (Second Cause of Action). Respondents initially contend that petitioners' claims are (1) non-justiciable as the rates are a product of the budgetary process and (2) that the rates are neither contrary to law nor arbitrary and capricious. Respondents further contend that the Court lacks personal jurisdiction over respondents regarding petitioners' declaratory judgment claims and that such claims are improperly duplicative. Petitioners were thereafter heard in reply.

I. Justiciability of Action

It is well settled that, "[t]he cornerstone of administrative law is derived from the principle that the Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in the interstices in the legislative product by prescribing rules and regulations consistent with the enabling legislation" (*Nicholas v Kahn*, 47 NY2d 24, 31 [1979]). "Where an agency has been endowed with broad power to regulate in the public interest, courts generally will uphold reasonable acts that further the regulatory scheme" (*Agencies for Children's Therapy Servs., Inc. v New York State Dept. of Health*, 136 AD3d 122, 128 [2d Dept 2015], *lv denied* 27 NY3d 907 [2016]).

Here, Public Health Law provides authority to respondent DOH to determine EIP rates which are then subject to Department of Budget approval and then passed during the budgetary process. Although the claim is justiciable, petitioners failed to join the Director of the Budget as a party (CPLR 1001), inasmuch as the reimbursement rates which are set by the respondents are *subject to approval of the Director of the Budget*" (10 NYCRR § 69-4.30 [emphasis added]; *see Matter of Arnot-Ogden Mem. Hosp. v Axelrod*, 95 AD2d 947, 948 [3d Dept 1983]).

However, and noting that this issue was not raised by respondent and affirmatively retorted by petitioner (*see* Transcript at p. 12), the Court finds that such failure is excused in the interest of

justice as the Director of the Budget is not an “indispensible party” and “neither respondent nor the Director of the Budget have been prejudiced since the latter continues to have final approval of the proposed reimbursement rates; respondent failed to advise the court and petitioners of the State director's absence which would have prevented any prejudice; and, insofar as the petition speaks to respondent's rate certification, an effective judgment may be rendered” (*Matter of Arnot-Ogden Mem. Hosp. v Axelrod*, 95 AD2d at 948). Accordingly, the Court disposes of respondent's initial claim as to justiciability.

II. Arbitrary and Capricious or Otherwise Contrary to Law

Respondent next contends that petitioners have not obtained personal jurisdiction in this proceeding, noting that a declaratory action is properly commenced with the filing of a summons and complaint or summons with notice. However, this Court finds that unlike in the caselaw presented by respondent, the Court may reach the merits of the petition despite this purported failure inasmuch as this claim *could have* been brought solely under CPLR article 78. Here, the question presented by petitioners, namely whether respondent's determination was arbitrary or capricious is not a distinctive cause of action that necessitates petitioners seeking relief under CPLR article 78 *together with* a plenary action (*compare Matter of Nicholas v Martuscello*, 245 AD3d 1055, 1058 n3 [3d Dept 2026]). Accordingly, the Court converts that portion of the proceeding into article 78 proceedings (*see Matter of Williams v New York State Dept. of Corr. & Community Supervision*, 212 AD3d 65, 68 [3d Dept 2022]; *Planck v New York State Off. of Temporary & Disability Assistance*, 30 AD3d 725, 727 [3d Dept 2006], *lv dismissed* 7 NY3d 826 [2006]; *Matter of Harrison Orthodox Minyan Inc. v Town/Village of Harrison*, 239 AD3d 156, 170 [2d Dept 2025]; *Matter of New York Civ. Liberties Union v New York State Off. of Ct. Admin.*,

231 AD3d 549, 550 [1st Dept 2024] [finding that conversion to an article 78 proceeding is proper if “article 78 relief was an adequate alternative remedy to declaratory relief”]).

Turning to the merits of petitioners’ claim, challenging the July 2025 EIP reimbursement rates as set forth by respondent, petitioners first contend that respondent’s reduction of telehealth reimbursement rates is in contravention with the agency’s own regulations. Moreover, petitioners note that respondent “has not made any meaningful adjustments to the EI[P] rates since the inception of the Program to account for inflation, increases to minimum wage, or the fact that some EI[P] service providers are required to obtain a doctoral degree to provide the exact same services they could provide with a bachelor’s degree in the 1990s, and numerous other factors that impact the actual cost to ‘fully reimburse’ provider agencies for the critical EI[P] services they provide” (Petitioners’ Memorandum of Law, pp., 8-9). Petitioners note that the July 2025 rates are devoid of supported methodology, analyses or processes undertaken by respondent to account for same. In support of their petition, petitioners provided a report of an independent consulting group that contracted with respondent “to support its effort to analyze and evaluate the effectiveness of the current reimbursement methodology for early intervention services, and to provide data and evidence-based recommendations to promote the efficient, economical, productive, and stable delivery of these services to eligible children and their families” (Exhibit A of Petition, p. 6). The consulting group made several recommendations, outlining their data and methodology to support same, however, petitioners note that respondent did not adopt these recommendations.

Respondent in opposition notes that the applicable statute does not set forth specific procedures that it must follow when determining the appropriate EIP reimbursement rates. Instead, respondent contends that it has appropriately made “annual determinations since EIP’s inception” (Respondent’s Memorandum of Law, p. 9). Moreover, respondent notes that “full reimbursement”

for “actual costs” is not feasible as not all providers can be fully reimbursed “exactly at their actual costs by the same rate” (Respondent’s Memorandum of Law, pp. 9-10). Respondent instead interprets “full reimbursement” as established when same are in accordance with Medicaid expenditures (Respondent’s Memorandum of Law, pp. 9-10).¹

“Rate-setting determinations are quasi-legislative in nature and will not be annulled except upon a compelling showing that the rates are unreasonable. Moreover, when the Legislature is unambiguous but general in its directive regarding reimbursement rates, thereby leaving interpretation and the development of a computation methodology to DOH’s discretion, DOH acts in its area of expertise in considering, interpreting and applying the complex rate-setting formulas involved in effectuating the statutory directive. It follows that rate-setting actions are determinations that are entitled to a high degree of judicial deference, and they will not be disturbed unless petitioners carry the heavy burden” of demonstrating that the methodology used to calculate the rates “is unreasonable and unsupported by any evidence” (*Matter of Arnot Ogden Med. Ctr. v New York State Dept. of Health*, 214 AD3d 1195, 1196-1197 [3d Dept 2023], *lv denied* 41 NY3d 905 [2024]; *see Matter of Wayne Ctr. for Nursing & Rehabilitation, LLC v Zucker*, 197 AD3d 1409, 1414 [3d Dept 2021], *lv denied* 37 NY3d 919 [2022] [holding that “DOH is entitled to a high degree of judicial deference, especially when acting in the area of its particular expertise, such that petitioners bear the heavy burden of showing that DOH’s rate-setting methodology is unreasonable and unsupported by any evidence”]).

¹ It is unclear to this Court how the statute cited by respondent which outlines the computation of federal payments to states is relevant or applicable to respondent’s calculation of the challenged reimbursement rates (*see* Respondent’s Memorandum of Law, p. 10 [referencing 42 USC § 1396[b]]). Although respondent asserted that this statute is applicable in a “very roundabout way” (Transcript at pp. 31-32), the Court fails to find same.

Moreover, although “[a]n agency’s interpretation of its own regulation generally is entitled to deference, courts are not required to embrace a regulatory construction that conflicts with the plain meaning of the promulgated language” (*Matter of Wayne Ctr. for Nursing & Rehabilitation, LLC v Zucker*, 197 AD3d at 1414).

As relevant here, computation of rates for early intervention services provided to infants and children ages birth to three years old and their families or caregivers includes “full reimbursement” for “physician services, nursing services, therapist services, technician services, nutrition services, psychosocial services, service coordination, and other related professional and paraprofessional expenses directly incurred by the approved provider; (2) space occupancy . . . and plant overhead costs; (3) all supplies directly related to the provision of early intervention services; . . . and (4) administrative, personnel, business office, data processing, recordkeeping, housekeeping, and other related provider overhead expenses” (Department of Health Regulations [10 NYCRR] § 69-4.30 [d]).

Upon review, the record is devoid of respondent’s computation of rates or methodology to support their calculation of the reimbursement rates challenged by petitioners and enumerated within 10 NYCRR 69-4.30 (d) as those that require “full reimbursement.” Although respondent noted before this Court that the original rates by respondent were calculated in 1994, “*think[s]* there were studies that were done” (Transcript at p. 29 [emphasis added]) and affirmed that there were periodic cost of living increases in 1997 and 2002 as well as a 5% cut “across the board” in 2011 (Transcript at p. 30), there is no methodology or calculations to support the *instant* rate cuts as it relates to the July 2025 rates – namely the 22% rate decrease for downstate providers and 10% rate decrease for all other providers. Moreover, in the “EICC Rate Setting Methodology Task Force Slides” promulgated by respondent and provided by petitioners in support of their petition,

there are indications as to how respondent “*should* use data sources” (Exhibit B to Petition, p. 12 [emphasis added]) and references certain recommendations for rate increases (Exhibit D to Petition, p. 4), no such data has been provided to this Court to support the rate setting of respondent or to support the statute’s directive that respondent provide full reimbursement for certain enumerated categories and *despite* being given the additional opportunity to provide same before this Court during oral arguments.

Accordingly, and despite the deference given to agencies when interpreting their own regulations, respondents have failed to establish that their regulatory construction is *not* in direct conflict with the plain meaning of the language of the statute. To this end, although respondent’s rationale regarding their intentions to reduce telehealth appointments is backed by respondent’s intentions to promote in-person services in consideration of treatment preferences, it is wholly devoid of any rationale in their *computation* of rates, *methodology* or how such reduction provides “*full reimbursement*” to providers. Mindful that this Court’s role is “limited to ascertaining whether there is a rational basis for the action in question or whether it is arbitrary and capricious” (*Matter of Mid Is. Therapy Assoc., LLC v New York State Educ. Dept.*, 129 AD3d 1173, 1175 [3d Dept 2015] [internal quotations and citation omitted]), the Court finds that despite respondent’s effort to calculate certain reimbursement rates in 2011 using enumerated data, respondent failed to use such data and further finds that the *current* rates are devoid of support, save from general budgetary considerations applicable to all New York State agencies.² Accordingly, this Court finds that respondent acted arbitrarily and capriciously with its own regulations, and thus the challenged

² Mindful of the Court’s limited role in ascertaining a *rational basis* for the challenged actions by petitioners, this Court’s holding makes no finding as to the meaning of “full reimbursement” as set forth in statute and instead, roots its determination in respondents failure to provide a rational basis in establishing these reimbursement calculations.

July 2025 rates must be annulled and remanded back to respondent for review (*see* CPLR 7803 [3]; *Matter of Hudson Health Extracts, LLC v Zucker*, 206 AD3d 1515, 1519 [3d Dept 2022]; *Matter of Richmond Children's Ctr., Inc. v Delaney*, 233 AD3d 1328, 1331 [3d Dept 2024]; *Matter of Mid Is. Therapy Assoc., LLC v New York State Educ. Dept.*, 129 AD3d at 1177).

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 and ADJUDGED that the petition is granted; and it is further

ORDERED and ADJUDGED that the matter is remanded to the New York State Department of Health for further proceedings not inconsistent with this Court's decision.

This memorandum constitutes the Decision and Order of the Court. The original Decision and Order is being uploaded to the NYSCEF system for filing and entry by the County Clerk. The signing of this Decision and Order and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b (h) (2) of the Uniform Rules for the New York State Trial Courts. Counsel is not relieved from the applicable provisions of those rules with respect to service and notice of entry of the Decision and Order.

SO ORDERED AND ADJUDGED.

ENTER.

Dated: October 14, 2026
Albany, New York


HON. WILLIAM T. LITTLE.
Supreme Court Justice


10/15/2026