STATE OF MICHIGAN

COURT OF CLAIMS

NORTHCARE NETWORK MENTAL HEALTH CARE ENTITY, NORTHERN MICHIGAN REGIONAL ENTITY, COMMUNITY MENTAL HEALTH PARTNERSHIP OF SOUTHEAST MICHIGAN, and REGION 10 PIHP,

Plaintiffs,

v

Case No. 24-000198-MZ

Hon. Sima G. Patel

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES, and ELIZABETH HERTEL, in her official capacity,

Defendants.
_____ /

AMENDED OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Plaintiffs, NorthCare Network Mental Health Care Entity (NorthCare), Northern Michigan Regional Entity, Community Mental Health Partnership of Southeast Michigan (CMHPSM), and Region 10 PIHP (Region 10), filed this declaratory and mandamus action against defendants, the State of Michigan, the Michigan Department of Health and Human Services (MDHHS), and Elizabeth Hertel (in her official capacity as Director of MDHHS), in this dispute over MDHHS's proposed 2025 fiscal year contract (FY25 Contract), as well as certain terms of the fiscal year 2024 contract (FY24 Contract), under which the parties continue to operate during a transition period that will expire no later than the end of the 2026 fiscal year. Defendants move for summary disposition under MCR 2.116(C)(5) and (8) before significant discovery has occurred. Having

heard arguments on the motion on April 9, 2026, the Court will GRANT IN PART and DENY IN PART defendants' motion for summary disposition.

I. BACKGROUND

A. MICHIGAN'S PIHP SYSTEM

Plaintiffs are four out of 10 regional Prepaid Inpatient Health Plans (PIHPs)[1] that facilitate specialty behavioral health services for individuals with mental illnesses, developmental disabilities, and substance use disorders. MDHHS is the state agency charged with administering the State's Medicaid program. In Michigan, specialty behavioral health services are carved out from traditional medical services provided by Medicaid health plans. MCL 400.109f. Community mental health service programs (CMHSPs) operate at the county level to provide behavioral health services funded by Michigan's Medicaid program. The counties may either establish their own CMHSPs or join together to form regional PIHPs. MDHHS historically contracted with PIHPs to provide services on a fiscal-year basis through a standardized contract.

Plaintiffs' most recent contract with MDHHS was for fiscal year 2024, which was effective from October 1, 2023 to September 30, 2024.[2] The contract contained the following provision requiring plaintiffs to provide continued services through a transition period:

> **26. Transition Responsibilities**. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 2 years) provide all reasonable transition assistance requested by the

[1] There is no dispute that the total number of PIHPs has changed over time, and there is no statutory mandate that 10 PIHP regions exist. As discussed later, MDHHS has recently expressed its intent to decrease the number of PIHP regions to three, which was the subject of two separate Court of Claims matters, Case Nos. 25-000143-MB and 25-000162-MB.

[2] Each PIHP executed a separate contract with MDHHS but there is no dispute the language of each FY24 Contract was the same for each PIHP.

> State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees.

The parties negotiated the terms of the FY25 Contract in 2024 but were unable to agree on several key terms. Plaintiffs did not sign the FY25 Contract as proposed by MDHHS because they believed certain provisions violated federal law. According to plaintiffs, on October 23, 2024, MDHHS provided them with "an ultimatum," via e-mail, which was to "[s]ign MDHHS's proposed contract, or Defendants would terminate the relationship[.]" MDHHS gave plaintiffs until October 31, 2024, to electronically sign the FY25 Contract as proposed by MDHHS; otherwise, the relationship would be terminated. There is no dispute plaintiffs never signed the FY25 Contract as proposed by MDHHS. Rather, plaintiffs provided MDHHS with signed, redlined versions of the proposed contract, which they argue eliminated the unlawful provisions. MDHHS did not sign the version of the contract proposed by plaintiffs. According to MDHHS, other PIHPs *did* sign the FY25 Contract as proposed by MDHHS and operated under the terms of that contract for the 2025 fiscal year. The FY25 Contracts with those PIHPs expired on September 30, 2025.

B. MDHHS'S INTENDED SHIFT TO COMPETITIVE BIDDING

Following the negotiations of the FY25 Contract, MDHHS decided to transition from a single-source procurement system to a competitive procurement system beginning in fiscal year 2027. In August 2025, MDHHS and the Michigan Department of Technology, Management, and Budget (DTMB) issued a request for proposals (RFP) to participate as PIHPs for fiscal year 2027. Additionally, MDHHS also expressed its intent to reduce the total number of PIHP regions from 10 to three beginning in October 2026. This change prompted two additional lawsuits in this Court: Court of Claims Case Nos. 25-000143-MB and 25-000162-MB, which were consolidated.

Region 10 is a named plaintiff in Case No. 25-000143-MB; however, the other PIHPs named as plaintiffs in this case are *not* plaintiffs in either of those matters. Although 25-000143-MB and 25-000162-MB involve fiscal year 2027 and later, the rulings in those cases have some bearing on the legal issues presented in this case.

Specifically, in October 2025, Judge YATES, who presides over Case Nos. 25-000143-MB and 25-000162-MB, ruled that MDHHS had the discretion under Michigan law to transition from a single-source procurement system to a competitive procurement system, as well as to reduce the overall number of PIHP regions. Judge YATES concluded that "a competitive procurement system is not only compatible with state law, but also regarded as the preferred nationwide model." *Region 10 PIHP v Michigan*, opinion of the Court of Claims, issued October 14, 2025 (Case No. 25-000143-MB), p 8. Judge YATES explained that while Michigan historically obtained a waiver from the federal government to avoid engaging in the preferred competitive procurement system, MDHHS had no assurance that a waiver would be granted in the future and was "simply taking proactive steps to bring Michigan into compliance with the federal mandate of competitive procurement." *Id.* Judge YATES concluded that Michigan law permitted MDHHS to engage in a competitive procurement system. *Id*. at 8-9. As for the issue of the reduction in PIHP regions, Judge YATES ruled that "nothing in Michigan law" precluded MDHHS from altering the number and geographic scope of the PIHP regions. *Id*. at 10. Judge YATES concluded, however, that a question of fact existed on whether the terms of the 2025 RFP complied with Michigan law. *Id*. at 10-11.

Later, in January 2026, following an evidentiary hearing, Judge YATES ruled that the 2025 RFP violated Michigan law by preventing the CMHSPs from fulfilling numerous statutory requirements in the Michigan Mental Health Code, MCL 330.1011 *et seq*. *Region 10 PIHP v*

Michigan, opinion of the Court of Claims, issued January 8, 2026 (Docket Nos. 25-000143-MB and 25-000162-MB), p 3. However, Judge YATES declined to prohibit MDHHS from selecting PIHPs through a competitive-bidding process, instead allowing MDHHS the option to determine how to bring the RFP into compliance with Michigan law. *Id*. MDHHS later rescinded the RFP in question, and the matters in Case Nos. 25-000143-MB and 25-000162-MB were dismissed without prejudice as moot. See *Region 10 PIHP v Michigan*, order of the Court of Claims, issued April 23, 2026 (Docket Nos. 25-000143-MB and 25-000162-MB); *Region 10 PIHP v Michigan*, order of the Court of Claims, issued April 14, 2026 (Docket Nos. 25-000143-MB and 25-000162-MB).

At this stage, the future landscape of PIHP contracting is in limbo. While Judge YATES ruled that the competitive-bidding model and decrease in the total number of PIHP regions was lawful, MDHHS has rescinded the RFP for contracts scheduled to begin in October 2026. However, MDHHS has indicated it intends to move forward with the competitive-bidding process and the reduction on PIHP regions, presumably with a new RFP. The parties represented during the hearing in this matter that they continue to operate under the transition clause of the FY24 Contract, which by its terms will expire no later than September 30, 2026. As of the date of this opinion and order, Judge YATES's rulings have been neither appealed nor stayed. Although neither party argues that Judge YATES's rulings have a preclusive effect on the issues related in this matter, the Court finds the rulings persuasive on certain issues raised in this case, as discussed later.

C. CONTRACT PROVISIONS AT ISSUE

Turning to the questions involved in this case, plaintiffs' claims relate to several provisions of the FY24 and FY25 Contracts. The first provision in question relates to the internal service funds (ISFs) maintained by the PIHPs. ISFs function like savings accounts for PIHPs. PIHPs are

funded in advance on a capped basis. They use ISFs as a method for saving funds to cover risk exposure, which is shared between the PIHPs and MDHHS, in case their expenses exceed the amount of the MDHHS capitated payments. The ISFs are subject to certain federal regulations.

The FY24 Contract capped the amount that the PIHPs could contribute annually to their ISFs to 7.5% of their annual operating budget. The FY24 Contract provision stated, in relevant part: "Contractor may transfer Medicaid Capitation funds up to 7.5% of the Medicaid/Healthy Michigan Plan pre-payment authorization to the ISF in any given year. Contractor may not transfer any funds in excess of that percentage to the ISF in any year."

However, the FY25 Contract changed the language of this provision and capped the total amount the PIHPs could save in their ISF account to 7.5% of their annual operating budget. The relevant contractual provision stated:

> The contractor may not reflect an ISF that exceeds 7.5% on any of Contractor's reporting requirements contained in this contract. If the Department determines that the ISF is over-funded, the ISF must be reduced within one fiscal year through the abatement of current charges. If such abatements are inadequate to reduce the ISF to the appropriate level, it must be reduced through refunds in accordance with [federal regulations].

The contract explains that the ISF maximum contribution limit reflected the PIHP's total risk liability, which is 100% of cost overruns between 100% and 105% of revenue and 50% of cost overruns between 105% and 110%. Plaintiffs assert that this provision differs materially from the one in the FY24 Contract because the cap on the total amount in the ISF limits each PIHP's ability to determine the appropriate amount in their ISF account "based on actuarial analyses and generally accepted accounting principles," as required under federal regulations.

For their part, defendants contend that this requirement did not change from the FY24 Contract to the FY25 Contract, despite the change in the language of the relevant provision. They argue other provisions within the FY24 Contract made it clear that the PIHPs could not maintain a total account balance of more than 7.5% of their annual operating budget. They argue the provision is designed to ensure the Medicaid funds are allocated for beneficiary services. Plaintiffs allege that MDHHS waived its position that the FY24 Contract prohibited plaintiffs from having an ISF balance over 7.5% because MDHHS accepted Region 10's and NorthCare's Risk Management Strategies in late 2023, despite that the Risk Management Strategies reported an ISF balance at a higher amount than 7.5% of the annual operating budget.

In late 2024, MDHHS notified plaintiffs that if any of their Fiscal Year 2024 Financial Status Reports (FSRs) showed an ISF balance of more than 7.5% of the annual operating budget, then the submissions would be returned for corrections, and if not corrected, would be considered late for purposes of determining plaintiffs' eligibility for bonus payments. Plaintiffs assert that the threat of "withheld bonuses" amounted to a sanction. Although plaintiffs do not allege that any sanctions have been imposed yet, they argue they are entitled to procedural due process before any sanctions are imposed on them both under the Mental Health Code and under the terms of the FY24 Contract, which contained a provision allowing for the opportunity for a hearing to contest or dispute the State's findings and sanction before the sanction is imposed.

Another contractual dispute involves modifications to the FY25 Contract in response to a settlement agreement from a 2016 case filed against MDHHS, *Waskul v Washtenaw Co Comm Mental Health*, United States District Court for the Eastern District of Michigan, Case No. 2:16-cv-10936. The *Waskul* case involved the budgeting process for community living supports (CLS) services for individuals with disabilities allowing them to live independently in their communities.

The CLS services are funded under a Medicaid waiver known as the Habilitation Supports Waiver. Each recipient has an Individualized Plan of Service, which is developed and implemented through a budgeting process. The *Waskul* case challenged the budgeting process and resulted in an arrangement in which a minimum fee schedule set forth within the *Waskul* Settlement Agreement must be used to establish rates.

The FY25 Contract contains an explicit provision requiring PIHPs to comply with the *Waskul* Settlement Agreement. The FY24 Contract did not refer expressly to the *Waskul* Settlement, but defendants argue that requirement was incorporated in a provision requiring that the parties abide by " 'Medicaid Policy.' " Plaintiffs maintain that the *Waskul* Settlement Agreement violated federal regulations prohibiting MDHHS from regulating PIHP expenditures. Alternatively, plaintiffs argue that defendants were required to comply with the Administrative Procedures Act (APA), MCL 24.201 *et seq*., to implement any changes outlined in the *Waskul* Settlement Agreement. Plaintiffs have attached the *Waskul* Settlement Agreement to their second-amended complaint.

Next, plaintiffs allege that, during the FY24 transition period, MDHHS has shifted certain responsibilities to them in relation to Certified Community Behavioral Health Clinics (CCBHCs), which aid in providing funding for substance use disorder and mental health services, without providing adequate funding. Plaintiffs additionally argue that in late November 2024, MDHHS notified several PIHPs that MDHHS would not provide funding for the substance use disorder health home (SUDHH) program because plaintiffs did not sign the FY25 Contract. The SUDHH program is intended to provide care management and coordination for Medicaid program beneficiaries suffering from opioid, alcohol, or stimulant use disorders. After the original complaint was filed in this case, the parties negotiated a preliminary injunction requiring MDHHS

to continue to fund the SUDHH program while this case is being litigated, which this Court entered in December 2024.

D. PROCEDURAL BACKGROUND

Plaintiffs filed this declaratory and mandamus action in December 2024. Plaintiffs amended their complaint twice with leave of the Court. The March 6, 2025 second-amended complaint is the operative complaint and raises the following six counts:

- Count I: A claim for declaratory and mandamus relief on behalf of all plaintiffs in relation to the ISF contract provision and the issue of the FY24 FSRs.
- Count II: A claim for declaratory relief on behalf of all plaintiffs regarding the contract provision about the *Waskul* Settlement.
- Count III: A claim for declaratory relief regarding the added responsibilities for the CCBHC demonstration in relation to plaintiffs CMHPSM and Region 10.
- Count IV: A claim for declaratory relief and damages for violation of the Headlee Amendment regarding the CCBHC demonstration program on behalf of plaintiffs CMHPSM and Region 10.
- Count V: A claim for declaratory relief requiring continued Medicaid funding on behalf of all plaintiffs.
- Count VI: A claim for a writ of mandamus on behalf of all plaintiffs on the basis that plaintiffs were entitled to due process before MDHHS could issue a sanction in relation to the FSRs or terminate the parties' relationship.

Before significant discovery occurred in this case,[3] defendants moved for summary disposition under MCR 2.116(C)(5) and (8), arguing that (1) plaintiffs are not the real party in interest and lack standing in relation to the FY25 Contract (and any other future contract claims) considering that the FY24 Contract has expired; (2) plaintiffs fail to state a claim in relation to the

[3] This Court stayed discovery pending the resolution of the motion for summary disposition of the second-amended complaint.

ISF contributions because the plain language of the FY24 Contract limits the ISF annual contribution and account balance; (3) plaintiffs fail to state a claim on which relief may be granted in relation to the *Waskul* Settlement because the settlement complied with the law, was binding on MDHHS, and did not require formal rulemaking; (4) plaintiffs failed to state a valid Headlee Amendment claim in relation to the CCBHC demonstration because relevant section of the Headlee Amendment cannot be independently enforced, the CCBHC demonstration did not impose any additional responsibilities on the PIHPs, and MDHHS was not required to comply with the APA when imposing those requirements; (5) plaintiffs' claims for continued payment and a writ of mandamus fail because no actual controversy or clear legal duty exists, and MDHHS was not required to fund plaintiffs after fiscal year 2024 or provide them with procedural due-process protections. MDHHS further argued that the legality of the FY25 Contract should not be questioned considering that it was approved by the federal Centers for Medicare and Medicaid Services (CMS).

Plaintiffs respond that they have standing and are the real parties in interest because they signed the FY25 Contract after redlining certain provisions. They argue that MDHHS terminated the relationship between the parties without required due process. They further contend that even if they do not have standing in relation to the FY25 Contract, the FY24 Contract, under which the parties continue to operate, contained many of the same unlawful provisions. Plaintiffs argue that they stated a claim for relief in relation to the ISF account because the FY24 Contract did not contain a limit on the cumulative amount that could be held in an ISF account, and the 7.5% limit is not based on sound actuarial principles. Plaintiffs further argue that MDHHS lacks legal authority to restrict plaintiffs' ability to use their ISF funds to pay for prior years. As it relates to the *Waskul* Settlement, plaintiffs reiterate that compliance with the settlement agreement would

violate federal law. Alternatively, plaintiffs argue the terms of the *Waskul* Settlement are unenforceable in relation to plaintiffs and were not promulgated in compliance with the APA.

Plaintiffs argue defendants' argument pertaining to the Headlee Amendment amounts to a question of fact, and defendants failed to impose the changes to the CCBHC Handbooks in accordance with the APA. Plaintiffs further argue that defendants were required to continue to provide Medicaid funding through plaintiffs under various provisions of the Mental Health Code and argue that they could not be sanctioned or terminated without due process. Thus, plaintiffs argue they are entitled to both declaratory and mandamus relief in relation to fiscal year 2025 and future fiscal years.

Defendants reply that plaintiffs do not have an exclusive right to an MDHHS contract or procedural due process for what amounts to a failed contract negotiation. They deny that Medicaid recipients will be severely impacted by the failure to contract with plaintiffs, noting that they are working on finding a replacement PIHP for each affected region (again, through a competitive-bidding process). They reiterate that the FY25 Contract provisions, as applied during the FY24 Contract transition period, are lawful and do not violate federal regulations.

II. STANDARD OF REVIEW

Defendants request summary disposition under MCR 2.116(C)(5) and (8). A motion under MCR 2.116(C)(5) tests a party's legal capacity to sue. *Sakorafos v Lyon Charter Twp*, 349 Mich App 176, 185; 27 NW3d 329 (2023). "In reviewing a grant of a motion for summary disposition pursuant to MCR 2.116(C)(5), [the court] must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009) (cleaned up).

In contrast, "[a] motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and is properly granted when, accepting all well-pleaded factual allegations of the complaint as true, the claims alleged are unenforceable as a matter of law and no factual development could justify recovery." *Sakorafos*, 349 Mich App at 186.[4] Additionally, plaintiffs have attached the written instruments on which their claims are based (including the FY24 and FY 25 Contracts), which are considered part of the pleadings for purposes of the motion for summary disposition under MCR 2.116(C)(8). See MCR 2.113(C)(1) and (2).

To the extent the Court is required to analyze certain statutory provisions to resolve the issues in this case, the Court is guided by the following legal principles:

> When interpreting a statute, [the] foremost rule of construction is to discern and give effect to the Legislature's intent. Because the language chosen is the most reliable indicator of that intent, [a court will] enforce clear and unambiguous statutory language as written, giving effect to every word, phrase, and clause. If the statutory provision at issue is clear and unambiguous, it must be enforced as written, and no judicial construction is permitted or required. [*Lockport Twp v Three Rivers*, 319 Mich App 516, 520; 902 NW2d 430 (2017) (cleaned up).]

III. FY25 CONTRACT

Defendants first challenge whether plaintiffs are the real party in interest to challenge any provisions of the FY25 Contract. Resolution of this issue turns on whether the parties either had

[4] The Michigan Court of Appeals recently clarified that motions relating to standing are more appropriately considered under MCR 2.116(C)(8) than MCR 2.116(C)(5), the latter of which pertains solely to legal capacity to sue. *Sakorafos*, 349 Mich App at 185-186. In this situation, because defendants maintain that plaintiffs are not the real party in interest, the Court will analyze the issue under MCR 2.116(C)(5) but notes that, for practical purposes, the analysis will not differ significantly under either subrule because all the key documents were attached to and incorporated in the second-amended complaint. See MCR 2.113(C)(1) and (2).

a valid FY25 Contract or whether plaintiffs have a recognizable legal interest in a future contract with MDHHS.

MCR 2.605 governs declaratory relief. MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." The court rule incorporates concepts of justiciability, such as standing, ripeness, and mootness. *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012).

MCR 2.201(B) provides that, in general, "[a]n action must be prosecuted in the name of the real party in interest." "A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013) (cleaned up). "The real party in interest is one who is vested with the right of action as to a particular claim, or, stated otherwise, is the party who under the substantive law in question owns the claim asserted." *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 622; 873 NW2d 783 (2015). For standing, the plaintiff must "have a sufficient interest in the outcome of litigation to ensure vigorous advocacy and in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy." *Id*. at 621 (cleaned up). Put another way, "[s]tanding generally is the right of the plaintiff initially to invoke the power of the trial court to adjudicate a claimed injury, while capacity to sue concerns whether there is a legal barrier, such as mental incompetency, that deprives a party of the legal ability to bring an action." *Sakorafos*, 349 Mich App at 185 (cleaned up).

The Court concludes that, whether cast as an issue of the real party in interest or of standing, plaintiffs cannot sue for relief under the FY25 Contract or on the basis that they had a right to a future contract. By plaintiffs' own admission, there was never a meeting of the minds on certain contract provisions for fiscal year 2025. It is a longstanding principle of Michigan law that a contract requires an offer, acceptance, and "mutual assent or a meeting of the minds on all the essential terms." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452-453; 733 NW2d 766 (2006). Acceptance occurs "where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for that purpose." *Id*. at 453-454 (cleaned up).

Additionally, one party may not unilaterally modify the parties' preexisting contract. See *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 364; 666 NW2d 251 (2003) ("However, with or without restrictive amendment clauses, the principle of freedom to contract does not permit a party *unilaterally* to alter the original contract."). "The mutuality requirement is satisfied where a modification is established through clear and convincing evidence of a written agreement, oral agreement, or affirmative conduct establishing mutual agreement to waive the terms of the original contract." *Kloian*, 273 Mich App at 455 (cleaned up).

In this case, plaintiffs recognize they did not sign the FY25 Contract proposed by MDHHS and instead sent back a redlined version of the contract, altering provisions they assert violated federal law. Plaintiffs acknowledge that MDHHS would not sign plaintiffs' version of the contract and gave plaintiffs a deadline to accept MDHHS's version of the contract. That deadline expired without the formation of a contract because there was no acceptance of an offer on either side, and no meeting of the minds on what plaintiffs characterize as essential contractual terms. Plaintiffs lacked the ability to modify unilaterally the parties' preexisting contract. The Court therefore

agrees with defendants that they did not terminate the FY25 Contract; rather, no such contract ever existed between the parties.

This conclusion is further supported by Judge YATES's recent rulings in Court of Claims Case Nos. 25-000143-MB and 25-000162-MB, in which a final judgment was recently entered. Those cases have not been appealed as of the date of this opinion and order. Although Judge YATES concluded that certain provisions of MDHHS's proposed RFP violated Michigan law, that conclusion did not invalidate his earlier ruling that MDHHS could lawfully switch to a competitive-bidding model and reduce significantly the total number of PIHP regions. Judge YATES's ruling for fiscal year 2027 and beyond supports that MDHHS did not have a legal obligation to execute the FY25 Contracts as redlined by plaintiffs (or to execute any contract with these PIHPs). Therefore, plaintiffs are not the real parties in interest and lack standing as it relates to any challenge to the terms of the FY25 Contract because they did not have a binding contract with MDHHS for this year.

IV. CLAIM FOR CONTINUED FUNDING

A related question exists on whether plaintiffs had a right under the Mental Health Code to a continued relationship with MDHHS for future years absent certain procedural due process protections. Plaintiffs argue in Count V of their second-amended complaint that they were entitled to notice and the opportunity for a hearing under MCL 330.1232b before MDHHS terminated its relationship with them. Count VI raises a related claim for a writ of mandamus premised on the same allegations. The Court concludes that plaintiffs did not have a right to a continued relationship with MDHHS.

Again, Judge YATES addressed the issue whether MDHHS could shift to a competitive procurement system and reduce the number of regional PIHPs. Judge YATES's opinion supports that plaintiffs had no continued right to an MDHHS contract because MDHHS could lawfully transition to a new contract-bidding process with fewer PIHPs. However, those cases did not address the provision of the Mental Health Code involving termination of the Medicaid contract. Nevertheless, the Court concludes that plaintiffs were not entitled to due process because the FY24 Contracts expired, and the FY25 Contracts were never executed so they could not be "terminated" as contemplated under the Mental Health Code.

The Mental Health Code provides, in relevant part:

> (5) Contracts with specialty prepaid health plans shall indicate the sanctions that the department may invoke if it makes a determination that a specialty prepaid health plan is not in substantial compliance with promulgated standards and with established federal regulations, that the specialty prepaid health plan has misrepresented or falsified information reported to the state or to the federal government, or that the specialty prepaid health plan has failed substantially to provide necessary covered services to recipients under the terms of the contract. Sanctions may include intermediate actions including, but not limited to, a monetary penalty imposed on the administrative and management operation of the specialty prepaid health plan, imposition of temporary state management of a community mental health services program operating as a specialty prepaid health plan, *or termination of the department's [M]edicaid managed care contract with the community mental health services program*.
>
> (6) *Before imposing a sanction* on a community mental health services program that is operating as a specialty prepaid health plan, the department shall provide that specialty prepaid health plan with timely written notice that explains both of the following:
>
> (a) The basis and nature of the sanction.
>
> (b) The opportunity for a hearing to contest or dispute the department's findings and intended sanction, prior to the imposition of the sanction. A hearing under this section is subject to the provisions governing a contested case under the [APA], unless otherwise agreed to in the specialty prepaid health plan contract. [MCL 330.1232b(5)-(6) (emphasis added).]

MCL 330.1232b requires notice and the opportunity for a hearing in the context of imposing a sanction, which includes termination of the contract. See MCL 330.1232b(6). It is plaintiffs' position that MDHHS terminated the contract, and they were owed notice and the opportunity for a hearing beforehand. However, MDHHS did not terminate the contracts with plaintiffs as a sanction for any misconduct outlined in MCL 330.1232b(5). Rather, the FY24 Contract expired, and no FY25 Contract was executed because the parties could not agree on the relevant terms. Again, the Court finds a distinction between termination, as contemplated in MCL 330.1232b, and expiration of the contract by its own terms, which is what occurred in this case.

In contrast, MCL 400.109f(1) provides, in relevant part, that "Medicaid-covered specialty services and supports shall be managed and delivered by specialty prepaid health plans *chosen by the department*." (Emphasis added.) There is nothing in the language of MCL 330.1232b that suggests that due process is required when a prior contract expires and MDHHS declines to execute a new contract with a PIHP on terms the PIHP deems acceptable. As Judge YATES previously concluded, MCL 400.109f grants MDHHS discretion to select PIHPs. *Region 10*, op at 10. The Court agrees with this reason and concludes it applies with equal force in the context of this case.

Plaintiffs also suggest that MDHHS had no option but to continue to contract with them because MDHHS could not engage another regional entity to act as the PIHP for the geographical area covered by plaintiffs. They rely on MCL 330.1204b(2)(b), a provision of the Mental Health Code that provides:

> (2) Except as otherwise stated in the bylaws, a regional entity has all of the following powers:
>
> * * *

> (b) The power to contract with the state to serve as the [M]edicaid specialty service prepaid health plan for the designated service areas of the participating community mental health services programs.

Plaintiffs' claim presumes that they will always exist as the PIHP for their respective regions, which is not necessarily true, particularly considering Judge YATES's opinion regarding fiscal year 2027 and beyond. Indeed, the statute allowing for the formation of regional-entity PIHPs provides that "[a] combination of community mental health organizations or authorities *may* establish a regional entity by adopting bylaws that satisfy the requirements of this section." MCL 330.1204b(1) (emphasis added). The use of the permissive word "may" suggests that regional-entity PIHPs are not required to be formed under the Mental Health Code. See *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 182-183; 14 NW3d 456 (2023) (explaining that the term "may" has a permissive meaning). Accordingly, plaintiffs have not cited a legal basis to support a declaratory judgment on the basis of a right to a continuing contractual relationship.

Similarly, plaintiffs' claim for a writ of mandamus is without merit. Mandamus is an extraordinary remedy and a discretionary writ. *Johnson v Bd of State Canvassers*, 341 Mich App 671, 684; 991 NW2d 840 (2022). "The primary purpose of the writ of mandamus is to enforce duties created by law, where the law has established no specific remedy and where, in justice and good government, there should be one." *Id.* at 684-685 (cleaned up).

> To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided. [*Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016) (cleaned up).]

For the reasons discussed earlier, plaintiffs do not have a clear legal right to require MDHHS to either execute a new contract or to provide plaintiffs with notice and a hearing in relation to the FY25 Contract. Nor does MDHHS have a clear legal duty to perform in this scenario. So plaintiffs are not entitled to mandamus relief in relation to fiscal year 2025 or any future fiscal years.[5] Therefore, summary disposition is GRANTED on Counts V and VI of the second-amended complaint, as well as Counts I and II, to the extent these claims are based on the FY25 Contract or alleged rights to future contracts.

V. FY24 CONTRACT CLAIMS

A. ISF PROVISIONS

Plaintiffs also argue that certain provisions of the FY25 Contract are being imposed on them unlawfully during the FY24 Contract transition period and that they have standing to pursue these claims because the parties continue to operate under the FY24 Contract. The transition period of the FY24 Contract cannot continue beyond September 2026. However, because the parties agree that they continue to operate under the terms of the FY24 Contract during a transition period that is currently in effect, plaintiffs have standing and are the real parties in interest to challenge MDHHS's enforcement of the FY24 Contract. Because the parties are currently operating under the FY24 Contract, the claims are not moot. Therefore, the Court will analyze the legal issues presented in the motion to the extent they affect the FY24 Contract.

The following contract-interpretation principles apply in this case:

> The main goal in the interpretation of contracts is to honor the intent of the parties. This is done by giving the plain and unambiguous words of a contract their plain

[5] The Court will discuss in the next section plaintiffs' mandamus claim as it relates to the ISF accounts.

> and ordinary meaning. The words and phrases of the contract cannot be read in isolation but must be construed in context and read in light of the contract as a whole. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. [*Allen Park Retirees Ass'n, Inc v Allen Park*, 347 Mich App 1, 11; 13 NW3d 865 (2023) (cleaned up).]

When a contract is ambiguous, the proper interpretation of the contract is a question of fact for the trier of fact to decide. *Patel v FisherBroyles, LLP*, 344 Mich App 264, 272; 1 NW3d 308 (2022).

Count I of the second-amended complaint is a claim for declaratory relief about the ISF account limit. Count VI also adds a claim for mandamus relief to prohibit MDHHS from issuing sanctions in relation to the FY24 FSR without procedural due process. Although plaintiffs appear to recognize that the FY24 Contract capped the amount that could be deposited into the ISF account in any given year, they allege that the FY24 Contract did not contain a limit on the cumulative amount that could be maintained in their ISF accounts. They argue, instead, that the only limit on the ISF account total was established under a federal regulation, which requires that the ISF account be maintained in accordance with generally accepted accounting principles and practices and in a manner that is actuarially sound. See 42 CFR 438.6(b)(1).

Plaintiffs allege that MDHHS has required plaintiffs to follow the new language in the FY25 Contract during the FY24 Contract transition period by threatening to withhold bonus payments for fiscal year 2024, which plaintiffs characterize as a sanction. Plaintiffs assert that this change to the ISF provision violates federal regulations because it is arbitrary, not based on acceptable actuarial methods and accounting practices, and not actuarially sound.

Starting with plaintiffs' argument that the FY24 Contract did not limit the overall amount of the ISF account to 7.5%, the relevant provision stated:

> Contractor may transfer Medicaid Capitation funds up to 7.5% of the Medicaid/Healthy Michigan Plan pre-payment authorization to the ISF in any given year. Contractor may not transfer any funds in excess of that percentage to the ISF in any year.

The FY24 Contract further explains that plaintiffs "may use funds in the ISF only for this defined purpose of paying for liabilities in excess of the 100% of the risk corridor-related operating budget." When read in isolation, this provision of the FY24 Contract is limited to the contributions per year—and not the total amount in the ISF account. The provision does not say anything about a limit on the total amount in the ISF account. And no other restrictions appear in the ISF section of the contract, other than a broad suggestion that "[t]he ISF fund balance should be kept at a minimum to assure that the overall level of Contractor funds is directed toward consumer services." The Contract does not specify that the "minimum" must be capped at 7.5% of the annual operating budget.

Defendants argue, however, that a separate section within the FY24 Contract, known as the "Risk Corridor" section, limited the total amount to 7.5% that could be contributed and present in the ISF account. The Risk Corridor section provided, in relevant part: "Contractor [plaintiffs] must be financially responsible for liabilities incurred above the risk corridor-related operating budget between 100% and 105% of said funds contracted." Additionally, under the Risk Corridor section, plaintiffs were "responsible for 50% of the financial liabilities above the risk corridor-related operating budget between 105% and 110% of said funds contracted." According to defendants, when these provisions are read together, it becomes clear that plaintiffs are responsible for 107.5% of their liabilities (100% of the liabilities up to the total amount of capitation payments and 7.5% of additional liabilities). Thus, the only plausible interpretation of the FY24 Contract in defendants' view is that it limits the amount to 7.5% that can be both contributed *and* present in the ISF account.

The Court agrees with plaintiffs that, at the very least, the contractual language contains an ambiguity because it could be interpreted either way—as allowing a cumulative total of over 7.5% in the ISF and as prohibiting a total exceeding that amount. It is unclear from the statutory language whether the Risk Corridor section of the contract was intended to apply to the ISF account provision in the manner defendants suggest and, if so, whether it would apply to cap the total amount in the ISF funds to 7.5%. Both parties' interpretations of the statutory language are plausible. Because the meaning of the contractual provision in the FY24 Contract is not inherent in the plain language, the provision is ambiguous, and discovery is appropriate to develop the factual record on this issue. See *Patel*, 344 Mich App at 272. Therefore, summary disposition under MCR 2.116(C)(8) is improper on Count I as it relates to the FY24 Contract.

Even assuming that defendants were correct that the FY24 Contract limits the amount that could be contributed *and* present in the ISF accounts, a further factual question exists for discovery: whether this restriction was actuarially sound. Plaintiffs allege that the ISF provision in the FY24 Contract violates 42 CFR 438.6(b)(1), which requires that risk-sharing mechanisms between the State and a PIHP are formed through "generally accepted actuarial principles and practices," and 42 CFR 438.4(a), which requires actuarial soundness in relation to capitation rates. The parties also dispute whether the provision violates 42 CFR 438.6(c)(1), which prohibits MDHHS from directing plaintiffs' expenditures under the contract.

Plaintiffs assert that the 7.5% limit is not actuarially sound or developed following generally accepted actuarial principles or practices. Plaintiffs allege that NorthCare retained an actuarial firm, Milliman, Inc., to perform an analysis of its ISF, which resulted in a conclusion that it should be funded at a higher rate of 12.3% of the annual operating budget. Plaintiffs also cite as evidence 2 CFR Pt 200, App V, which is a Code of Federal Regulations Appendix relating to state

and local government central service cost allocation plans, to support that the ISF limit should be closer 16.4%, rather than 7.5%. In sum, plaintiffs suggest that the entire mechanism through which defendants restrict their use of their ISFs violated the federal regulations and fundamental actuarial principles.[6]

The issue whether the 7.5% limit complied with the federal regulations involves questions of fact on what an actuarially sound level is and whether the actuarial methods were used, which require development of the factual record in discovery. Moreover, whether the various ISF requirements in the FY24 Contract directed plaintiffs' expenditures in violation of 42 CFR 438.6(c)(1) also involves a factual dispute about whether the ISF provision constituted a direction of expenditures. While defendants argue that the ISF limit is not an expenditure, this conclusion is not mandated by the text of the regulation. Yet another factual dispute exists relating to plaintiffs' allegation that MDHHS waived its position that the FY24 Contract prohibits plaintiffs from having an ISF balance over 7.5% of the annual operating budget by accepting Region 10's and NorthCare's Risk Management Strategies. Plaintiffs plead that waiver occurred and have not had the opportunity to develop that claim through discovery. Also, plaintiffs rely on Government Accounting Standards Board (GASB) Statement No. 10, which was cited in the FY24 Contract and which plaintiffs argue permits funding of the ISF account over a reasonable period without a specific cap on contributions. Thus, they have cited a factual basis to support their claim.

[6] Plaintiffs arguably waived this issue as it relates the 7.5% limit on annual contributions, which was included in the plain language FY24 Contract terms when plaintiffs signed those contracts. However, plaintiffs assert that the FY24 Contract did not include a 7.5% cap on overall funding into the ISF accounts, which is their primary allegation involving the ISF provision and is again a question requiring factual development in discovery.

Plaintiffs also raise a broader argument that MDHHS may not restrict their ability to use ISF funds to pay for services rendered in a prior fiscal year. Defendants argue that the FY24 Contract allows this restriction because it requires PIHPs to return unexpended risk corridor funds over 7.5%. They also argue that the Mental Health Code grants MDHHS broad powers, including those necessary to fulfill its duties and powers. See MCL 330.1116(3)(g). Once again, plaintiffs have stated a valid claim that this limitation would violate 42 CFR 438.6(c)(1), which prohibits MDHHS from directing expenditures under the contract "in any way." Plaintiffs allege defendants violate this federal regulation by mandating that ISF funds can only be used for future expenses and never for expenditure for prior years. Again, whether the contract provision violates these federal regulations involves questions of fact warranting discovery. Plaintiffs have therefore articulated a valid claim for declaratory relief as it relates to whether MDHHS is improperly restricting their ability to use ISF funds.

As it relates to plaintiffs' request for mandamus relief to prohibit MDHHS from issuing sanctions relating to plaintiffs' alleged failure to comply with the ISF provision of the FY24 Contract without notice and a hearing, plaintiffs have stated a valid claim that the withheld bonus payments function as sanctions, thus supporting a claim for declaratory and mandamus relief. Defendants, citing the contract language, argue that the bonuses are "award[s] to support program initiatives based on yearly metrics," to determine the amount each PIHP receives. Plaintiffs argue that the scenario in this case is like that present in *Mich Federation for Children & Families v Mich Dep't of Health & Human Servs*, Court of Claims Case No. 24-000195-MZ, a case involving an administrative rate that MDHHS was required to pay foster care service providers. In that case, this Court ruled that MDHHS's division of a legislatively selected administrative rate into base and incentive rates violated the relevant statute. *Mich Federation for Children & Families v Mich*

Dep't of Health & Human Servs, order of the Court of Claims, issued March 4, 2025 (Case No. 25-000195-MZ), pp 8-13.

Plaintiffs argue MDHHS is doing essentially the same thing in this case by recasting payments owed to plaintiffs under the law as "bonuses" over which MDHHS has discretionary authority. They argue the FY24 Contract provided a right to the bonus payments upon timely submission of the required reports, and MDHHS does not contend that any report was untimely. Whether the money in question is a bonus or funding owed to the PIHPs under the law is a factual dispute to be addressed in discovery.[7] If plaintiffs are correct that MDHHS is sanctioning them, then plaintiffs would be entitled to the procedural due process outlined in MCL 330.1232b(6).

As pleaded, plaintiffs' second-amended complaint alleges a colorable claim that plaintiffs have a clear legal right to continued funding and procedural protections, and that MDHHS has a clear legal duty to provide due process before issuing a sanction under MCL 330.1232b(6). And while the outcome of the administrative hearing would involve some level of discretion, the act of providing notice and the opportunity for a hearing is ministerial in nature. See *Hayes v Parole Bd*, 312 Mich App 774, 781; 886 NW2d 725 (2015) ("Mandamus is an extraordinary remedy that may lie to compel the exercise of discretion, but not to compel its exercise in a particular manner.") (cleaned up). Finally, plaintiffs allege they have no other available remedy at law to achieve the same results, and MDHHS does not outline any viable alternatives. Considering the factual allegations in the light most favorable to plaintiffs, they have stated a valid claim for declaratory

[7] Defendants also argue that CMS reviewed and approved the FY24 Contract but provide no factual support for this argument or explain why CMS's approval of the contract would negate any need to provide plaintiffs the amount they are owed under the contract absent a sanction following notice and the opportunity for a hearing.

and mandamus relief warranting discovery on the issue. Summary disposition is DENIED on Count I of the second-amended complaint as it relates to the FY24 Contract.

B. *WASKUL* SETTLEMENT

Plaintiffs further contend, in Count II of the second-amended complaint, that the requirement that the PIHPs create a CLS budget using a minimum fee schedule as required in the *Waskul* Settlement violates 42 CFR 438.6(c)(1) by improperly directing Medicaid expenditures. The language requiring direct compliance with the *Waskul* Settlement Agreement appeared only in the proposed FY25 Contract. According to plaintiffs, MDHHS has imposed the requirement on them during the FY24 Contract transition period as a form of "Medicaid policy."

The central dispute is whether the *Waskul* Settlement Agreement is an improper direction of plaintiffs' Medicaid expenditures, in violation of 42 CFR 438.6(c)(1). This federal regulation provides, in relevant part, that, with certain exceptions, "the State may not in any way direct the . . . PIHP's . . . expenditures under the contract." 42 CFR 438.6(c)(1). Plaintiffs assert that the *Waskul* Settlement requires plaintiffs to pay certain rates for certain services when developing a budget with recipients who self-direct their services, thus constituting a direction of their expenditures under the FY24 Contract.[8] Although 42 CFR 438.6(c)(1)(*iii*)(A) contains an exception allowing MDHHS to require a PIHP to "[a]dopt a minimum fee schedule for providers that provide a particular service under the contract using State plan approved rates," plaintiffs argue that this limited exception does not apply because the *Waskul* Settlement Agreement did not involve payments for providers. Plaintiffs further argue that the exception, even if it applied, is being

[8] Defendants suggest that the federal court rejected that argument in *Waskul* but does not assert a collateral-estoppel defense or provide evidence to support that argument.

applied in violation of federal regulations because it treats providers providing services via a self-determination modality different than other providers, in violation of 42 CFR 438.6(C)(2)(*ii*)(B). And even if the exception *did* apply more generally, plaintiffs argue that it does not apply in this case because providers are treated differently depending on the modality of services. The parties dispute whether defendants have improperly directed plaintiffs' expenditures for services. The language of the *Waskul* Settlement Agreement does not settle these questions. Thus, the pleadings sufficiently allege a claim in relation to the *Waskul* Settlement for the FY24 Contract, and the issue may be developed further in discovery.

Additionally, plaintiffs assert that defendants were required to follow the notice and hearing requirements outlined in the APA to implement any form of new "Medicaid policy." Defendants argue they were exempt from those requirements for policies outlined in the Medicaid Provider Manual under MCL 24.207(o) and MCL 400.6(4). MCL 24.207(o), a provision of the APA, exempts from the meaning of the term "rule" under the APA "[a] policy developed by the department of health and human services under section 6(4) of the social welfare act, 1939 PA 280, MCL 400.6, to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds." MCL 400.6(4) additionally provides:

> The family independence agency may develop policies to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds. Policies developed under this subsection are effective and binding on all those affected by the programs. Policies described in this subsection are exempt from the rule promulgation requirements of [the APA].

This issue is another one that requires development of the factual record. Specifically, defendants argue that "every policy provision of the *Waskul* Settlement implements a Medicaid statute or regulation setting forth a condition of receipt of federal Medicaid funds that Michigan follows these provisions in the Social Security Act." But defendants cite no federal statute or

regulation that requires the provisions of the *Waskul* Settlement Agreement. Nor do they cite any caselaw to support that a federal lawsuit settlement is binding on the PIHPs in this context. The record has not been developed on this issue beyond the language of the Settlement Agreement, which does not affirmatively establish whether its language is implementing a Medicaid statute or regulation. Plaintiffs are therefore entitled to conduct discovery on whether each policy provision of the *Waskul* Settlement is intended to, and does, implement a Medicaid statute or regulation. Therefore, summary disposition is DENIED on Count II of the second-amended complaint as it relates to the FY24 Contract.

C. CCBHC CLAIMS

In Counts III and IV of the second-amended complaint, plaintiffs request declaratory relief and relief under the Headlee Amendment, Const 1963, art 9, §§ 25-34, on the basis that MDHHS shifted responsibilities onto CMHPSM and Region 10 through modification of the CCBHC Handbook without providing additional funding. This issue relates to action taken during the fiscal year 2024 transition period. Defendants argue that plaintiffs cannot maintain an independent claim under § 25 of the Headlee Amendment, and that the changes in the contract did not add financial burdens on these PIHPs.

The Headlee Amendment is designed to protect against a legislative attempt "to shift responsibility for services to the local government . . . in order to save the money it would have had to use to provide the services itself." *Adair v Michigan*, 470 Mich 105, 112; 680 NW2d 386 (2004) (cleaned up). Const 1963, art 9, § 25 provides, in relevant part, that "[t]he state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government."

Even accepting MDHHS's argument that § 25 does not create an independent cause of action, plaintiffs also cite Const 1963, art 9, § 29, which provides, in relevant part:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.

Plaintiffs assert that they and the CMHs they serve are local units of government for purposes of the Headlee Amendment, a position that is not challenged by defendants in their motion for summary disposition. Additionally, the Michigan Court of Appeals has clarified that this Court has subject-matter jurisdiction over Headlee Amendment claims filed against state entities. See *Telford v Michigan*, 327 Mich App 195, 201; 933 NW2d 347 (2019) (involving a Headlee Amendment claim against the State of Michigan, the Governor of Michigan, the State Treasurer, and various state agencies). Defendants do not challenge plaintiffs' ability to raise a claim under § 29.

Plaintiffs' Headlee Amendment claim is premised on MCL 21.235(1), which relates to state budgeting and requires that "[t]he legislature shall annually appropriate an amount sufficient to make disbursements to each local unit of government for the necessary cost of each state requirement pursuant to this act, if not otherwise excluded by this act." MCL 21.235(2) adds, in relevant part, that the first advance disbursement must be made at least 30 days before the effective date of the state requirement in question.

Beyond the threshold argument regarding § 25, defendants do not raise an argument that plaintiffs' claims are not Headlee Amendment claims or that they do not fall within the meaning

of the constitutional provisions or MCL 21.235. Rather, defendants maintain that the changes to the CCBHC Handbook clarified responsibilities but did not add responsibilities on the part of the PIHPs. Plaintiffs plead just the opposite and cite the Handbook provisions at issue within their complaint. A finding in defendants' favor would require the Court to ignore plaintiffs' allegations in the second-amended complaint, which the Court cannot do when deciding a motion for summary disposition under MCR 2.116(C)(8). Therefore, this argument goes to the merits of the issue rather than the adequacy of the pleadings.

Defendants further point out that plaintiffs' actuarial expert, Milliman, Inc., indicates in its report, which is attached to the second-amended complaint, that " 'many of the PIHP responsibilities for the CCBHC Demonstration are currently being performed as part of the existing program.' " However, the actuarial report is not dispositive on whether the amendments to the CCBHC Handbook amounted to new responsibilities without funding in violation of the Headlee Amendment. Plaintiffs assert that the Milliman Report actually supports their position by referring to "new 'major responsibilities,' " thus giving rise to a factual issue to be explored during discovery. Once again, this issue presents a question of fact rather than a question about the adequacy of the pleadings.

Similarly, plaintiffs have stated a claim that MDHHS was required to follow the APA to modify the CCBHC Handbook. MCL 330.1232b(1) provides, in relevant part, that "[t]he department shall establish standards for community mental health services programs designated as specialty prepaid health plans under the [M]edicaid managed care program . . . . The standards established under this section shall be published in a departmental bulletin or by an updating insert to a departmental manual." It is unclear from the language of this statute whether compliance with the APA is required, or whether the CCBHC Handbook provisions would fall under the category

of "standards for community mental health service programs" in MCL 330.1232b(1). This is true even assuming plaintiffs agreed to follow the most current iteration of the CCBHC Handbook when they signed the FY 24 Contract. The fact that plaintiffs agreed to follow the current version of the CCBHC Handbook does not amount to a waiver of MDHHS's obligation to follow APA procedures. Therefore, plaintiffs have stated a valid claim for relief in Counts III and IV of their second-amended complaint.

VI. CONCLUSION

IT IS ORDERED:

1. Defendants' motion for summary disposition is GRANTED IN PART as it relates to all claims in Counts I, II, V, and VI arising from the FY25 Contract and any claim for a future contract or continued funding after the FY24 transition period.

2. Plaintiffs' claims in Counts I, II, V, and VI arising from the FY25 Contract and any claim for a future contract or continued funding after the FY24 transition period are DISMISSED WITH PREJUDICE.

3. Defendants' motion for summary disposition is DENIED IN PART as it relates to all claims for declaratory and mandamus relief in Counts I, II, V, and VI arising from or relating to the FY24 Contract and DENIED as it relates to Counts III and IV.

4. The stay on discovery is LIFTED. The Court contemporaneously requests by letter that the parties submit a stipulated Scheduling Order.

5. The December 23, 2024 preliminary injunction relating to the SUDHH funding will remain in full force and effect until further order of the Court.

6. This order is not a final order and does not resolve all claims.

Date: June 3, 2026

Sima G. Patel
Judge, Court of Claims