

Build a better health plan, mayor: How Adams can pick up the pieces from the Medicare Advantage debacle

By STEVE COHEN

NEW YORK DAILY NEWS |

MAR 05, 2022 AT 5:00 AM

An ad-hoc group of retired New York City municipal workers apparently never got the message that you can't fight City Hall. A New York Supreme Court justice ruled Thursday that the city could not take away the health-care benefits of 250,000 retired firefighters, teachers, police officers and others, which they have depended on for the last 40 years. While the victory was a classic David vs. Goliath story (disclosure: I'm the lawyer who represented the Davids), the battle revealed several important issues that remain unresolved.

The biggest proverbial gorilla in the room is the high cost of health care. New York City spent some \$8 billion on health insurance last year — about \$5 billion for the 337,000 active city employees and about \$3 billion for 250,000 retirees. That is a lot of money, and most people agree that it would be a good thing to find ways to at least control — if not actually reduce — that cost.

At the heart of the case was the city's attempt to force Medicare-eligible retirees off what is known as a Medicare Supplemental (or Medigap) plan, and onto what is known as a Medicare Advantage plan. Supplemental plans are very simple: They pay for the 20% of health expenses that Medicare does not cover, and are paid for by individuals, companies, or as here, by the city. Advantage plans are run by private insurance companies, and are fully paid for by the federal government.

Although the names are similar, the two plans are fundamentally different. Many doctors do not accept Advantage plans because the private insurers pay less for services than does Medicare. That is a very real concern for seniors who want to keep their doctors and ensure continuity of care.



Retired New York City municipal workers are pictured on the steps of Brooklyn Borough Hall to call on Mayor Adams to preserve their Medicare coverage last December. (Luiz C. Ribeiro/for New York Daily News)

But perhaps more significantly, insurers running Advantage plans subject patients and their doctors to onerous “prior authorization” hurdles. [The](#)

[American Medical Association has been studying prior authorization and found that](#) 83% of doctors report that prior authorization requirements harm the continuity of care; 94% report delays in necessary care; and 21% report that prior authorization has led to a patient's hospitalization. Moreover, 18% said prior authorization issues had led to life-threatening events or required intervention to prevent permanent damage or impairment.

The statistics do not adequately convey the dangers of, and retirees' concerns about, prior authorization. One of the insurance companies slated to provide the city's Medicare Advantage Plus plan, is the defendant in a medical malpractice suit. The company denied a 47-year-old woman an MRI prescribed by her orthopedist, and she makes the case that the resulting delay — from the doctor's appeal and the insurer's ultimate reversal — let an undiagnosed cancer grow, requiring doctors to amputate her leg, hip and pelvis.

Hours after the court said the city could not make retirees pay \$191 a month to stay on their existing supplemental plan because it was against the plain language of a city law, the teachers union dropped its support for the new plan. And the city said it was weighing its options — particularly about whether to appeal the decision.

Candidate Adams said he didn't think the forced shift to the Medicare Advantage Plan sounded fair, but Mayor Adams was apparently lured by the prospect of finding \$600 million in new federal funds and said he supported it.

Now that the court has weighed in, Adams could choose a third path: Abandon an appeal, and tell interested insurance companies to start from scratch. They should create a new Medicare Advantage Plan that is actually as good as retirees' existing supplemental plan. Design something that all doctors would accept and that didn't impose burdensome prior authorization procedures. The city should consider subsidizing what the federal government spends on an Advantage plan

— if the benefits are right. And the plan would have to be voluntary: no trying to force retirees into it by threatening not to pay for their supplemental alternative. The mayor could create a win-win-win: respecting retirees’ legal rights and addressing their legitimate concerns; tapping into federal Advantage monies; and saving the city hundreds of millions of dollars. Not the full \$600 million annually that the de Blasio administration thought it could pick from retirees’ hard-earned retirement benefits, but easily \$200 million or even \$300 million annually.

But such an approach would require real leadership. Adams would need to stand up to the unions that thought they were going to reap hundreds of millions in contributions to their individual welfare funds. But first, he has to say to his own lawyers it’s time to do the right thing for retirees: Abandon the appeal, and talk with these senior citizens and disabled first responders. They served us well; now they deserve to be heard.

Cohen is an attorney at Pollock Cohen LLP, and was part of the team representing retirees.

- -