

Retired NYC Workers Celebrate Medicare Switch Court Win

Sam Mellins / March 3

Court rules retirees can keep current insurance free of charge, as alternative to a planned cost-cutting transfer to Medicare Advantage.

A years-long fight over a planned cost-cutting change to retired city employees' health coverage reached a critical juncture Thursday with a judge's decision that allows retirees to choose to keep their current plan.

The ruling from Judge Lyle Frank in Manhattan state Supreme Court allows a joint city-union effort to shift retired municipal workers' health coverage from traditional Medicare to a privatized Medicare Advantage program by April 1 to proceed. But the city must now let current and future retirees opt out of the shift and maintain their current health care, free of charge.

The ruling was a partial win for the city, which under former Mayor Bill de Blasio reached agreement with municipal unions to pursue the Medicare switch and other cost savings as existing workers sought raises.

But it's also a victory for the group of retirees who sued to stop the switch, citing fears of higher costs, smaller networks, and greater administrative obstacles to accessing health care and preferred doctors under the new plan.

The city had planned to force retirees to enter the new privately administered Retiree Health Alliance plan or pay \$191 per person per month to maintain their current coverage. Retirees currently receive

their insurance package — traditional Medicare plus a supplemental program for treatments not covered by Medicare — free of charge.

Especially for retirees at the lower end of the city's pension scale, which bottoms out around \$15,000 a year, that cost threatened a significant financial burden.

Frank's order said that as long as the retirees' current health care program, known as GHI Senior Care, continues to exist as an option, it must be offered to retirees free of charge.

Steve Cohen, the lawyer for the NYC Organization of Public Service Retirees, the group that sued to block the switch, said that Frank's ruling was "an unequivocal win" for retirees.

"They're happy they're going to be protected and they're going to have their doctors. We're grateful to the judge for seeing through all that the city tried to put forth," he said.

But the ruling also creates a new complication for City Hall and municipal unions, by disrupting the expected boost to funding for union member health benefits from reinvestment of the plan's savings.

Michael Mulgrew, president of the United Federation of Teachers, urged reworking the labor deal to ensure the promised reinvestment will still be realized.

"While the NYC Medicare Advantage Plus plan is sound, the program has suffered from serious implementation problems and poor legal arguments, particularly on the part of the city. Our retirees deserve better," said Mulgrew in a statement.

He announced the UFT is withdrawing its support for the April 1 start date "and will urge the Municipal Labor Committee to suspend its efforts to begin the program until all the implementation and legal issues are resolved."

And Henry Garrido, executive of District Council 37, the city's largest municipal union, said the ruling would require his labor organization

and others to renegotiate with the city. DC 37 members have been working under an expired contract since May and the union is seeking to set a new wage and benefit pattern for the entire city workforce. “But that’s probably not going to happen until we find a solution for the health contract,” he noted.

A spokesperson for City Hall said, “We are reviewing the court’s decision and evaluating our options.”

The city Law Department did not immediately respond to a request for comment.

Obstacles to Care

For nearly a year since details of the new medical plan became public, retirees have voiced skepticism that it will provide benefits equal to what they currently receive, while saving taxpayers a promised \$600 million annually.

Nearly all Medicare Advantage plans include fewer doctors than traditional Medicare does. The city has repeatedly claimed that the Alliance’s plan will enable retirees to see any doctor that accepts Medicare, which the vast majority of doctors do. But retirees cast doubt on this claim, giving testimony at hearings and submitting affidavits in state court saying that their doctors have told them that they will not be participating in the plan, or are unaware of it.

The new plan will also make it more difficult for retirees to access many treatments.

Under Medicare Advantage, health care providers will have to get approval in advance from insurance companies before conducting dozens of procedures or treatments including some doctor’s office visits, mental health care treatments, home health care services, and tests such as x-rays and bloodwork, legal documents show.

Under their current Medicare, this kind of pre-approval is only required for a very limited number of treatments, such as transplants and

physician-administered drugs. Most treatments do not require any pre-approval at all.

“We are so grateful that we will not have the \$191 penalty every month, which we cannot afford, and we are so grateful that we will not be required to have prior authorizations for many, many, many common medical treatments,” said Sarah Shapiro, a retired member of the United Federation of Teachers union.

Now the leaders of the retiree backlash are preparing to make sure retirees know that they can opt to keep their current Medicare coverage for free.

“We’re trying to get the message out to retirees that they still have time to opt out, if they wish to,” Cohen said.

‘Drop This’

But the retirees’ victory may be a temporary one. Under Frank’s order, the city has the right to drop the GHI Senior Care plan and force all retirees onto the fully private Medicare Advantage program in the future.

Cohen said that any moves to eliminate Senior Care would have to be the subject of negotiation between the city and the municipal unions. “Is that in the best interest of the active [employees] or retirees? Let’s see if everybody will do the right thing,” he said. The ruling is also subject to appeal.



Steve Cohen, a lawyer representing the Organization of Public Service Retirees, speaks outside City Hall on March 3 | Ben Fractenberg/THE CITY

Ralph Francisco, a retired lieutenant paramedic with the New York Fire Department, and a member of the board of the Organization of Public Service Retirees, said that he hopes the city will not appeal the decision.

“Please, just let it go. We’ve earned these benefits, we’ve fought for these benefits, the judge has said we’re in the right. Do the right thing Mayor, drop this,” he said.

During his mayoral campaign, Adams voiced concerns about the plan, calling it a “bait-and-switch” that would “traumatize” retirees.

“Some of the stories I’m hearing about increases in payments, you’re on a fixed income — this is devastating,” he said at a campaign event in October 2021.

But once elected, Adams began singing a different tune. On Feb. 6, he issued a statement of support for the plan. “I believe the new program will be in the best interest of retirees and the city’s taxpayers, who stand to save \$600 million annually,” Adams said, noting that the plan will “continue to offer premium-free health coverage to retirees, along with new and enhanced benefits.”

As a retiree from the New York City Police Department, Adams’ own healthcare benefits will be affected by the shift.

With Adams supporting the change, retirees have looked to city Comptroller Brad Lander to block the plan. Lander voiced concerns about the switch last month, but it is not clear he has much power to impede it.

Even if the comptroller objects to a contract, city law allows the mayor to overrule them and enact it.

The genesis of the Retiree Health Alliance plan, which will be run by a partnership between insurance giants EmblemHealth and Empire Blue Cross Blue Shield, dates to a 2014 agreement between de Blasio and the major municipal unions. In that deal, the unions promised several billion dollars of health care savings in exchange for raises for current employees.

New York Focus broke the news of the planned shift in April, and in September, the NYC Organization of Public Service Retirees filed suit seeking to block it.

In October, Judge Frank issued a temporary injunction against the plan, and in December, he delayed its implementation until April 1, leaving open the possibility of further delays. The plan had originally been set to go into effect on January 1.

Frank’s December order required the city to extend the period that retirees are permitted to opt out of the Medicare Advantage plan through June 30, a position that he reaffirmed in Thursday’s order.

About 47,000 retirees — nearly 20% of retired city workers — have already opted out of the plan, Fortune reported earlier this week.

The plan's rollout has been marred by confusion and inaccuracies. Last fall, the city mailed retirees plan enrollment guides containing false information on key aspects of the new plan. The city initially refused to mail retirees a corrected version of the guide, citing an estimated \$825,000 cost and a "global paper shortage." In his December order, Frank required the city to mail corrections to all retirees who had received inaccurate enrollment guides.

Francisco, the retired paramedic, said that Thursday's ruling "means a lot" to him.

"I didn't want to be told that I needed to get permission to go to a doctor, to have a referral to go get an MRI done, and be told by an insurance company, 'well, do you really need that?'" he said.

For fire department retiree John Gilleny, the whole saga has a moral. "I'd like to say that the statement that you can't beat City Hall is untrue," he said.

Additional reporting by Reuven Blau.