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NYC loses appeal in court battle over Medicare Advantage Plan for retired city workers

By Chris Sommerfeldt

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Mayor Adams' administration suffered another setback Tuesday in its effort to shift retired city workers into a privatized Medicare plan as a Manhattan appellate court upheld a ruling that deemed a key part of the plan unlawful.

For nearly a year, Adams' administration has tried to enroll the city's roughly 250,000 retired workers in a Medicare Advantage Plan, which would allocate as much as \$600 million in municipal budget savings each year thanks to federal subsidies and a partnership with a private health insurance provider.

The savings — which Adams has described as a critical hedge against [looming city budget deficits](#) — are contingent on the administration being able to levy a \$192 monthly penalty on any retiree who opts to stay on their traditional Medicare coverage instead of accepting the Advantage plan.

But Manhattan Supreme Court Justice Lyle Frank [ruled this past March](#) that the financial penalty ran afoul of a local law called 12-126 that requires the city to provide retirees with premium-free health coverage for life. Adams' administration appealed the ruling, contending it was complying with the law as long as it offers the Advantage plan for free.

On Tuesday morning, a panel of judges on the Supreme Court's appellate bench rejected the argument from Adams' team and ruled Frank's decision should

stand.

“Nothing in the statutory text or history supports (the administration’s) interpretation,” the two-page ruling stated.



New York City Mayor Eric Adams (Luiz C. Ribeiro/for New York Daily News)

The decision marks a victory to NYC Organization of Public Service Retirees, a grassroots group of retired EMTs, firefighters, cops and other city workers who have argued that an Advantage plan would water down their health coverage. They’ve pointed to [federal studies](#) that show Advantage plans can block beneficiaries from “medically necessary care” while pressing the case that traditional Medicare is more reliable.

The retiree organization filed the lawsuit that prompted Frank’s initial March decision, and Marianne Pizzitola, an ex-FDNY EMT who serves as the group’s president, praised the appellate court for ensuring “justice prevailed in a true David vs. Goliath story.”

“This attack on our most vulnerable population must end,” Pizzitola told the D News. “Senior citizens and 9/11 responders are not for sale.”

The appellate setback for Adams may not be the end of the Medicare Advantage saga, though, as his administration has previously said it could implement the cost-saving plan despite an adverse ruling.

[[NYC Council 'lukewarm' on Mayor Adams' push to change city law as part of Medicare Advantage battle: sources](#)]

The first contingency Adams' team has said it could opt for would be convincing the City Council to amend 12-126 in such a way that Frank's ruling would be rendered moot, thereby greenlighting the Advantage plan's \$192 monthly opt-out fee.

Adams spokesman Jonah Allon said the appellate ruling should spur Council members into action on such an amendment.

“We continue to maintain that the city's position is firmly grounded in law, but today's decision further underscores the urgency for the City Council to act and approve the administrative code change required to preserve a choice for retirees,” Allon said. “The city is facing serious financial challenges and we need the partnership of the Council to provide this sensible path forward to contain skyrocketing health care costs.”

United Federation of Teachers President Michael Mulgrew, who serves as vice chair of the Municipal Labor Committee, which supports Adams' Advantage push, echoed Allon's sentiment. “The City Council must change the city's Administrative Code,” Mulgrew said in a statement.

However, a senior Council source said no member of the body had, as of this week, even expressed interest in introducing a bill on the matter. Retirees opposed to Advantage, meantime, have for months flooded Council members' inboxes with emails urging them not to act on the administration's request for 12-126 tweak.

In a letter to the Municipal Labor Committee last month, Renee Campion, Adams' labor relations commissioner, acknowledged the administration had not secured any support from the Council on the 12-126 proposal.

Campion also wrote that, barring a sudden shift in momentum in the Council, Adams' administration would likely move ahead with a second option: Instructing an independent arbitrator overseeing the healthcare dispute to implement Medicare Advantage as the only plan available to municipal retirees. It's unclear how the appellate ruling may impact that proposal.

In her letter, Campion stressed that the administration will try "in any way that we can" to implement Advantage, arguing it's a critical savings tool at a time when the city is staring down [a projected \\$6 billion budget deficit](#) by 2026.

Pizzitola said she expects the battle to continue.

"The fight continues as we are sure the city and the Municipal Labor Committee will try any tactic to further take away our benefits," she said.

