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VIA EMAIL AND NYSCEF

Justice Lyle E. Frank
Supreme Court of the State of New York
New York, NY 10007
email: lfrank@nycourts.gov

Re: *NYC Organization of Public Service Retirees, Inc. et al v. Renee Campion et al*, Index No. 158815/2021

Dear Justice Frank:

We represent Petitioners in the above-captioned matter.

The retirees read the City's January 7, 2022 letter to the Court concerning its implementation of the Medicare Advantage Plan (MAP) with great interest. (NYSCEF No. 173). Reading this update gives the impression that the City and Alliance are proceeding smartly and efficiently across calm seas. In reality, seniors have overwhelming evidence to show they are like passengers on the Titanic heading towards disaster. But unlike the designers of the ill-fated liner, retirees are screaming "Iceberg ahead!" And no one – except the Court – wants to hear the truth.

The City/Alliance's information/implementation plan is a Potemkin village: there is a façade of activity and very little behind it. Remarkably, the City and the Alliance have taken steps in the last month that not only fail to adequately and appropriately educate retirees about the new MAP, but actually make things worse. Specifically:

The Alliance's list of participating doctors continues to be inaccurate. Retirees recognize that it takes time for the Alliance to contact doctors, convince them to accept the MAP, and update the online search/participation tool. Consequently, most retirees waited until after January 7th to check in with their doctors to see if they were participating in the new MAP. As you will see from attached affidavits, what retirees found was simply mind-blowing: the participating doctor database and search tool is still fundamentally flawed. Dozens of retirees saw their providers listed on the database as participating, but when they called the doctors' offices, were told the doctor was not.

These are not cherry-picked examples. The doctor participation list is shockingly inaccurate and the search tool defective. Retirees simply cannot make an informed decision if they do not know whether their doctors will be accepting the plan.

The Alliance’s webinars do not allow questions. The City/Alliance claim to have conducted exactly two webinars in the last month and claim that six more will be held by the end of January. But as of today, not a single webinar is listed on the OLR website; and they are poorly promoted. How are seniors expected to know about these sessions? Yet there is a more fundamental problem: not a single one has been interactive or allowed questions from retirees. Not only are these webinars not interactive, but questions posed by participants in the chat box go unanswered.

It is like the old Borscht Belt joke: “The food at this hotel is terrible,” says one guest. And a friend replies, “It is terrible; and the portions are too small.” Except here, it is not funny: with no opportunity to get their questions answered, retirees cannot make an informed decision whether to participate in the MAP.

The 833-number representatives continue to be-ill informed. Retirees who call the 833 number continue to receive inaccurate, often contradictory information -- as the attached affidavits spell out. Several seniors have requested a printed version of the Evidence of Coverage – only to be told it is only available once they choose to enroll in the MAP; or that it is only available online. Another was told the “real” opt out deadline was mid-February and there was no guarantee of not being enrolled in the new MAP if the retiree waited until the Court-mandated March 31st deadline to opt out. And yet others who asked for an updated doctor participation list were directed to an irrelevant Anthem website. One retiree was even sent documents for a wholly irrelevant plan. And as Marianne Pizzitola’s affidavit makes clear, the OLR telephone hotline and email system are very slow in responding – when retirees can actually get through – placing additional burden on the 833 representatives.

Given that there are no interactive webinars, OLR is completely unresponsive to retiree questions, and the 833-number is closed on weekends and ill-informed when they are there, how are retirees expected to get accurate, timely information?

The Enrollment Guide is completely misleading. The most fundamental problem with the Enrollment Guide is that it continues to misrepresent the extent of the extraordinary number of tests and procedures that will be subject to prior authorization. A second brochure about prior authorization is available only online.

Hospital participation is still not resolved. Despite the City/Alliance assurances that virtually all hospitals will be participating, that is simply not the case. (See the OLR website which says all hospitals are participating, but also states that the FAQs were last updated on December 2nd; screenshot attached as an exhibit.) Major hospital systems – including New York Presbyterian, Baptist Hospital the leading hospital system in Southeast Florida, the Cleveland Clinic in Ohio, and the Nuvance Health system in the Hudson Valley – are still not participating. And of course, just because a hospital is participating does not mean that individual doctors are. How is a

senior expected to make an informed decision based on false and incomplete information?

Doctor participation – and outreach – is still inadequate. As many of the attached affidavits make clear, not only is representation of doctor participation inaccurate, but doctors also still do not know enough about the MAP to decide whether to participate. Moreover, the Alliance’s insistence that doctors must participate – because they accept a different insurance plan or Medicare itself – is simply untrue. Doctors may be considered in-network by the Alliance, but the choice about whether to participate in this new MAP – or accept new patients – is solely theirs.

The inadequacy of the Alliance’s outreach to doctors was underscored recently by a statement made by the Alliance’s Kim Parker on a webinar. She told retirees that when asking doctors if they were going to participate not to use the MAP name, but some other local Empire/Anthem plan name, and that retirees should do the research necessary to find out what local Advantage plan might be relevant. This is simply absurd.

The Alliance’s effort to educate doctors and convince them to participate is proceeding. But there is still a very long way to go – and more time is needed – before doctors decide. And only then can their patients get a clear answer.

Your Honor, the bottom line is that retirees simply do not have adequate, accurate information upon which to make an informed decision about whether to participate in the new MAP. The City and Alliance may be trying to make improvements in their outreach to doctors, in the accuracy of the provider participant website, in their negotiations with hospitals, and in their communications with seniors. But because they are rushing the process so aggressively, they are exacerbating the problems, not solving them. And that is causing irreparable harm to a very fragile population which is justifiably concerned by what is being forced upon them.

We ask that you slow down the process just a bit: please delay the implementation by at least two months – to June 1st – to give the City and the Alliance the chance to make things right; and see if they do. The last month has been a disaster in the City/Alliance’s new, improved implementation plan. The retirees should not be penalized for the City/Alliance’s mistakes.

Thank you for Your Honor’s attention and consideration.

Sincerely,
/s/ Steve Cohen
Steve Cohen

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cc (via email): Rachel DiBenedetto, Esq.
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Michael DeLarco, Esq.