DAILY NEWS
OPINION

The City Council owes retirees Medicare choice: Let people pick if they want to switch to Medicare Advantage

By Gary Altman

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Historically, New York's City Council has set nationwide precedents by adopting historic and landmark legislation dealing with such vital issues as campaign finance, anti-apartheid, human and worker rights, and women and senior citizen protection laws. It once again has the opportunity to protect the health and well-being of more than 250,000 retired city public servants.

Intro 1099 now before the Council would allow a choice between traditional Medicare and a new Medicare Advantage Plan. This bill would protect the many thousands who have been told that some of their long-time oncologists, cardiologists, gynecologists, etc. will not accept advantage plans. Can anyone imagine the horror of hearing from your oncologist, whose expertise, caring and treatment has kept you or a loved one alive for much longer than anyone expected, that her medical group sadly will not accept Aetna Advantage? This fear and resultant stress, which is proven to bring on sickness and worse, is a heavy burden for so many seniors to endure.

Council members are mistakenly being told that retiree benefits are subject only to the Taylor Law and collective bargaining. The historical facts as detailed below prove that the two largest union supporters of removing all city retirees from traditional Medicare — District Council 37 and the United Federation of Teachers — never before believed this, as evidenced by their own testimony before the City Council on prior legislation amending the exact section, 12-126 of the city's administrative code, which they mistakenly now claim the Council is preempted from amending.

On my first day working in the Council's legal division in 1979, I met two people who I would grow to deeply respect, befriend and admire. One was then aide and future borough president and now again a Council member, Gale Brewer, and the other was Council Member Mary Pinkett.
President of AFSCME DC37, Michelle Keller, rallies a group of municipal retirees in Lower Manhattan on Thursday, March 9, 2023.
President of AFSCME DC37, Michelle Keller, rallies a group of municipal retirees in Lower Manhattan on Thursday, March 9, 2023. (Barry Willilams/for New York Daily News)

Our no door offices were only yards apart. Mary, prior to making history by becoming the first Black woman ever elected to the City Council, was the president of Local 371 and vice president of DC 37. Her husband Bill was an active member of the UFT. Mary always fought for the unions and increased worker protections and benefits. For years, the Council would, when necessary, amend section 12–126 of the administrative code to provide city government retirees reimbursement of their Medicare Part B premiums.

But with her distinguished 25 year-plus tenure soon to end, Mary, as Governmental Operations Committee chair, wanted to guarantee full reimbursement for city retirees as promised, no matter who the mayor or speaker in the future might be. This led to the passage of Intro 580-A in 2001 with the outspoken support of DC37 and the UFT. When the final negotiations with the mayor on this bill occurred in early 2001, I along with Speaker Peter F. Vallone, and our chief of staff were the only three Council people in the mayor's office during these weekly discussions. I've always clearly remembered these meetings as I had promised my long-time friend Mary, we'd do all we could to get this bill passed.

That is why I was astonished when I read UFT President Michael Mulgrew's June 30 letter to Speaker Adrienne Adams in which he claimed that the Taylor Law and collective bargaining disallows legislative action on Intro 1099 and only through collective bargaining can retiree benefits be granted or amended. Mulgrew wrote that this has been the policy for "more than half a century."

He must surely know that this is untrue as in 2000 and 2001 both union presidents strongly urged the Council to pass legislation and amend section 12–126 without a single mention of preemption. And even only 35 years ago, Bob Linn, Ed Koch's Office of Labor Relations director and chief labor negotiator wrote Mayor Koch Feb. 26, 1988 that Medicare Part B "reimbursement is pursuant to local law, not any collective bargaining agreement."

On Jan. 31, 2000, Lee Saunders, administrator of DC37 testified before the City Council on Intro 580 which amended section 12–126 and provided for full Medicare Part B reimbursement. He stated "DC37 emphatically and unequivocally supports this legislation. Indeed, we view it as the fulfillment of a promise made to the men and women who spent their working lives in public service by the city a long time ago.

The promise was that the city would do exactly what the bill calls for: fully reimburse retirees for the cost of Medicare part B payments." Saunders did not mention any legislative preclusion or preemption to act because of any supposed restrictive language under collective bargaining or the Taylor Law, as this was one of numerous prior times the Council acted according to its legal authority to amend section 12–126. It was legal then and it's legal now.

New York City municipal retirees protest changes to their Medicare in Lower Manhattan on Thursday, March 9, 2023.

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At the same hearing in 2000, UFT President Randi Weingarten's personal representative testified on behalf of "our 35,000 member retired teachers chapter and on behalf of the UFT and its 140,000 members urging the Council to adopt Intro 580." She continued, "We know that the entire Council will vote positively on this important issue." Again, not a single word of mention about collective bargaining or the Taylor Law was made by the UFT that day.

In fact, the UFT was not even on the invited public witness list prepared by the committee's counsel which my office then sent out under my signature. Yet they deemed it so important that they came down to City Hall to testify in support of Council passage. The Taylor Law and collective bargaining now touted by the UFT's current long-time and hand-picked successor to Weingarten as precluding Council legislative action, was again, never raised.

The following year, 2001, the Council finally adopted Intro 580-A and who came to testify at the hearing? Why none other than DC37 and the UFT, and they again both separately testified and urged the quick passage of the legislation by the Council with yet once again, not a single mention of any preemption.

I urge all Council Members to consider sponsoring and adopting Intro 1099. The legality of Section 12-126 has now been upheld by the courts numerous times in the last two years. On Aug. 11, Justice Lyle Frank of Manhattan Supreme Court said, "that both the doctrine of promissory estoppel and the provisions of New York City Administrative Code Section 12-126 bars the actions sought to be taken by respondents." Isn't it time that the Council puts this action by the Municipal Labor Committee and OLR to rest? The MLC has never bargained for or represented retirees, and surely not for me as a non-union City Council employee.

Giving retirees a choice to pick Medicare Advantage or not matters because, according to a 2023 Kaiser Family Foundation study, more than 2 million nationwide prior authorization requests (6%) were fully or partially denied by Medicare Advantage insurers in 2021. The highest percentage of denials which was double that at 12% was from none other than Aetna/CVS.
Just one out of nine of the more than 2 million denials were actually appealed as the process is often difficult, especially for the elderly or infirm. Yet in 82% of those appeal cases, the denial was fully or partially overturned. Aetna after many times wrongly, cruelly, or greedily fully or partially denying 12% of all pre-authorizations then overturned and reversed their decisions 90% of the time when appealed.

This was, of course, no help to the eight out of nine enrollees who couldn't or didn't appeal believing the initial determination was final. How many of those denials resulted in needless pain, torment or even death?

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Please do not be swayed by any MLC or union claim that this Aetna plan has been carefully negotiated and is different and better than all other Aetna plans. A zebra can't change its stripes. And instead of touting the free meals after hospital stays or car rides (yes many who need, can already get that and it's called Meals on Wheels and Access-A-Ride) that the Aetna plan will provide,

how about letting us stay on traditional Medicare and continue to keep and choose our own doctors. Our lives may depend on it.

Please remember that Aetna is a for-profit company, and however noble some unions may think their effort is, Aetna only makes additional money by denying pre-authorizations, whenever possible. They have already admitted to the state Supreme Court that death has occurred because of denials. The overwhelming majority of more than 250,000 city retirees are living on small pensions and Social Security and will have no choice but to switch to Aetna if the unthinkable happens. These are more likely to be Black, Hispanic and women retirees, whose salaries and thus pensions years ago were often unfairly kept lower. Please, Council think of them and all retirees as we battle the infirmities and diseases that older age inevitably and eventually brings.

Do it for Mary.

Altman was an attorney at the City Council for 38 years during which he served for almost 25 years as the legislative counsel to four speakers.

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