August 30, 2022

Michael Mulgrew
President, UFT

Vincent Gaglione
Chair, UFT RTC Health Committee

Gentlemen,

We have had the opportunity to read your latest emails. One year after we began looking into why retirees were being forced into a health plan against their wishes, and well-being, and facing new co-pays also implemented by the MLC and City, *you finally admit that what we have been saying is true.*

Thank you.

In 2014, the MLC bestowed $1 billion upon the UFT for the benefit of THEIR active union members to fund THEIR raises. Your statement that the Health Insurance Stabilization Fund (HISF) is “fungible,” thereby permitting one union to benefit from its funding at the expense of all other unions, is chilling. What did the retirees hear? “Well, yes, we took the money, but we repaid it by selling off your insurance to a managed health care company to satisfy our debt.” This is the epitome of the quid pro quo of union negotiations. But using your enlightened reference, you bought an air-fryer not from your paycheck but by passing the cost to your neighbor.

Unions were once honorable and protected their members and retirees. Sadly, that is no longer the case. The UFT and MLC have set a precedent that, collectively, you are willing to sell off a benefit earned by 250,000 retirees from every agency in the City to satisfy the debt owed by one union. To repay monies taken from the HISF by inflicting changes that affect all unions to buy a raise for teachers is the crime of the century. We looked into how the MLC permitted this to happen and learned of the undemocratic weighted voting process that exists. We were advised that the UFT and DC37 control almost 2/3’s of the vote needed to get motions passed. We realize that with the help of Harry Nespoli, President of the Sanitation Union and MLC chair and Greg Floyd, of Local 237, you probably have your 2/3’s. We do not know for sure, as MLC operations and HISF transactions are conducted without any oversight. Our requests for information or meetings receive no reply. We request a copy of the HISF financials now from you, for the last 10 years.

Here is our response to Mr. Gaglione’s communications:

- You describe our statements that the 2014 UFT MOU conveyed $1 billion to the City to pay for the teachers raises as an “allegation.” You then admit the UFT did exactly that: so it is not an allegation, it is a fact. Even Lynn Winderbaum, FL RTC, stated the same in her emails.

- You say the UFT action was permitted to take the $1 billion and that it was repaid through the health savings agreement by shifting the retirees into Medicare Advantage. The teachers alone benefited by the money coming out of the HISF and you repaid it by selling off the health plans of ALL RETIREES from ALL agencies. You STOLE everyone's Medicare to benefit only the UFT and got the MLC to agree all along the way.

    - You state the MLC and City produced significant savings on healthcare costs that "did NOT diminish either in-service or retiree benefits." That is a BOLD FACE LIE. How did you achieve those savings? By diminishing benefits!
        - Increased co pays
        - Increased prior authorizations to deter utilization of health services
        - Increased cost sharing, including deductibles
        - Restricted all choice for a Medicare eligible retiree by forcing them into accept a Medicare Advantage plan with diminished medical benefits than we currently have, or charge a penalty premium to opt out and stay in their current plan.
        - Burdened these same retirees with a $15 co pay for almost every service. In too many cases, the costs equal a monthly car payment.

How is this not a diminishment of benefits? Our pension checks are small. Many of us make less than $20,000 a year. Now we are paying more for care than we ever expected and surely had no opportunity to plan for. We had no say in the process you undertook to secure raises for current teachers. So let us ask you something: If YOU take a loan, shouldn't YOU pay it back? Why is it acceptable to pay it back using OUR benefits?

The other letter you distributed (8/12) advises that you are not an attorney and your information may not be "totally accurate." Yes, that is the case, so let's dive in there.

- The correct name of our organization is NYC Organization of Public Service Retirees, NYCOoPSR. We won in Supreme Court in March. The City appealed the next day. It became apparent the City filed a frivolous case by arguing against its own legal opinion, and we filed for sanctions. They are still arguing the same erroneous position in violation of law and we believe we will win again.
- We asked for a delay in the filing of our brief because we asked the City for four things: will a MAP still be offered; who will the new vendor be now that Anthem has withdrawn; will the plan features be the same as the previous plan; and would the implementation be the same. Answers have not been provided..
- We filed for an extension to file our brief. That request was mooted by the Court setting the calendar for the September term. Then, Anthem pulled out and the City asked for an extension.
- We did not ask for another MAP not to be implemented. Our position is that ANY MAP should be a choice, as they have been and were intended to be when advantage plans were created, and that Medicare eligible retirees always have the option of traditional Medicare with a Medigap plan……at no cost.
- You do mention the fact that Health and Human Services Office of Office of the Inspector General (OIG) report that found Medicare Advantage plans delay and deny care. While you are only familiar with examples reported in the OIG report, we have many retirees whose family members are in these MA plans

and have actually experienced those same issues and more. The vendors cited are many and include: Aetna, Anthem Blue Cross, Humana and United HealthCare.

- You posted a link to the OIG report, and then you link to the website JDSupra and say you vetted it. Let us vet it further for you. It is a legal clearing house of articles, written by many different attorneys, including Strook & Strook, who happens to be the same firm that represents the UFT, MLC and Emblem Health. The attorney who wrote the article you linked in your letter used to work for AETNA. So much for the non-biased editorial. That does not speak to integrity.
- The OIG report of April 2022 is not the first one that points out the poor oversight in Medicare Advantage plans. While you accurately point out CMS is failing in its duty to ensure the plans accurately follow the rules and do not harm, we are concerned that while you acknowledge their failure to protect MA beneficiaries, you are okay with the City and Unions forcing retirees into them. The Inspector General, in a Congressional hearing held in June, testified that these plans were causing harm to people. This can open the City and unions to liability since you freely acknowledge the inferior plans' operations and yet still support them.
- Let's go one step further with the Government Accountability Report. The GAO found that seniors **in their last year of life** were leaving MA plans to return to traditional Medicare. The logical question to ask is why would this be the case? The disturbing answer is because MA plans do not serve their needs and deny them access to care at the most critical times in their lives.

Medicare was founded in 1966 and the City determined in 1967 that healthcare savings could be realized by allowing eligible retirees to use Medicare as their primary, rather than the City paying for full primary coverage. Medigap plans were introduced to the City offerings in order to make retirees whole, as was the Medicare Part B premium reimbursement. This was accomplished by statute, Administrative Code 12-126, and was supported by all the unions and elected officials alike. This is how unions should operate, to ensure that benefits are not diminished. However, this statute, which protects health coverage for municipal employees and retirees, is now under threat of being modified or abolished by the very same City and unions who once supported it.

This attempt to take away the protections of Medicare Part B premium reimbursement would be the THIRD attempt to do so. First was during the fiscal crisis in 1977 and, if not for Mary Pinkett, (BK), Aileen Ryan, and Speaker Paul O'Dwyer, Mayor Beame might have gotten away with it. At that time, it was DC37 that shelled out $26 million in givebacks to protect seniors. Second was in 1983 under Mayor Koch. Then Speaker Vallone and Mary Pinkett protected seniors. Today, it's not the Mayor trying to undo the protections put in place by 12-126, *but our very own unions*. Mr. Gaglione, you mention an email we sent out, but we did not send out one recently with the details you mention in your rambling diatribe. Your reply should include the email you are citing. And ignorance sir, is when a person doesn't readily admit what they do not know. Our lives are not fungible. You may be okay with robbing Peter, Paul, and Mary to fund the UFT. We assure you, Peter, Paul and Mary do not like it.

Lastly, your email of 8/29 quotes the Journal News. On Yahoo, we found the same quote published from a DFS press release. If you read it, the rates are only for Individual and Small Group rates. We are Large Employer Group Waiver Plans (EGWP). NYS (2016) identifies small groups as 1-100 employees.

And typically, the City has negotiated rate increase caps with vendors. Please realize that when you are the Chair of a Union Committee, what you say and publish carries weight and people believe it. When

you spread misinformation, you are the cause of harming people. It is okay to make a mistake, but correct it. In this last email, you add more misinformation and gas lighting to make readers believe your statements are accurate. Regardless of the rate increases you mention, a Medicare retiree plan cost is less expensive than an active; and that has been our point.

The unions of today have lost their way. This time, Mr. Mulgrew, it should be the UFT that saves the day. Fix what you broke.

Signed, the "Fungible Airfryer Rump" Retirees…

The Board of the NYC Organization of Public Service Retirees and ALL the retirees WE represent

From: VINCENT GAGLIONE <uftrtchealthchair@gmail.com>
Date: August 16, 2022 at 7:42:53 AM EDT
To: undisclosed-recipients:;
Subject: HEALTHCARE SAVINGS

Several outstanding allegations are made against the MLC and the CITY for agreements related to finding healthcare savings that extend back to 2014. In addition, those allegations touch on claims that monies from the Stabilization Fund were used for in-service salaries at the expense of retiree benefits.

As far back as 2014 it was becoming exceedingly clear that healthcare costs were skyrocketing. Both the MLC and CITY recognized the problems and took proactive steps to protect our benefits. That is NOT a bad thing.

With rare exceptions pots of money in a budget are fungible, that is, able to be used and repaid for purposes other than designated. Bloomberg had left many contracts unsettled for many years and put no monies designated for salary increases in the budget left to the DeBlasio administration. The City and the MLC agreed to use Stabilization monies for salary increases on the promise to repay it with healthcare savings that would also extend and continue into the future. The MLC and CITY produced significant savings on healthcare costs that did NOT diminish either in-service or retiree benefits.

SEE ATTACHED PIECES which I composed based upon my interpretations of what I have found in documents on the OLR website and elsewhere.

The NYC Office of Labor Relations (OLR) *represents the Mayor in the conduct of all labor relations between the City of New York and labor unions representing employees of the City.*

"With the cooperation of all of the MLC unions and their leadership, including Harry Nespoli, President of the Sanitation Workers Union and Chairman of the Municipal Labor Committee, Michael Mulgrew, President of the UFT, and Henry Garrido, Executive Director of DC 37, as well as the members of the Labor Management Health Insurance Policy Committee, we have met our goals and made significant inroads in reducing our health care costs into the future. At this time, **we can report on the successful conclusion of the FY 19 - 21 Agreement, which met the goals of adding another $1.1 billion in health care savings over three years**, **meeting the Administration's total goal of $4.5 billion in health care savings."**

The MLC and the City in 2014 agreed to use monies from what is called the Stabilization Fund, which was over-funded at that point, to provide monies for salary increases IF the city's unions would agree to helping the City reduce healthcare costs by finding savings mechanisms. In fact, over the next three fiscal years, late 2015 to early 2018, whatever monies were borrowed from the Stabilization Fund for salary increases were completely repaid by the savings that were found by the MLC in healthcare costs. And most importantly, **NOT A SINGLE HEALTHCARE BENEFIT WAS EITHER LOST OR DIMINISHED TO UNION MEMBERS DURING THAT THREE YEAR PERIOD**. In fact, some healthcare benefits were increased. So, the statements that are continually repeated that the Stabilization Fund was raided at the expense and loss to retirees for in- service salaries and benefits is a canard.

"Effective July 1, 2014, the Stabilization Fund shall convey $1 Billion to the City of New York to be used to support wage increases and other economic items for the current round of collective bargaining."

"At this time, we can report on the successful conclusion of the FY 19 - 21 Agreement, which met the goals of adding another $1.1 billion in health care savings over three years, meeting the Administration's total goal of $4.5 billion in health care savings" https://www.jdsupra.com/legalnews/hhs-oig-report-on-prior-authorizations-2369087/

By the way, I double-checked the integrity of the above-sourced material which criticizes the OIG report. The source was regarded as the top legal blog on healthcare issues.

https://blog.feedspot.com/health_law_blogs/

The temps and humidity today are even better than yesterday. Take a walk. Enjoy the weather.

Vinny

Fwd: MORE DEEP DIVING INTO MEDICARE

Date: Fri, Aug 12, 2022
Subject: MORE DEEP DIVING INTO MEDICARE
To:

Good morning, all.

I am not a lawyer so what I now convey may not be totally accurate. I think I understand the gist of it, however.

The latest news about the ongoing court case by the ONYCPER against the MA+ plan is that they asked the court yesterday to delay the appeals hearing. In addition, they do not want the City to pursue finding a substitute plan. The City's response is that a major insurer withdrew from the MA+ plan thereby making the issue and original appeal of the MA+ plan moot since the plan no longer exists. The City wants no delay in the appeals court's review of the judge's interpretation of the rules governing the City's ability and costs to provide a plan or plans. We again await a court decision.

Now, lest some think that I am trying to baffle you with BS, I have been trying to get a better understanding of the many issues that have been raised among us, one of them being, the basics of MA plans. They are the brainchild of CMS, which administers Medicare. Putting the political objections that some have about "privatizing Medicare" aside, in the realization that nearly half of the Medicare-eligible population is enrolled in MA plans, I felt compelled to learn more about them from their source.

One of the concerns you expressed at our last meeting and which was conveyed to Michael was insuring alignment in any new plan with Medicare rules. I include with this email a link to the CMS' own description of Medicare Advantage plans. When you read it, you will see that they specifically clarify the responsibilities of Medicare Advantage plans, including providing for all Medicare services.

Understanding Medicare Advantage Plans.

But as some written stories, newspaper and internet articles, and a recent CMS Office of the Inspector General's report indicated, some plans do not follow CMS rules. But that, of course, was the "lost" point of the OIG report - **that CMS must exercise more oversight over MA plans.**

https://oig.hhs.gov/oei/reports/OEI-09-18-00260.asp

The following document criticizes the OIG document for the sloppiness of its methodology. That doesn't take away from the report's original and main point, that **CMS needs to enforce tighter oversight of MA plans.**

From: VINCENT GAGLIONE <uftrtchealthchair@gmail.com>
Date: August 29, 2022 at 8:13:38 AM EDT
To: undisclosed-recipients:;
Subject: FUNGIBLE

Several former colleagues have sent to me a recent email from the ONYCPER group which filed the lawsuit against the MA+Plan. I find some of the material ignorant of the historical situation with healthcare over the past 20 years and even more recent developments.

In the first instance, each year insurers apply to the NYS Department of Financial Services for permission to increase rates on plans. This is the most recent approval by NY State as provided in my local August 19 newspaper, The Journal News :

"Health insurance rates will increase on average 9.7% next year for individuals and 7.9% for small group plans, state records show.
The insurance premium rate increases came in well below the proposed rates sought by health insurers, which requested rate hikes of nearly 19% and 16.5% for individuals and small group plans, respectively....

State Department of Financial Services Superintendent Adrienne Harris asserted the approved rate increases are a result of rising medical costs and inflation putting "upward pressure on premiums," as well as the lingering impacts of COVID-19 on the health system.

...Still, the final rates for next year exceeded recent years. For example, regulators last year approved average rate increases of 3.7% for individuals and 7.6% for small group plans. That was down from the 11.2% and 14%, respectively, sought by insurers.

...Eric Linzer, president and CEO of the state Health Plan Association, which represents insurers, asserted the final rates for next year failed to "fully account for the factors driving underlying health care costs." Those health care costs "are largely driven by significant increases in the prices drug companies, hospitals and providers are charging," Linzer said in a statement Wednesday. "The proposed rates also reflected the continued effect of COVID, including ongoing testing, treatment and vaccination, as well as increased utilization and higher costs due to care that was deferred as a result of the pandemic," he said. "The rate submissions were reasonable and appropriate, reflecting underlying costs and taking into account the premium reductions the state has imposed the last several years," he added. ... The New York State Conference of Blue Cross and Blue Shield Plans also asserted the state should have allowed higher rates, citing rising costs linked to drug prices, state taxes, new mandates and COVID- 19. The insurer group added it strived "to limit rate increases to the lowest amounts possible" in the face of those costs. Both health insurance trade groups urged state lawmakers to approve measures in the future that address the factors driving up health insurance costs in New York.

The following paragraphs from the August 22nd front page of The Journal News indicate what's happening in the medical industry:

"Some of the Hudson Valley region's largest physician groups recently partnered with regional and national companies amid concern from federal regulators that health care mergers increase costs of care for patients.

CareMount Medical, which is part of a group of over 2,100 providers serving more than 1.6 million patients throughout the Hudson Valley and New York City, recently finalized its move to join Optum, one of the largest owners of provider groups in the country, with 53,000 physicians nationally.

And earlier this year, Westmed Medical Group, which has nearly 500 physicians and 1,500 clinical employees at facilities across Westchester County in New York and Connecticut, joined Summit Health, a medical network with more than 12,000 workers across five states.

Meanwhile, authorities have moved to block other mergers involving some hospitals in other states as well as several large health companies, including Optum, claiming the deals violated antitrust laws and threatened to raise prices for patients."

Increasingly, provider practices have been absorbed by hospitals and large groups. Their billings are higher than what either Medicare and/or individual insurance plans allow. This only increases the costs of insurance. It is a simplistic and false idea that rates remain constant. It ignores fiscal realities that the City can simply absorb all those costs. Especially nowadays when the economic rebound of NYC lags behind the nation at only 82% of pre-pandemic fiscal levels.

The August 19 video of the ONYCPER group also gives a riff on the word "fungible". I have not seen any official material as yet from the UFT that includes the word "fungible," so I figure that the material referred to is what I had sent only to the committee a couple of weeks ago. ***To be clear, the materials that I sent to you are not in any way official UFT materials.*** **I thought that I had made clear that they are *my own personal take* on the issues that have come forward in the course of discussions about healthcare.** Feel free to share. But please notate what I wrote about their being my personal take on things. I believe that I pretty much capture the overall truth. And, my use of the word "fungible" is, according to Webster, correct.

I figured that I would expand a little on the document which I had sent to you that used the word "fungible" so that the context was greater and much clearer.

After 12 years of Bloomberg and contracts not bargained because Bloomberg wanted givebacks that would undermine union gains and benefits, in 2014 the labor-friendly deBlasio administration was a welcome partner to city unions. The city budget that the Bloomberg administration handed off to the deBlasio administration had no monies set aside for contractual settlements. ***How do you settle contracts with no money set aside for them?***

Concomitantly, the 2008 recession was only slowly diminishing, tax revenues were not increasing fast enough, and it was obvious that health care costs to the City had been increasing rapidly and exponentially. Costs were exceeding the City's ability to pay. ***How then do you keep health care benefits at previous levels?***

The MLC and the City developed a plan to try to solve both problems - creatively and without any impact to either the City budget or union workers benefits. Unlike the Bloomberg model of trying to extinguish union input into City policy, deBlasio welcomed the opportunity to work jointly to solve issues.

The Stabilization Fund, funded by monies saved by the City from insurers, had sufficient resources to help provide fungible cash. It could provide funds for contracts. The MLC for its part projected to find further health care savings, first to replace the funds for contracts from the Stabilization Fund, and then provide further savings through the years to the City to help relieve the City's increasing costs to provide healthcare benefits. ***So, between 2015 and 2018, the contracts were settled, the funds borrowed from the Stabilization Fund were replaced, and enough savings in healthcare were found that there were excess funds applicable to savings in years 2019 to 2021.*** **AND THERE WAS NO DIMINUTION OF HEALTHCARE BENEFITS TO ANY RETIREE DURING ALL THOSE YEARS!!!**

"FUNGIBLE", as some would have it, isn't some devious trick with budgets. It's the same way we handle all our personal funds. With no surplus cash, we borrow $50 from this week’s paycheck’s allocation for the next rent payment to buy a new air fryer, and we replace that $50 with cash from the next paycheck. Fungible allocations is what we personally use in our personal budgeting as well.

The riff on “fungible” is humorous more for the fact that the word was newly learned. That the details of how and why the word was used in its context was left out of the riff, I hope is not a scam on those for whom all the facts may as yet have not been given.

Vinny Gaglione