

November 29, 2021

Dear PSC retirees,

We hope you and your families are well. This is an update on retiree health care. Pending litigation makes the outcome uncertain, but it is important that you are aware of the latest developments. As you may know, a group of retirees sued, challenging the City's implementation of the Medicare Advantage Plus plan (MA+). The judge who is hearing the case challenging the implementation of the City's agreement with the Alliance, the MA+ provider, has not yet ruled on the City's plan to cure the defects in its implementation of the new plan.

Some important decisions are still not final. The deadline for retirees to opt out of the MA+ plan has not been clarified. Nor is it clear whether the judge will allow the City to begin implementing the MA+ plan on January 1.

However, today the judge informed the parties that he will not be amending the injunction he issued on October 21 at this time. The City had asked the judge to lift his injunction to allow them to transfer the data for retirees who do not opt out by November 30 to the Center for Medicare Services, a federal agency, by December 1. Through this action, the City would have effectively enrolled into the MA+ plan those who have not yet opted out. Since the judge has declined to modify his October 21 injunction, the City is unlikely to transfer retiree data by December 1, as to do so would appear to be a clear violation of the judge's order. **However, if you wish to opt out by November 30, you can do so by completing this online form: <https://nyc-ma-plus.empireblue.com/optout/>**

Details about litigation

As you may recall, this past summer the City and the Municipal Labor Committee (MLC) agreed, over the objections of the PSC and health care unions, to implement a new, premium-free MA+ plan administered by an "Alliance" of Emblem and Anthem Health to replace the previous premium-free combination of traditional Medicare and Senior Care. As agreed to by the City and the MLC, retirees who wanted to keep their Senior Care would have had to affirmatively opt out of MA+ by October 31 and would have to pay a monthly premium starting January 1, 2022.

However, on October 21, Judge Lyle Frank found that, while the decision to award the contract to administer the MA+ plan to the "Alliance" complied with the law, the City's implementation of the MA+ plan had been arbitrary and capricious. He issued a temporary restraining order prohibiting the City from enforcing the October 31 opt-out deadline and ordering the City to maintain the status quo in plan enrollment until the City cures deficiencies in the MA+ implementation plan. Further, the judge ordered

the City to send the attorney representing the retirees who brought the lawsuit the City's plan for curing the implementation deficiencies, and to submit that plan to the court within seven days after that, at which point the court would review and make a determination.

A timeline of events since then:

- November 5: the City sent its plan to cure deficiencies to counsel for the retirees.
- November 12: the City filed their plan with the court and, that evening, counsel for the retirees filed their objections to the plan.
- November 16 and 22: counsel for the retirees sent letters to the judge, accusing the city of violating the judge's order.
- November 19 and 22: the City responded.
- November 23: the court held a status conference regarding the plan. The judge did not rule on the City's plan to cure the deficiencies in the MA+ implementation, scheduled another status conference on December 8 and asked the parties to meet to resolve their differences in the meantime. That same evening, the City modified its proposed plan, asking the court to (a) dissolve the injunction by December 1 in order to allow the City to move forward with enrollment to be effective on January 1 and (b) adjourn the December 8 status conference. Counsel for the retirees responded the next day.
- November 29: the judge told the parties he does not plan to modify his October 21 order at this time.

The City's plan

The City is anxious for the MA+ plan to go into effect by January 1, 2022. However, given the judge's notification to the parties today that he does not plan to amend his order at this time, it is not clear that the MA+ plan will go into effect on that date. As noted, the City modified its plan in response to objections from retirees and from the judge at the November 23 status conference. As best as we can ascertain, this is what the City is currently offering:

A. Retirees who opt out by November 30 will remain enrolled in their current plan. All others will be automatically enrolled in MA+. (The November 30 date was established because December 1 is the last day for the City to submit participant data to the Center for Medicare Services – a federal agency – in time for January 1 implementation.)

B. However, throughout the month of December, any retiree who has not opted out may still do so and remain in their current plan effective January 1.

C. Although retirees who do not opt out by November 30 will be enrolled automatically in MA+, they may still change their minds and opt out by April 30, 2022.

D. Throughout the month of December, retirees who opted out of MA+ by November 30 may still change their minds and elect MA+ effective January 1, but they will not receive their ID cards and welcome kits until January 31.

E. Between January 1 and April 30, 2022, retirees are permitted to make one change (in either direction) to their enrollment between MA+ and Senior Care, with an effective date of the first of the month following the date on which they notify the Alliance of the change.

F. The Alliance will make a more concerted effort to reach out to providers to secure their participation in MA+.

The City says it has stopped enrolling people in the MA+ plan, pursuant to the judge's order. And, because the judge will not at this point modify his order, it appears that the City will not be able to enforce a November 30 opt out deadline and may not be able to implement the plan on January 1, 2022. So, it appears that the City's proposal, as outlined in items A through F above, will not take effect, at least for the time being.

Keep in mind that the foregoing is what the City has told the judge it would like to do, but this plan has not been approved by the judge. Moreover, given the many problems in the implementation of the MA+ plan to date, we have no certainty as to whether the City will actually be able to keep these commitments.

The retirees' objections

The retirees suing the City object to the City's plan, saying it does not cure the deficiencies in implementation. They say it provides no certainty about which providers will accept the MA+ plan and imposes a new, previously undisclosed list of required pre-authorizations. The City, they claim, has been violating the judge's order by contacting retirees to encourage them to enroll in the new MA+ plan and saying the MA+ plan will take effect January 1.

In short, the judge has not ruled on whether the City has cured the deficiencies in its MA+ implementation plan. Given that the judge has declined to amend his injunction order at this time, we believe it is highly unlikely the City will transfer retiree data to CMS on December 1, as to do so would likely violate the judge's order. **We still do not know what the new opt out deadline will be, or whether the City will be allowed to implement the MA+ plan on January 1, 2022.**

As always, please monitor the PSC retiree website, <https://www.psc-cuny.org/whats-happening-retiree-healthcare>, where we will post important developments as they occur.

In solidarity,

James Davis, President, PSC