

Testimony on Proposed Contract
Between NYC and Aetna Life Insurance Co. for Medicare Advantage Services
March 21, 2023

I am James Davis, President of Professional Staff Congress (PSC), Local 2334, AFT, AFL-CIO, representing nearly 30,000 faculty and professional staff at the City University of New York. PSC has opposed the implementation of a Medicare Advantage (MA) plan since the idea was raised nearly a decade ago. New York City should not facilitate the privatization of a successful and popular public health care program like Medicare into a profit-making enterprise and risk NYC retirees' access to the health care they need—which is the way Medicare Advantage plans make money. PSC has argued for the last two years that the City can take a different approach to health care savings without doing it on the backs of retirees, but our arguments have fallen on deaf ears, and now retirees face being forced into the Aetna MA plan if they want to enjoy the full range of health benefits to which they are entitled.

We were surprised to discover that the Aetna contract provides an option for retirees to stay in traditional Medicare, with a supplemental plan paid for by the City. Retirees and their unions have been told otherwise for months: that the Medicare supplemental plan (Senior Care for most retirees) had to be eliminated, or Aetna would not provide their Medicare Advantage program. This was reasserted in the March 9 meeting at which the Municipal Labor Committee voted to okay the contract. Now we learn that one of the most important provisions of the contract was misrepresented. The City has a moral obligation to elect the option, expressly permitted by the contract, to preserve the option for retirees to retain traditional Medicare plus a supplemental plan, paid for by the City, as they have for decades. PSC will continue to fight for that option for NYC retirees. In its proposals to the Mayor and the City Council, the PSC has identified funds that could cover the cost of this option.

As President Biden stated just two weeks ago, "Medicare is...the rock-solid guarantee that Americans have counted on to be there for them when they retire." The City can offer this option, without changing the Administrative Code, and still save hundreds of millions of dollars.

Retirees' resistance to Medicare Advantage has already yielded gains for the City. The Aetna contract is a significant improvement over the contract with "The Alliance" proposed in 2021. But there are still problems. The biggest problem is with forcing retirees into a private, for-profit health plan which, to maintain and increase shareholder profits, will inevitably constrain retirees' utilization of health care benefits.

PSC's primary objection to the contract is the extent of confidentiality required by Aetna under the terms of Section 9.11 of the Agreement—and the limitations it imposes on the distribution of information about the performance of the MA plan and NYC retiree experience. The Mayor's Office has an obligation to provide information to the Comptroller, the City Council, the IBO and a variety of NY State agencies. Furthermore, although there is a robust reporting calendar (Section 11 of the Agreement), the distribution of reports is limited to an "MA Review Committee" (all of whose members must sign confidentiality agreements, including the MLC representatives). These will be aggregated reports, unlikely to contain personal health information (PHI) or data that Aetna might claim as trade secrets. The reports should therefore be publicly available so that plan participants, policy makers and the public can understand if retirees' utilization is being constrained and access to health care is reduced.

Related to the issue of public access to ongoing reporting about the performance and participant experience are several questions/concerns:

- Why so long a term—essentially 11+ years—without much room for change in the basic terms? If prices go up more than Aetna projects or CMS reimbursement is severely constrained, Aetna will likely take action to reduce utilization, such as requiring more prior authorizations.
- MA plans often impede retirees from getting the health care they need by requiring prior authorizations for many services. NYC has negotiated a waiver in the normally required number of prior authorizations for at least 2 years—at a price of \$45M/year to the City (\$15 pmpm)—to make the plan more attractive to NYC retirees. There is no clear language to compensate the City or participants (e.g. through a reduced deductible) if the list of waived prior authorizations is reduced. *(Note that traditional Medicare conducts after-the-service-is provided reviews and, historically, is much less likely than MA plans to deny payment for services.)*
- Attachment C to the Agreement describes a gain-sharing arrangement between Aetna and NYC, labelled Medicare Advantage Retrospective Experience Fund. Aetna agrees to refund the City for what might be loosely called “overpayment,” based on the calculation of a Medical Loss Ratio (MLR), but the input elements of that calculation (specifically “Claims” and “Quality Improvement Exercise” are not clearly defined in the document. Here is a case where public reporting on the actual inputs to this calculation going forward could dispel concerns.
- Under Attachment C to the Agreement, any refunds the City receives go into an escrow fund, held against potential claw-backs of funding by federal CMS from Aetna. Such claw-backs occur if a CMS audit determines that Aetna has claimed a risk adjustment to what CMS pays Aetna that cannot be substantiated. (Risk adjustments are based on claims that retirees in a plan are sicker than other Medicare beneficiaries in the same communities.) Why should the City share financial liability with Aetna when the liability is the result of negative audit/s of the plan and its administration? Given the history of CMS audits of Aetna, such findings are likely.

Thank you for the opportunity to raise these concerns and questions. We hope they can be addressed. But most of all, PSC urges the Mayor and the City Council to ensure that Medicare-eligible retirees continue to have access to traditional Medicare and a premium-free supplemental plan.