PSC Comments on Draft Contract Between NYC and Alliance/Anthem Health to Provide Retiree Health Benefits in the form of a Premium-Free Medicare Advantage Plus Plan

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The draft contract between the Alliance and the City is deeply flawed. First, it provides for little accountability to retirees or the City of New York (identified as the plan sponsor with the Municipal Labor Committee) as to medical care, health outcomes, or cost. Second, the contract gives the Alliance wide latitude to make changes in benefits, precertification requirements, and premiums charged the City. This draft contract should not be approved.

1. Accountability is Critical – Is the MA+ Plan meeting the needs of NYC retirees?

- The contract does not require the Alliance to report to beneficiaries, the MLC, or the City of NY information on retiree access to services, medical care utilization, health outcomes, plan income and expenses, claims denials, appeals, and dispositions. The Alliance is required to compile this information and report it to federal CMS (Centers for Medicare & Medicaid Services).[1] The MA+ plan and its sister retiree benefit plan (Senior Care which is a supplemental--"medigap"--plan which works with traditional Medicare) are both managed by the same two insurance companies. Contracts for both MA+ and Senior Care should require that regular information be provided to the plan sponsors (NYC/MLC) in a common format about beneficiaries, access to services, medical care utilization, health outcomes, plan income and expenses so that NYC retirees and plan sponsors can compare performance.
- Through 2021, over 90% of retirees have been covered by traditional Medicare plus Senior Care, premium-free to the retirees. Because of affordability (retirees will have to pay a premium of $191.57/month to remain in traditional Medicare plus Senior Care), most retirees will be forced to shift to the premium-free MA+ plan. From the perspectives of both quality of care and cost-effectiveness, it will be important that the plan sponsors understand whether NYC retirees' health care needs are being met.

2. Key aspects of the MA+ Plan can be changed without consultation or approval by the sponsor (NYC/MLC) -- Will barriers to retiree health care emerge in the short or long term?

- The Alliance asserts the right to "waive or modify any referral, authorization, or certification requirements, benefit limits, or other processes contained in the Evidence of Coverage [Plan] if such waiver is in the best interest of a Member or will facilitate effective and efficient administration of claims." (Section 13B, p. 7) Defining the "best interest of a Member" or what"facilitate[s] the effective and efficient administration of claims" should be the subject of consultation and approval between the insurer and the sponsor (NYC/MLC), not left to the Alliance alone.
- The Plan allows the Alliance to require pre-certification of almost every medical care service in the Evidence of Service [Plan], including physician visits, lab and x-ray services, podiatry, hospital care, and rehab therapy. Such pre-certifications can result in delays in diagnostic services, care and follow-up, as well as require multiple provider visits, which can be burdensome for elderly patients. Yet the Alliance has verbally assured NYC retirees in multiple presentations that MA+ pre-

[1] As summarized in a report from the HHS Inspector General, "Federal regulations at 42 CFR § 422.516(a) establish data-reporting requirements for MA organizations. The regulations specify that MA organizations must have procedures to develop, compile, evaluate, and report statistics and other information to CMS, enrollees, and the public regarding (1) utilization, accessibility, and acceptability of services; (2) enrollee health status; (3) operational costs; and (4) other matters CMS may require." To this list, CMS has added detailed information about medical care denials, appeals, and dispositions. Furthermore, Anthem of Wisconsin, the sponsoring entity, should disaggregate data submitted to CMS for NYC from any other plans they sponsor.

certifications will not be more extensive than they currently are under Senior Care. Having given the Alliance wide latitude, the contract would permit the Alliance to tighten pre-certification requirements at any time without consultation, approval, or even notification to the City/MLC. Studies have shown repeatedly that pre-certifications are used widely by Medicare Advantage plans to control costs as well as manage care.[2]

- The Alliance can unilaterally change the financial agreement if the costs are greater than anticipated or if the Federal government changes the amount it pays the Alliance. Medicare Advantage plans are more costly to the federal government than traditional Medicare. Federal policy makers are actively considering changes to control the rate of increase in federal subsidies for MA plans. The right of the plan sponsor (NYC/MLC) to review and approve/disapprove any changes to premiums, benefits and other coverage processes due to changes in federal funding should be explicit in the contract.
- While the City premium requirement is guaranteed for 2022 through 2026, premiums for 2027 and 2028 are "contingent on Group Performance." (Addendum A)
- Furthermore, the City premiums (or lack thereof) for 2023-2026 can be unilaterally changed:
    - if there is more than 0.5% reduction in what Medicare pays the Alliance, or
    - if CMS changes the way it calculates special payments to the Alliance for documenting additional medical care needs (risk scores) by more than 2%. (Multi-Year Stipulations)

Both the benchmark-setting process for Medicare Advantage and the risk score methodology have come under significant criticism by members of Congress and the Medicare Policy Advisory Commission.[3] Therefore, there will likely be changes over the next 5 years that result in premium changes permitted by the contract.

3. The potential for plan instability exists -- Will NYC retirees be stuck with an inadequate health plan?

- The sponsoring parties should have explicit language in the contract providing maximal opportunities for review, evaluation and approval/disapproval of the terms and operation of the plan during its first 5 years. The NYC Medicare Advantage Plus Plan is a newly created Medicare Advantage plan, administered by insurers (Empire BlueCross/BlueShield and EmblemHealth) with minimal experience administering this kind of plan. Their past experience administering health care benefits for the municipal NYC work force has been touted as a reason to expect minimal dislocation and disruption, but implementation has been plagued by incompetence, delays, incomplete information and rushed deadlines, resulting in anxiety, frustration and anger for NYC retirees.
- As a measure of participant satisfaction which is required by Medicare, the MA+ plan has presented the 4-star rating earned by Anthem of Wisconsin, not by the local insurance companies. Historically, both Emblem and Empire have ranked in the lowest third of companies in patient satisfaction at handling complaints.

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[2] *See, e.g.*, Schwartz, Brennan and Verbrugge, et al., "Measuring the Scope of Prior Authorization Policies: Applying Private Insurer Rules to Medicare Part B," JAMA Health Forum. 2021;2(5):e210859. Available online at https://jamanetwork.com/journals/jama-health-forum/fullarticle/2780396.

[3] MedPAC Report to Congress, Medicare Payment Policy, March 2021, pp. 356-7. http://medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf