EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LISA FLANZRAICH, BENAY WAITZMAN, LINDA WOOLVERTON, ED FERINGTON, MERRI TURK LASKY, PHYLLIS LIPMAN, on behalf of themselves and others similarly situated, and the NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC., on behalf of former New York City public service employees who are now Medicare-eligible retirees,

Petitioners,

-against-

RENEE CAMPION, as Commissioner of the City of New York Office of Labor Relations, CITY OF NEW YORK OFFICE OF LABOR RELATIONS, the CITY OF NEW YORK,

Respondents.

Index No.: 158815/2021

AFFIDAVIT OF KIMBERLY A. PARKER

COMMONWEALTH OF PENNSYLVANIA :
: ss.:
COUNTY OF PIKE :

Kimberly A. Parker, being duly sworn, deposes and says:

1. I am a sales and renewal executive, working on the Group Retiree Solutions team at Anthem, Inc. ("Anthem"), a position I have held since around December 2017.

2. My responsibilities include supporting Anthem's affiliate, Empire HealthChoice Assurance, Inc., d/b/a Empire BlueCross BlueShield ("Empire"), in administering the GHI/EBCBS "Senior Care" plan to City of New York retirees. In this capacity, I have access to Empire's business records regarding claims submitted by service providers on behalf of members in the Senior Care plan.

3. Below, I address certain facts relevant to the claims of the Petitioners regarding coverage under The Alliance's Medicare Advantage plan (the "MA Plan"), which is scheduled to become effective as of January 1, 2022.

4. I make this affidavit based on personal knowledge or from my review and knowledge of company business records.

COVERAGE UNDER SENIOR CARE AND MA PLANS

5. Empire/Anthem and EmblemHealth Inc., and its affiliates ("Emblem") jointly administer the City's so called GHI/EBCBS "Senior Care" plan. Roughly 200,000 of the City's approximately 250,000 retirees are on the Senior Care plan as of 2021.

6. In the current Senior Care plan, Empire provides coverage at hospitals within New York City and its surrounding areas. Empire also provides coverage outside New York City and its surrounding areas through various affiliates. Emblem, meanwhile, provides coverage for professional services (*i.e.*, doctors and ancillary services such as radiology, laboratory, durable medical equipment, etc.) within New York City and its surrounding areas, and also handles member enrollment. The companies will have the same general roles for the MA Plan.

7. Empire and its Anthem affiliates have various provider networks. When we say that a provider is part of a particular coverage network, we generally mean that a provider has a contract with Empire/Anthem that, among other things, obliges the provider to see members of a covered plan.

8. That said, the MA Plan is what is known as a "passive PPO," which is a type of PPO that covers services at the same cost share to the member whether a health care provider is in-network or out-of-network. In simpler terms, a member of the MA Plan could see out-of-network providers at no additional cost to the retiree compared to an in-network provider, so long

as the out-of-network provider agrees to accept Medicare. This covers an even broader group than the already-broad network itself.[1]

9. It is, of course, true that some medical providers – psychiatrists are a common example – simply do not accept insurance at all. For these providers, there will be no difference between the Senior Care plan and the MA Plan, because the provider would not accept either form of Medicare.

10. Several of the petitioners and affiants claim that the addition of prior authorization requirements under the MA Plan could delay certain treatments as compared to their current Senior Care plan. These concerns are based on a misunderstanding of how prior authorizations for medical tests and treatments work.

11. Under the MA Plan, in-network providers who accept the MA Plan are required to ask for prior authorization before providing certain types of care. Some examples of the common services that require prior authorization include: inpatient hospital admissions, skilled nursing facilities, complex radiology (*e.g.*, MRI), prosthetics, and transplants. If a provider does not seek prior authorization for any type of care that requires such authorization, the claim will be denied; however, the provider may not bill the member for the cost of the test or treatment if the provider failed to seek prior authorization. Out-of-network providers are not required to, but may, request prior authorization. If prior authorization is not sought by an out-of-network provider, the claim

[1] It is theoretically possible that a provider who accepts Medicare will decline to accept payment from the MA Plan. The Alliance has committed to work with any such providers, via a concierge service, to make clear that the MA Plan offers the same payment schedule and billing protocol as traditional Medicare, and answer any questions the provider may have. However, if the provider still refuses, the member can pay the provider and then submit the claims to the MA Plan for reimbursement, and so long as the service is a Medicare-covered benefit and the Medicare fee schedule is followed, the member will only be responsible for his or her copays/coinsurance as provided in the MA Plan.

is considered after the test or treatment. If it is approved, the MA Plan will cover the costs specified in the plan; if it is denied, the member is responsible for the costs of the test or treatment.

12. From a clinical perspective, the prior authorization requirement exists to make sure members are receiving the most effective, appropriate care. As noted below, all prior authorization decisions are ultimately made by medical professionals, and the prior authorization requirements apply only to a subset of services/treatments where the member is most likely to benefit from that review. We track whether particular services/treatments should have a prior authorization requirement on an ongoing basis.

13. It is important to note that prior authorization of a test or treatment is not a care decision—a denial of authorization does not prevent a doctor from administering a test or treatment the doctor deems medically necessary. If a healthcare provider feels that a test or treatment needs to be done on short notice, there are processes in place for emergency prior authorizations. Indeed, CMS has detailed regulations governing prior authorizations as well as emergency situations.

14. It is also worth noting that authorization requirements are not new. Even under the Senior Care plan (and, indeed, any Medicare plan), authorizations are required for provider claims to be paid; what differs is when the authorization is submitted. Providers that accept Medicare routinely submit requests for reimbursement for tests and treatments to Medicare, explaining why the test or treatment was medically necessary. If Medicare disagrees and denies coverage, then the insured typically has to pay out-of-pocket for the relevant costs. The MA Plan, in contrast, frontloads this decision by requiring prior authorization before a test or treatment is performed. While different than the traditional Medicare, this approach is hardly new—Medicare Advantage plans with prior authorization requirements have been around since 1999. And prior authorization requirements are widely regarded as a method of protecting members, because when a member

sees an in-network provider, the member does not run the risk of being stuck with the cost of medical services because a provider claim is denied after the services were performed.

15. I understand that at least one affiant has expressed concern about who would handle these pre-authorization decisions—a clerk or a medical professional. To explain, the prior authorization process proceeds in several steps. First, a clerk processes any prior authorization requests and sends them to the appropriate workstream. Some requests go initially to a lower level clinician (like a nurse), while other types of requests must always go to a licensed doctor for approval. In some circumstances, the lower level clinician review may result in referral to a doctor for review as well, which, in some circumstances, may go through a peer doctor review as well. But no procedure will be denied on medical necessity grounds without a licensed doctor being involved in the process.

16. The Alliance has devoted significant efforts to informing City retirees about this aspect of the MA Plan. The prior authorization requirement is discussed in the MA Plan enrollment guide, and we have prepared a separate, four-page document addressing prior authorization in particular. A true and correct copy of that document is attached hereto as **Exhibit A**.

PETITIONERS' CURRENT COVERAGE AND COVERAGE UNDER THE MA PLAN

17. I want to specifically address the allegations made by the Petitioners (as reflected in their supposed Amended Petition, NYSCEF No. 28) in the above captioned proceeding, and in their supporting affidavits, regarding the alleged differences in coverage between their current health insurance plans and the MA Plan.

18. For each Petitioner or affiant, Empire/Anthem generated a claims report dating back to January 1, 2019, showing the medical facilities and providers that submitted claims on

those members' behalf. (This analysis covered only claims submitted to Empire/Anthem, not Emblem.) We then investigated whether those providers are contracted to be "in-network" for the MA Plan.

19. As noted above, it is not actually necessary for these providers to be in network for members to use their services, because the MA Plan is a passive PPO, and members can see any provider who accepts Medicare at the same cost to the member. But other than a possible exception for one member, *all* of the providers we identified for these members over the past two-plus years will be in Empire/Anthem's network for the MA Plan.[2]

A. Lisa Flanzraich

20. Ms. Flanzraich submitted an affidavit (NYSCEF No. 5) in which she avers that she is currently a member of the Senior Care plan and that she has contacted several of her doctors who have indicated that they will not accept The Alliance's MA Plan.

21. Empire/Anthem has received claims from one hospital and one provider on behalf of Ms. Flanzraich since January 1, 2019. Both have a contract with Empire/Anthem providing that they will be in-network providers under the MA Plan.

B. Linda Woolverton

22. Ms. Woolverton submitted an affidavit (NYSCEF No. 7) in which she avers that she is currently a member of the Senior Care plan. She does not, however, claim that any of her providers have indicated that they will not accept the MA Plan. From my review of her claims history, all the facilities that have made claims since January 1, 2019 will be in-network for the MA Plan.

[2] In the course of my review, I did not find any claims that were submitted to Empire/Anthem on behalf of Petitioners Merri Turk Lasky or Benay Waitzman.

C. Phyllis Lipman

23. Ms. Lipman submitted two affidavits (NYSCEF Nos. 10 and 46) in which she avers that she is currently a member of the Senior Care plan and that she has providers in California and New York, which, after she contacted them, indicated they were unsure if they would accept the MA Plan.

24. Empire/Anthem has received claims from several hospitals and one provider, in New York and California, on behalf of Ms. Lippman since January 1, 2019. All but the Hospital for Special Surgery ("HSS") are currently in-network for the MA Plan. With respect to HSS, we already have a verbal agreement with HSS to become an in-network provider under the MA Plan effective January 1, 2022, and are working on the contract now. Thus, by the time the MA Plan is active as of January 1, 2022, all of Ms. Lipman's providers under the Senior Care plan for whom Empire/Anthem have claim data since January 1, 2019 will be in-network on the MA Plan.

D. Ed Ferington

25. Mr. Ferington submitted an affidavit (NYSCEF No. 8) in which he avers that he is currently a member of the Senior Care plan and that he has called his providers, who have indicated that they will not accept the MA Plan. He makes similar claims in the amended petition.

26. Empire/Anthem has received claims from two hospitals and one provider for Mr. Ferington since January 1, 2019. All have contracted to be participants in the MA Plan.

E. Alan Odze

27. Mr. Odze submitted an affidavit (NYSCEF No. 47) in which he avers that an Alliance customer service agent and the City told him to opt out of the MA Plan because his visits for 9/11 related cancer treatments with Dr. Paul Finger and Dr. Kimble Woodward were not covered by the MA Plan.

28. Dr. Finger has, in fact, contracted to be in-network under the MA Plan. Empire/Anthem does not have any records of claims submitted by Dr. Woodward for Mr. Odze since January 1, 2019.

F. Sheila Singer

29. Ms. Singer submitted an affidavit (NYSCEF No. 48) in which she avers that "[b]ased on the information provided to date," she has serious concerns about whether she could continue seeing her current provider or receive prompt medical attention with pre-authorization requirements.

30. Empire/Anthem has received claims from one surgical center for Ms. Singer since January 1, 2019. That surgical center is in-network for Empire/Anthem currently and has agreed to be in-network on the MA Plan.

G. Dana Sutton

31. Ms. Sutton submitted an affidavit (NYSCEF No. 49) in which she avers that the health insurance benefits of the MA Plan are "inferior" to her current plan (the Senior Care plan). In particular, Ms. Sutton is concerned about a so-called "365-rider," which provides extra coverage for hospital stays.

32. These concerns are misplaced. The Senior Care plan, which Ms. Sutton is currently on, does not provide for 365 days of supplemental hospital coverage, so members have to purchase a separate rider if they desire that coverage. But The Alliance's MA Plan *includes* 365 days of hospital coverage as part of the base plan, so there is no need to purchase an additional rider for that coverage. Thus, far from offering less hospital coverage to members than the Senior Care plan, the MA Plan provides more.

H. David Shapiro

33. Mr. Shapiro submitted an affidavit (NYSCEF No. 50) in which he avers that, when he called the NYC Medicare Advantage Plus Plan's dedicated hotline, he received conflicting messages about coverage—namely, whether his primary care physician, other doctors used by his wife, the University of Florida Hospital, and the Moffitt Cancer Center (in Tampa) would accept the MA Plan.

34. Empire/Anthem has received claims from several hospitals and clinics for Mr. Shapiro and his wife since January 1, 2019. Each of the providers Mr. Shapiro indicated uncertainty about have contracted to be in-network under the MA Plan.

I. Joyce Buck

35. Ms. Buck's daughter submitted an affidavit (NYSCEF No. 51) in which she avers that two of her mother's physiatrists have stated they are not currently accepting the MA Plan

36. Empire/Anthem has received claims from multiple hospitals and providers for Ms. Buck since January 1, 2019. All of them have contracted to be in-network under the MA Plan.

J. Judith Palmer

37. Ms. Palmer submitted an affidavit (NYSCEF No. 52) in which she avers that, when she visited her healthcare provider's office, they were not sure if they would accept the MA Plan for her Medicare-approved treatments.

38. Empire/Anthem has received claims from eight hospitals and providers for Ms. Palmer since January 1, 2019. For five, we have confirmed that they are contracted to be in-network for the MA Plan. The other three providers are associated with a hospital that is in-network; we have not been able to confirm that these three providers are contracted, but it is very

likely that they are, because in most cases hospital-affiliated providers are covered by the hospital contract.

K. Richard Oliveri

39. Mr. Oliveri submitted an affidavit (NYSCEF No. 53) in which he avers that he is a current member of the Senior Care plan and that, when he and his wife visited their healthcare providers' offices, they stated that they do not accept all Florida Blue plans (which are provided by an Anthem affiliate) and were unfamiliar with the MA Plan.

40. Empire/Anthem has received claims from multiple hospitals and providers for Mr. Oliveri since January 1, 2019. All of those hospitals and providers will be in-network under the MA Plan.

L. Elisabeth Gitter

41. Ms. Gitter submitted an affidavit (NYSCEF No. 56) in which she avers that he is a current member of the Senior Care plan and that she and her husband are concerned about the prior authorization requirement under the MA Plan. Ms. Gitter asserts that when she spoke with an Alliance customer service associate and asked about who would decide whether to grant prior authorization, the customer service associate stated that a clerk would make the decision. Ms. Gitter claims that "clerk-ordered prior authorizations" would cause her and her husband irreparable harm. As noted above, it is simply not correct that clerks are in charge of pre-authorization decisions—doctors and nurses make all medical necessity decisions—and to the extent the customer service suggested otherwise, that suggestion was not accurate.

Sworn to before me this
15th day of September 2021

Kimberly A. Parker

Commonwealth Of Pennsylvania - Notary Seal
Laura Jean Gramling, Notary Public
Pike County
My Commission Expires September 28, 2024
Commission Number 1379800