
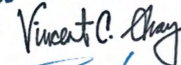



COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
1350 Pennsylvania Avenue, NW
Washington, DC 20004

MEMORANDUM

TO: Nyasha Smith, Secretary to the Council

FROM: Phil Mendelson, Chairman 
Councilmember Vincent C. Gray 
Councilmember Robert White, Jr. 

DATE: September 30, 2021

RE: **Emergency Legislation for the October 5, 2021 Legislative Meeting**

This memorandum is to request that the following measures be placed on the agenda for the October 5, 2021 Legislative Meeting, at the request of the Mayor:

- **Contracts with Managed Care Organizations for the Provision of Health Care Services to District Residents Emergency Declaration Resolution of 2021**
- **Contracts with Managed Care Organizations for the Provision of Health Care Services to District Residents Emergency Approval and Authorization Act of 2021**
- **Contracts with Managed Care Organizations for the Provision of Health Care Services to District Residents Temporary Approval and Authorization Act of 2021**

These emergency measures focus on the next nine months: approving three MCO contracts without disrupting the current assignment of beneficiaries. Further, the legislative provisions have been crafted carefully to minimize the risk of adverse litigation. If these measures are not approved, it is probable that litigation will continue and, according to an analysis by our General Counsel, it is probable that a court would rule against the District at which time changes could be ordered that would be both disruptive to the beneficiaries and very costly to the District.

We have worked with the Executive to craft these measures. For two of the contracts – AmeriHealth Caritas and Trusted Health (CareFirst) – the Mayor has undertaken the CAB-ordered re-evaluation/rescoring and the proposed legislation approves the option year renewal for nine months. *It is important to note that the Council's approval is for nine months because the Mayor has committed to undertake a new solicitation which should be finalized and presented to the Council for approval within that nine months' time.* The third contract will be with MedStar, so the current beneficiaries won't have to be redesignated, but this contract, too, will be for nine months.

The advantages of this solution, worked out between the Chairman's office and the Executive, are: (1) stability in the provision of care for the 250,000 District residents participating in the Medicaid and DC Health Care Alliance programs; (2) that the CAB-ordered re-evaluation

has been respected and is the basis for continuing the two contracts that are not controversial; (3) that this nine-month approval gives the Executive time to solicit and award new, long-term MCO contracts; and (4) these measures minimize the legal and financial risks to the Government if we (the Council) do nothing.

As you know, the Mayor submitted option renewal contracts for each of the three MCOs on September 1st without complying with a December 2020 CAB order, claiming authority to do so under a Mayoral declaration of emergency. Our General Counsel opined that “the contract extensions at issue represent an impermissible exercise of authority by the Mayor and therefore they may not be deemed approved...” On September 10th four councilmembers introduced a disapproval resolution to extend the Council’s review period into October. However, on September 16th the Mayor executed the three contracts, thereby purportedly “exercising option period one for nine months” for each of the contracts (quoting from the Attorney General’s status report to the CAB). On September 24th a motion to stay (enjoin) the Mayor’s action was filed with the CAB by a losing bidder, Amerigroup.

Approval of the emergency measures will cut through these actions, enable the government to proceed with three MCO contracts for the next nine months, avoid disrupting the assignment of any of the 250,000 beneficiaries, and minimize risk and cost to the District that otherwise might occur. Further, there will be a new solicitation completed within nine months, which is important to this resolution of this matter.

The draft measures are attached. Please call me or Mr. Evan Cash if you have any questions at (202) 724-7002.

cc: All Councilmembers
Council Officers