

RISE Delaware™: SUPREME COURT RULING April 12, 2024

The Delaware Supreme Court today issued its decision in *Rise Delaware v SEBC*. That Court reversed Judge Scott's well-reasoned ruling that the State in February 2022 had acted unlawfully under open government laws when adopting Medicare Advantage for State of Delaware Medicare retirees.

But 30,000 State retirees know that Judge Scott was correct. **Importantly, his ruling staved off Medicare Advantage, while our continuation of the lawsuit gave us the time needed to push for important legislative changes to stop Medicare Advantage in the future**

The Supreme Court's ruling today is effectively an advisory opinion without actual impact on a "live case or controversy." RISE Delaware and Medicare retirees already have won in the real world! The SEBC on October 2, 2023 made its February 2022 decision inoperative when it moved on to require a Medicare Supplement plan in the next contract cycle. It has now awarded the new Medicare Supplement contract to Highmark. **In short, the Supreme Court's academic and ethereal ruling cannot change that the next two-year contract cycle is for a Medicare Supplement plan**

We think, with all due respect, that the Supreme Court's decision was simply wrong. In ruling in favor of the State, the decision jumped over without good basis long-standing Delaware Supreme Court precedent, including: that there must be a live case or controversy on appeal (meaning that advisory opinions are a no-no); and that the appellant cannot raise new arguments on appeal (e.g. the State's argument that the adoption of Medicare Advantage did not meet the definition of a regulation). In the past, these basic precepts have not depended on who the appellant was. But those precedents were not applied here against the appellant State.

We believe that the State's decision in 2022 to discontinue paying for retirees' health insurance was a major policy decision and, as such, should have gone through the policy-making procedures set forth in the Administrative Procedures Act (APA). If taking away employer-paid benefits is not a policy change, what is?

At this point, only the General Assembly or a new governor can give teeth to the APA. But if Rep. Paul Baumbach's important bill, HB 281 (guaranteeing a Medicare Supplement plan for State retirees), becomes law this year, then the lack of APA protections with regard to Medicare Advantage will be irrelevant in the future. **RISE Delaware supporters need all the more now to continue to press for passage of HB 281, and the bills that go hand-in-hand with it to constrain the wild pricing and charges for drugs, diagnostics and medical services. And we need to ensure that the next Governor is fully on board.**

Elisa Diller, President, RISE Delaware

Mary Graham, Legal Liaison for RISE Delaware

Karen Peterson, Legislative Liaison for RISE Delaware

====

RISE Delaware: Retirees Investing in Social Equity Delaware

Elisa Diller, President

You received this email because you signed up for our messages.

Please do not respond to this email message. Email: risedelaware@gmail.com

<https://www.gofundme.com/f/rise-delaware-round-2-legal-and-other-costs>

Our Facebook page: <https://www.facebook.com/profile.php?id=61557317635829>

Our Web site: www.risede.com

Checks may be made payable to: RISE Delaware

Address: RISE Delaware, P.O. Box 7262, Newark, DE 19714

Public Meeting Calendar: State of Delaware

<https://publicmeetings.delaware.gov/#/>

[Unsubscribe](#)