



## Retired Public Employees of Alaska, APEA/AFT

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### PUBLIC COMMENTS BEFORE THE RETIREE HEALTH PLAN ADVISORY BOARD

May 8, 2018

Good morning. My name is Brad Owens and I am the Executive Vice President of the Retired Public Employees of Alaska. These comments today are offered on behalf of RPEA.

1. RPEA is a non-profit organization which was formed in 1996 and incorporated in 1998. Its members are mostly retired public employees and their dependents. Its purpose is to protect retiree benefits by educating, assisting and advocating on behalf of not only the members of RPEA but for all persons covered by PERS, TRS, JRS and other state retirement systems.
2. This Retiree Health Plan Advisory Board was recently created to provide an efficient and transparent way to facilitate regular engagement, communication and cooperation between the members of the state retirement systems and the Governor, the Department of Administration and the ARM Board (Alaska Retirement Management Board) about the administration and management of the state's retirement systems.
3. The principal responsibility of this Board is to make recommendations to DOA related to the health care plans provided under the state retirement systems.

I want to comment on three items today:

1. The EGWP program,
  2. The health plan modernization proposed by DOA, and
  3. DRB's regular denial of access to the OAH appeal process.
4. The materials provided by DOA for this meeting indicate it has been developing changes to the retiree health care plans: The Employer Group Waiver Program or EGWP (pronounced "egg whip") and the "DB Retiree Health Plan Modernization."

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5. The EGWP is a program offered by the federal government under Medicare as a group Medicare Part D prescription drug plan option. It is described by the DOA as the “most cost-effective way for the retirement system to provide retiree prescription drug coverage for Medicare eligible retirees and dependents.”
6. DOA recognizes that the existing health plan benefits are protected under Article XII, Sec. 7 of the Alaska Constitution from diminishment or impairment and, as such, cannot be modified to disadvantage or impair these current retiree benefits unless comparable new advantages are included to offset these proposed changes.
7. However, because the EGWP is a federal program, it is not a Constitutionally protected benefit like the prescription drug program under our current health care plan and could be modified, suspended or cancelled at any time by Medicare.
8. Despite this, it appears DOA proposes to change our current health care plan by implementing this EGWP plan in the very near future. In fact, the Financial Analysis provided at page 33 appears to be a forecast of savings in 2018.
9. The DOA also proposes a Retiree Health Plan Modernization through amendments to the current health care plan over the next two years. However, the timeline provided in the Plan Cycle, at page 4, appears to show implementation of the proposal in 2018.
10. This proposal is based on 12 areas DOA has focused on, described at page 9 of the materials, such as outdated pharmacy design, the safety and efficacy of drugs, reduced sensitivity to the price and increases in unnecessary services, confusion over rehabilitative services and dental implants, and use of a network for enhanced clinical review. It does not, however, indicate either the source of these concerns, nor the scope or impact of the concerns.
11. But before DOA can impose any of these proposed changes – either the EGWP or the proposed modernization -- it must follow the process specified by the Alaska Supreme Court in the case of *RPEA v. Duncan*: first, it must perform an equivalency analysis to establish the value between the changes which disadvantage retirees as a group and those that provide offsetting advantages; second, this analysis must be based on reliable evidence, such as solid, statistical data drawn from actual experience-including accepted actuarial sources-rather than by unsupported hypothetical projections; and third, equivalent value must be proven by a comparison of the actual benefits provided to those that are proposed in the changes.

12. In addition, where any individual shows that a proposed change results in a serious hardship that is not offset by comparable advantages, that affected individual should be allowed to retain existing coverage.
13. Similarly, changes that will predictably cause hardship to a significant number of beneficiaries who cannot at the time of the change be specifically identified, an option of providing an election to beneficiaries to retain existing coverage should be available, unless the state can show a compelling need for the change and the impracticability of providing for an election.
14. Likewise, major deletions in the types of coverage, such as coverage of a particular disease or condition, should not be allowed even though other coverage might be improved, if the deletion would result in serious hardship to those who suffer from the disease or condition in question.
15. Lastly, changes that substantially reconfigure the mix of benefits to beneficiaries should be approved only upon a strong showing of justification and unusual gaps in coverage should be avoided.
16. DOA must perform an analysis of the impact of these proposed changes on the retirees and beneficiaries before it imposes the changes. It must do so because, as the administrator and fiduciary of these retirement benefits, it must ascertain the impacts of any changes that disadvantage retirees, what the nature and extent of the disadvantage might be, identify and provide prior notice to any retirees who might experience a substantial hardship as a result of the changes and provide them an opportunity to establish such hardship, and ensure that any diminishment or impairment caused by these changes are offset by adequate and comparable new advantages.
17. We believe the law requires DOA to make these analyses in an adequate and proper way before it imposes any proposed changes.
18. We hope that this Board, in fulfilling its responsibilities to the retirees and participants of these health care plans, will investigate these proposed changes and recommend whatever steps are appropriate to ensure DOA follows the proper procedure.

The other matter I wanted to bring to the attention of this Board is the concerted and ongoing effort by DRB to deny members their right to appeal claim denials to OAH.

#### DENIAL OF OAH APPEAL RIGHTS

DRB has regularly inserted itself into the appeal process and has settled specific claims that have been appealed but has done so in a way that precludes the retiree from obtaining a decision on whether he or she is entitled to rely on the settled claims as a determination of coverage for future claims of the same type.

This has occurred over the last year or more primarily in the area of rehabilitative care involving physical therapy, occupational therapy, massage therapy and chiropractic care. What DRB has done is settle the specific denied claims and directed payment of those claims but has also stated in each appeal that settlement of the past claims is not a determination as to coverage for any similar future claims.

In many cases the retiree has objected to this refusal by DRB to determine future coverage of similar claims under the terms of the plan and its refusal to submit this remaining coverage issue to OAH for a decision – a right to which they are entitled under the provisions of PERS and TRS.

DRB has repeatedly taken the position that payment of the specific denied claims renders any further appeal to OAH moot. In this manner, DRB has been able to avoid any decision on the merits of coverage for future similar claims. This regular course of conduct violates the statutory right to appeal to OAH and constitutes a breach of DRB's fiduciary duty.

RPEA requests this Board to investigate these refusals to submit appeals to OAH and to recommend appropriate action to DOA which allows retirees to exercise their statutory right to have their entire claim decided by OAH.