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***DUNCAN v. RPEA* COMPARATIVE ANALYSIS**

The retiree health care plan was first developed as part of the public retirement systems in 1975. It was specifically intended to encourage qualified individuals to enter into and remain in public employment. It provided extensive and valuable health care benefits and coverage for qualified public employees. The retiree health care plan, like other retirement benefits, created a type of “savings” plan for public employees – one they could rely upon to provide the promised coverage once they retired.

In the case of *Duncan v. RPEA*, the Supreme Court ruled that health care benefits, just like other retirement benefits, are protected from diminishment or impairment by the Alaska Constitution. However, that does not mean that retirement benefits cannot be changed. Benefits can be modified so long as the modifications are reasonable, and one condition of reasonableness is that disadvantageous changes must be offset by comparable new beneficial changes.

The Court in *Duncan* recognized that health care benefits must be allowed to change as health care evolves. Recognizing the economic realities of administering health care coverage, the Court reluctantly concluded that an equivalency analysis of any changes must be done from a group standpoint rather than on an individualized basis.

However, the Court reiterated that equivalent value must be proven by **reliable evidence**.

Under any group approach, just as with an individual comparative analysis, offsetting advantages and disadvantages should be

established by solid, statistical data drawn from actual experience rather than by unsupported hypothetical projections.

Such statistical data can include accepted actuarial sources, but the Court did not say an actuarial analysis was the only, or even the best, data.

The Court reiterated that equivalent value must be proven by a comparison of the benefits **actually provided** – a mere comparison of old and new premium costs does not establish equivalency.

The Court warned that Duncan did not allow or approve any **major deletions** in the **types of coverage** offered during an employee's term. Coverage of a particular disease or condition should not be deleted, 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.

Where an individual can show that substantial detriments were not offset by comparable advantages and that this resulted in a **serious hardship**, the affected individual should be allowed to retain existing coverage.

Moreover, the Court stated that changes that will predictably cause hardship to a significant number of beneficiaries who cannot at the time of the change be specifically identified should be given the option of an election to retain existing coverage, unless the state can demonstrate a compelling need for the change and the impracticability of providing for an election.

Finally, the Court stated that changes that substantially reconfigure the **mix of benefits** to beneficiaries should be approved **only** upon a strong showing of justification; and any unusual gaps in coverage should be avoided.

Proposed *Duncan* Equivalency Analysis Template

1. Is there an identified legitimate need to change the benefits provided?
2. What are the reasons for each proposed change?
3. What data exists that supports or bears on each proposed change?
4. Do the proposed changes substantially reconfigure the mix of current benefits?
5. Will the proposed changes result in any unusual gaps in in the benefits or coverage currently provided?
6. Do the proposed changes involve the restriction, reduction or elimination of currently provided benefits?
7. If so, how many members will be impacted by each particular change?
8. Will the proposed changes predictably cause hardship to a significant number of members who cannot be specifically identified?
9. Have all members affected by the proposed changes been given adequate notice of the proposed changes?
10. Have the affected members been given adequate opportunity to question or obtain additional information about the proposed changes?
11. Have the affected members been given adequate opportunity to show any proposed changes may result in substantial hardship?
12. Is any substantial hardship offset by comparable advantages?
13. Do the proposed changes result in the diminishment or impairment of any current benefits?
14. Has there been an adequate and timely comparative analysis performed to determine if there is equivalent value between the offsetting advantages and disadvantages under the proposed changes?
15. What specific solid statistical data, drawn from actual experience, has been used in this comparative analysis?
16. Has the comparative analysis and the data upon which it is based been made available to all affected members sufficiently before the implementation of the proposed changes to allow their response and input?