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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

THE RETIRED PUBLIC )  
EMPLOYEES OF ALASKA, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STATE OF ALASKA, DEPARTMENT )  
OF ADMINISTRATION, DIVISION )  
OF RETIREMENT AND BENEFITS, )  
 )  
Defendant. )

Case No. 3AN-18-06722 CI

**AFFIDAVIT OF LARRY DAVIS**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, Larry Davis, being first duly sworn, testify to the following:

1. I am employed by the State of Alaska, Department of Administration, Division of Retirement and Benefits (the “Division”), as the Appeals and Risk Mitigation Manager. I have been employed with the Division since July 27, 1997.

2. I have personal knowledge of all matters contained herein.

3. By virtue of my position and duties I have personal knowledge of the statutes, policies, procedures, and regulations regarding the AlaskaCare Retiree Health Plan (“Plan”).

4. I was directly involved with the Division’s review, response, and defense of the administrative appeal *ITMO CP*; OAH No. 15-0283-PER.

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5. When I began employment with the Division, it was the long standing practice of the Plan to charge its deductible in addition to any deductible change by Medicare or any other primary insurer.

6. During my tenure with the Division, the Plan has consistently independently assessed its deductible when coordinating benefits with Medicare.

7. To the best of my knowledge, since 2003 only one member has ever appealed the application of the Plan's deductible when coordinating benefits with Medicare to the former Public Employees' Retirement Board or the Office of Administrative Hearings ("OAH").

8. At the time the Division filed its briefing *ITMO CP*, I was familiar with the facts of the appeal and the arguments made by the Division. In its briefing, the Division argued that the plain language of the Plan had remained unchanged and the Plan required the independent satisfaction of its deductible when coordinating benefits with Medicare. The Division's briefing also refuted the appellant's argument the Plan was ambiguous. Moreover, the Division's proposal for action specifically argued that the Division's established practice was to assess the Plan's deductible separate from the Medicare deductible.

9. The OAH's decision *ITMO CP* was inconsistent with my understanding of the long-standing practice of the Division in assessing the Plan's deductible when coordinating with Medicare.

10. It is my understanding that the OAH has no authority to rewrite the terms of the Plan or otherwise generate new substantive rights for retirees.

11. Following the issuance of the decision *ITMO CP* the Division drafted Plan Amendment 2016-2 to clarify the ambiguity identified by the OAH in its decision and reassert the Division's long-standing practice in relation to the application of the Plan's deductible when coordinating benefits with Medicare.

12. I have reviewed prior versions of the Plan contained in the Division's records and determined that the requirement that the Plan assess its deductible contemporaneously with the Medicare deductible has existed in some form or another since the inception of the Plan.

13. In issuing Plan Amendment 2016-2, the Division relied on its long-standing practice and the arguments made *ITMO CP* to support the amendment.

14. Plan Amendment 2016-2 was reviewed and adopted by the Commissioner of Administration after consultation with the Division.

15. Furthermore, I have personal knowledge of the records and information generated, collected, and maintained by the Division in physical form and electronically in computer systems and databases.

16. I have personally reviewed the record in this case and Exhibits A-H attached to this Affidavit, and the records and information contained therein were made at or near the time of collection by a technician with actual knowledge of the records and information acquired through the regularly conducted business of the Division. Furthermore, it is the regular business practice of the Division to keep the records and information contained in Exhibits A-H and I am a custodian of these records. The

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Information contained in Exhibits A-H are true and accurate copies of the information contained in the Division's records.

DATED May 8, 2020.

/s/ Larry Davis  
Larry Davis

SUBSCRIBED AND SWORN to before me this 7th day of May, 2020.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_