

Eric Croft (Alaska Bar No. 9406031)
THE CROFT LAW OFFICE
738 H Street
Anchorage, AK 99501
T: 907-272-3508 | F: 907-274-0146
eric@croftlawoffice.com

Peter C. Renn (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
4221 Wilshire Boulevard, Ste. 280
Los Angeles, CA 90010
T: 213-382-7600 | F: 213-351-6050
prenn@lambdalegal.org

Tara L. Borelli (admitted *pro hac vice*)
Meredith Taylor Brown (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
730 Peachtree St. NE, Ste. 640
Atlanta, GA 30308
T: 470-225-5341 | F: 404-897-1884
tborelli@lambdalegal.org, tbrown@lambdalegal.org

Attorneys for Plaintiff Jennifer Fletcher

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Jennifer Fletcher,

Plaintiff,

vs.

State of Alaska,

Defendant.

Case No. 1:18-cv-00007-HRH

**DECLARATION OF TARA L. BORELLI IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Fletcher v. Alaska, No. 1:18-cv-00007-HRH

I, Tara L. Borelli, do hereby declare as follows:

1. I am an attorney for Plaintiff Jennifer Fletcher in the above-captioned matter. I have actual knowledge of the matters stated in this declaration and would so testify if called as a witness.

2. Attached as Exhibit A is a true and correct copy of the State of Alaska's Responses to Plaintiff's First Set of Interrogatories, with a verification dated December 17, 2018.

3. Attached as Exhibit B is a true and correct copy of the State of Alaska's First Supplemental Responses to Plaintiff's First Set of Interrogatories, with a verification dated February 22, 2019.

4. Attached as Exhibit C is a true and correct copy of the State of Alaska's Responses to Plaintiff's First Set of Requests for Admission, served on November 30, 2018.

5. Attached as Exhibit D is a true and correct copy of the State of Alaska's First Supplemental Responses to Plaintiff's First Set of Requests for Admission, served on February 21, 2019.

6. Attached as Exhibit E is a true and correct copy of the State of Alaska's First [*sic*] Supplemental Responses to Plaintiff's First Set of Requests for Admission, served on June 17, 2019.

7. Attached as Exhibit F is a true and correct excerpt of the AlaskaCare Employee Health Plan for the plan year beginning January 1, 2017, spanning bates numbers SOA 000674 - 000859.

8. Attached as Exhibit G is a true and correct excerpt of the AlaskaCare Employee Health Plan for the plan year beginning January 1, 2018, spanning bates numbers SOA 000450 - 000636.

9. Attached as Exhibit H is a true and correct excerpt of the AlaskaCare Employee Health Plan for the plan year beginning January 1, 2019, spanning bates numbers FLETCHER 003652 - 003849.

10. Attached as Exhibit I is a true and correct copy of a Memorandum by Segal Consulting, dated September 20, 2016, regarding “Fiscal Impact of Potential Plan Changes,” bates numbered SOA 001255 - 001259.

11. Attached as Exhibit J is a true and correct copy of an email chain from November through December of 2017 between Daniel Dudley, Michele M. Michaud, and Andrew Robison, bates numbered SOA 056903 - 056905.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and corrected. Executed this 1st day of July, 2019.

/s/ Tara L. Borelli

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, I electronically filed the foregoing document and all attachments with the Clerk of the Court by using the CM/ECF system, causing a copy of the foregoing document and all attachments to be served on all counsel of record.

/s/ Tara L. Borelli

Peter C. Renn (admitted *pro hac vice*)
Tara L. Borelli (admitted *pro hac vice*)
Meredith Taylor Brown (admitted *pro hac vice*)
Eric Croft (Alaska Bar No. 9406031)

Attorneys for Plaintiff Jennifer Fletcher

**INDEX OF EXHIBITS TO
DECL. OF TARA L. BORELLI IN SUPP. OF
PLTF.'S MOT. FOR PARTIAL SUMM. J.**

Exhibit	Description
Exhibit A	State's Resp. to Pltf.'s First Set of Interrog., verification dated Dec. 17, 2018
Exhibit B	State's First Supp. Resp. to Pltf.'s First Set of Interrog., verification dated Feb. 22, 2019
Exhibit C	State's Resp. to Pltf.'s First Set of Req. for Admis., served on Nov. 30, 2018
Exhibit D	State's First Supp. Resp. to Pltf.'s First Set of Req. for Admis., served on Feb. 21, 2019
Exhibit E	State's First [<i>sic</i>] Supp. Resp. to Pltf.'s First Set of Req. for Admis., served on June 17, 2019
Exhibit F	Excerpt of AlaskaCare Employee Health Plan, Jan. 1, 2017, bates nos. SOA 000674 - 000859
Exhibit G	Excerpt of AlaskaCare Employee Health Plan, Jan. 1, 2018, bates nos. SOA 000450 - 000636
Exhibit H	Excerpt of AlaskaCare Employee Health Plan, Jan. 1, 2019, bates nos. FLETCHER 003652 - 003849
Exhibit I	Memo by Segal Consulting, dated Sept. 20, 2016, re: "Fiscal Impact of Potential Plan Changes," bates nos. SOA 001255 - 001259
Exhibit J	Email chain from Nov. and Dec. 2017, between Daniel Dudley, Michele M. Michaud, and Andrew Robison, bates nos. SOA 056903-56905

Exhibit A

1 Healthcare for the treatment of gender dysphoria in the AlaskaCare plan.

2 **ANSWER:** Title VII is not a national health insurance law and it does not
3 mandate health insurance coverage for particular medical treatments. Instead, it is a
4 federal statute that prohibits employment discrimination on the basis of “race, color,
5 religion, sex, or national origin.” Where a health plan excludes coverage of a treatment
6 for all employee plan beneficiaries regardless of their race, color, religion, sex, or
7 national origin, there is no claim under Title VII. Moreover, Plaintiff has not presented
8 any evidence that any medical expenses she incurred were medically necessary,
9 appropriate, or otherwise comply with any terms of the AlaskaCare Employee Health
10 Plan. On information and belief, Plaintiff traveled outside the United States to obtain her
11 various procedures. The AlaskaCare Employee Health Plan excludes any
12 “non-emergency charges incurred outside of the United States if you traveled to such
13 location to obtain medical services, prescription drugs, or supplies, even if otherwise
14 covered under the medical plan.”

15 **INTERROGATORY NO. 2:** Identify all Persons with involvement in, or
16 knowledge of, the creation, review, and maintenance of the exclusion of coverage for
17 surgical interventions as part of Transition-Related Healthcare in the AlaskaCare plan
18 for plan years 2016, 2017, 2018, and once available, 2019.

19 **ANSWER:** Objection to relevancy, overbreadth, vagueness, and privilege. The
20 request is overly expansive and vague when it requests “all Person with . . . knowledge
21 of” the challenged exclusion. This request seeks disclosure of every person that has ever

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1 read the AlaskaCare employee health plan and is not proportional to whether a sex
2 neutral health benefit exclusion is prohibited under Title VII of the Civil Rights Act of
3 1964 and is not reasonably calculated to lead to the discovery of admissible evidence.
4 Moreover, the request potentially seeks privileged communications between state
5 officials and attorney client or work product communications. In addition,
6 attorney-client privilege attaches to any discussions former State officials had with their
7 attorneys in their capacity as State employees. Without waiving said objections, and to
8 the extent the request is asking for people with relevant information, they are listed as
9 follows:
10

11
12 Michele Michaud
13 Chief Health Official
14 Division of Retirement and Benefits *Attorney-Client*
15 Department of Administration *Privilege*
16 State of Alaska
17 c/o Office of the Attorney General
18 P.O. Box 110300
19 Juneau, AK 99811-0300
20 (907) 465-3600

21
22 Emily Ricci
23 Chief Health Policy Official *Attorney-Client*
24 Division of Retirement and Benefits *Privilege*
25 Department of Administration
26 State of Alaska
c/o Office of the Attorney General
P.O. Box 110300
Juneau, AK 99811-0300
(907) 465-3600

23 //

24 //

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1 Steve Ramos
2 Vendor Manager
3 Division of Retirement and Benefits
4 Department of Administration
5 State of Alaska
6 c/o Office of the Attorney General
7 P.O. Box 110300
8 Juneau, AK 99811-0300
9 (907) 465-3600

*Attorney-Client
Privilege*

7 Leslie Ridle
8 Former Commissioner of Administration
9 Department of Administration
10 State of Alaska
11 c/o Office of the Attorney General
12 P.O. Box 110300
13 Juneau, AK 99811-0300
14 (907) 465-3600

12 Sheldon Fisher
13 Former Commissioner of Administration
14 State of Alaska
15 c/o Office of the Attorney General
16 P.O. Box 110300
17 Juneau, AK 99811-0300
18 (907) 465-3600

17 John Boucher
18 Former Deputy Commissioner of Administration
19 State of Alaska
20 c/o Office of the Attorney General
21 P.O. Box 110300
22 Juneau, AK 99811-0300
23 (907) 465-3600

22 **INTERROGATORY NO. 3:** Describe in detail the specific reasons that
23 Defendant commissioned the September 20, 2016 memorandum analyzing the inclusion
24 of Transition-Related Healthcare benefits on the AlaskaCare plan by Segal Consulting.
25

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1 **ANSWER:** Objection privileged. Portions of the September 20, 2016 Segal
2 memorandum concern health benefit changes unrelated to “Transition-Related
3 Healthcare” that are still under deliberation by the State and are therefore covered under
4 the deliberative process privilege. In addition, the State objects to the relevancy of this
5 interrogatory as the reasons for the State obtaining a fiscal analysis of its health benefit
6 plans is unlikely to lead to the discovery of information related to whether or not the
7 maintenance of a sex neutral health benefit exclusion constitutes discrimination under
8 Title VII. Without waiving said objections, the State answers that the
9 September 20, 2016 memorandum was produced during a period of significant state
10 budget deficits partly to analyze the costs of compliance with federal rule making under
11 Section 1557 of the Affordable Care Act which was subsequently enjoined.

14 **INTERROGATORY NO. 4:** Describe in detail any and all steps Defendant
15 took in response to the September 20, 2016 memorandum analyzing the inclusion of
16 Transition-Related Healthcare benefits on the AlaskaCare plan by Segal Consulting.

18 **ANSWER:** Objection to relevancy. The reasons for the State obtaining a fiscal
19 analysis of its health benefit plans is unlikely to lead to the discovery of admissible
20 evidence related to whether or not the maintenance of a sex neutral health benefit
21 exclusion constitutes discrimination under Title VII and is not proportional to the issues
22 raised in the Complaint. Without waiving said objection, the State answers that the
23 Division of Retirement and Benefits discussed the September 20, 2016 memorandum
24 with the Commissioner’s Office. No further action was taken directly related to the

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1 September 20, 2016 memorandum beyond providing copies to Plaintiff in response to a
2 public records request.

3 **INTERROGATORY NO. 5:** Identify all Persons involved in Communications
4 relating to the September 20, 2016 memorandum analyzing the inclusion of
5 Transition-Related Healthcare benefits on the AlaskaCare plan by Segal Consulting,
6 including any and all steps taken by Defendant in response to the memorandum.

8 **ANSWER:** See Answer to Interrogatory #2.

9 **INTERROGATORY NO. 6:** Describe in detail Defendant's criteria, policies,
10 practices, and procedures for establishing coverage for procedures relating to
11 vaginoplasty, and mammoplasty and/or breast reconstruction surgery for plan years
12 2014, 2015, 2016, 2017, 2018, and once available, 2019.

14 **ANSWER:** Objection to vagueness, overbreadth, and relevancy. Vaginoplasty is
15 a broad term encompassing many distinct procedures including, without limitation,
16 separation of congenitally fused urethra and vagina, repair of a urethra that is short,
17 vaginal construction, vaginal vault prolapse, and treatment of Mullerian agenesis.
18 Likewise, mammoplasty and breast reconstruction surgery are broad terms covering
19 many medically distinct procedures. Moreover, the State's policies for determining
20 coverage for medical procedures are not reasonably calculated to lead to the discovery of
21 admissible evidence on whether a sex neutral health plan exclusion violates Title VII
22 and is not proportional to the issues raised in the Complaint. For example, the fact that
23 State is legally required to provide for reconstructive surgery following a mastectomy
24

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1 under the Women's Health and Cancer Rights Act, is irrelevant to the issues contained
2 in the Complaint. Without waiving said objections, the State answers that the
3 AlaskaCare Employee Health Plan is reviewed periodically (at least annually) by the
4 Division of Retirement and Benefits and changes and recommendations are submitted to
5 the Commissioner of Administration for review and approval. The Division of
6 Retirement and Benefits makes its determinations in consultation with its current
7 third-party administrator—which provides information on the current medical consensus
8 about various procedures—and fiscal consultants and through research into other public
9 and private health plans. The Division considers applicable state and federal health care
10 mandates and adjusts its coverage accordingly.

11
12
13 **INTERROGATORY NO. 7:** Describe in detail all Communications that took
14 place between or among any employee of the State of Alaska Department of
15 Administration Division of Retirement and Benefits and/or any other Alaska state
16 agency relating to Ms. Fletcher and the underlying events of this action (beginning with
17 Ms. Fletcher's initial inquiries to the Division of Retirement and Benefits in 2016 to the
18 present).

19
20 **ANSWER:** See response to request for production.

21 **INTERROGATORY NO. 8:** Identify all conditions, diagnostic codes, or
22 instances where vaginoplasty coverage is available under AlaskaCare for plan years
23 2014, 2015, 2016, 2017, 2018, and once available, 2019. Include in that identification:

24 a. Diagnostic code(s);

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1 reasonably calculated to lead to the discovery of admissible evidence on whether a sex
2 neutral health plan exclusion violates Title VII and is not proportional to the issues
3 raised in the Complaint.

4
5 Finally, identification of all “instances” of coverage conceivably requires review
6 of all claims for medical benefits submitted to AlaskaCare for a period of approximately
7 five years, which likely exceeds several million individual claims. Without waiving said
8 objections, see response to request for production.

9
10 **INTERROGATORY NO. 10:** Describe in detail the reasons for Defendant’s
11 removal of the exclusion of coverage for hormone therapy and counseling and/or therapy
12 as part of Transition-Related Healthcare in the AlaskaCare plan for the 2018 plan year.

13 **ANSWER:** Objection to relevancy and privilege to the extent the question calls
14 for information related to decisional activity protected by deliberative process or
15 attorney-client privilege. In addition, the State’s revision to the prior exclusion for
16 certain service Plaintiff links to “Transition-Related Healthcare” is not reasonably
17 calculated to lead to discovery of admissible evidence related to whether a sex neutral
18 health plan exclusion violates Title VII and is not proportional to the issues raised in the
19 Complaint. Without waiving said objections, the State responds by stating that the
20 Division of Retirement and Benefits routinely and periodically reviews the AlaskaCare
21 employee health plan’s provisions, terms, and conditions in order to ensure compliance
22 with various state and federal laws and regulations and to adjust coverage based on
23 current consensus of medically relevant procedures and terminology, and fiscal
24

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1 considerations. The AlaskaCare employee health plan has historically provided coverage
2 for conditions such as Gender Dysphoria and other gender-identity disorders that did not
3 conflict with the provisions, terms, and conditions of the plan. The Division of
4 Retirement and Benefits consults and advises the Commissioner of Administration
5 regarding potential plan changes. In 2016, the Division and the Commissioner's office
6 began reviewing the challenged coverage exclusion as a part of its periodic review
7 process. This review considered potential costs associated with various treatments
8 associated with Gender Dysphoria and other gender-identity related conditions, the
9 expected utilization of said treatments, the fact that some of the various treatments were
10 covered under alternative plan provisions, and the medical consensus on the efficacy,
11 safety, and expert recommendations for the various treatments. After review of the
12 available information, the decision was made to clarify the availability of mental health
13 counseling for gender-identity issues and allow for hormone therapy.

14
15
16 **INTERROGATORY NO. 11:** Identify all Persons involved in and Documents
17 related to Interrogatory 10.

18
19 **ANSWER:** See response to Interrogatory #2 and response to request for
20 production.

21 **INTERROGATORY NO. 12:** Identify and describe in detail every instance in
22 which a State agency or entity currently provides partial or full coverage for
23 Transition-Related Healthcare of any kind, including but not limited to counseling
24

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1 and/or therapy, hormone therapy, or surgery. Include in your answer the date such
2 coverage began.

3 **ANSWER:** Objection to overbreadth, and relevancy. The basis for Plaintiff's
4 claim is a single exclusion from the AlaskaCare employee health plan and whether such
5 an exclusion to health benefits constitutes discriminations on the basis of sex under the
6 terms of Title VII. Consequently, the actions of numerous state agencies such as the
7 Department of Corrections or the Department of Health and Social Services is not
8 reasonably calculated to lead to discoverable information regarding the establishment
9 and maintenance of an exclusion in the AlaskaCare plan as those agencies have no
10 control over the AlaskaCare plan and are not necessarily in privity with the Department
11 of Administration, Division of Retirement and Benefits. The fact the State of Alaska
12 provides for medical care in a multitude of situations has no relevance as to whether the
13 challenged language in the AlaskaCare employee health plan violates Title VII.

14 Moreover, the question calls for the disclosure of protectable personal information
15 related to individuals on Medicaid or currently incarcerated not contemplated by the
16 terms of the agreed to protective order in this matter. Review of all "instances" of
17 coverage is overboard because it conceivably requires review of all claims for medical
18 benefits submitted to AlaskaCare or to State agencies not in privity with the Department
19 of Administration, Division of Retirement and Benefits for a period of approximately
20 five years which consists of millions of individual claims to determine if the claim was
21 for services related to "Transition-Related Healthcare". It is functionally impossible and
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1 irrelevant to review State sponsored health benefit plans separate and distinct from the
2 AlaskaCare employee health plan and such requests are not proportional to the claims
3 raised by the Complaint, in that the Plaintiff does not participate in other State sponsored
4 health benefit plans, AlaskaCare has no control of other State sponsored health benefit
5 plans, and the Plaintiff may never participate in other State sponsored health benefit
6 plans. Finally, despite Plaintiff’s attempt to define “Transition-Related Healthcare,”
7 services may have been provided under alternative provisions of the various State run
8 medical benefit programs or associated with diagnostic classifications not related to—or
9 comorbid with—gender-identify issues. Without waiving said objections, AlaskaCare
10 has historically provided counseling service for gender-identity disorder and—starting
11 January 1, 2018, covers hormone treatment and counseling in apparent compliance with
12 Plaintiff’s definition of “Gender-Transition Healthcare” and see response to request for
13 production.
14
15

16 DATED: December 14, 2018.

17 KEVIN G. CLARKSON
18 ATTORNEY GENERAL

19
20 By: /s/ Kevin M. Dilg
21 Kevin M. Dilg
22 Assistant Attorney General
23 Alaska Bar No. 1406053
24
25
26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 14, 2018 a copy of the foregoing was served
3 via email on the following parties of record. Due to the size of the production file and
4 technical issues in preparing it, it will be provided via ZendTo FTP and on DVD via
U.S. Mail on December 17, 2018:

5 Peter C. Renn
6 LAMBDA LEGAL DEFENSE END
7 EDUCATION FUND, INC.
8 4221 Wilshire Boulevard, Ste. 280
9 Los Angeles, CA 90010
prenn@lambdalegal.org

10 Tara L. Borelli
11 LAMBDA LEGAL DEFENSE END
12 EDUCATION FUND, INC.
13 730 Peachtree St. NE, Ste. 640
14 Atlanta, GA 30308
tborelli@lambdalegal.org

15 Eric Croft
16 THE CROFT LAW OFFICE
17 738 H Street
18 Anchorage, AK 99501
eric@croftlawoffice.com

19 /s/ Richard J. Carter
20 Richard J. Carter, Law Office Manager

Exhibit B

1 KEVIN G. CLARKSON
2 ATTORNEY GENERAL
3 William Milks (Alaska Bar No. 0411094)
4 Kevin Dilg (Alaska Bar No. 1406053)
5 Assistant Attorneys General
6 Department of Law
7 P.O. Box 110300
8 Juneau, AK 99811-0300
9 Telephone: (907) 465-3600
10 Facsimile: (907) 465-2520
11 Email: bill.milks@alaska.gov

12 *Attorneys for defendant*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ALASKA**

15 JENNIFER FLETCHER,)
16)
17 Plaintiff,)
18)
19 v.)
20)
21 STATE OF ALASKA,)
22)
23 Defendant.)

CIVIL ACTION

CASE NO. 1:18-cv-00007-HRH

24 **STATE OF ALASKA'S FIRST SUPPLEMENTAL RESPONSES TO**
25 **PLAINTIFF'S FIRST SET OF INTERROGATORIES**

26 Defendant State of Alaska, by and through the office of the Attorney General,
supplements its responses to Plaintiff's first set of interrogatories as follow:

INTERROGATORIES

INTERROGATORY NO. 6: Describe in detail Defendant's criteria, policies,
practices, and procedures for establishing coverage for procedures relating to

1 vaginoplasty, and mammoplasty and/or breast reconstruction surgery for plan years
2 2014, 2015, 2016, 2017, 2018, and once available, 2019.

3 **ANSWER:** The State’s initial response is incorporated and reasserted in
4 conjunction with this supplementation. The State supplements by stating that the
5 AlaskaCare Employee Health Plan is a self-insured health benefit coverage program
6 available to certain classes of State employees and their dependents. While the State is
7 financially liable for the Plan, the State contracts with a Third-Party Administrator
8 (TPA) to oversee the day-to-day claims operation of the Plan, including processing and
9 paying all payable claims under the terms of the Plan, making initial coverage decisions,
10 and developing reimbursement and medical necessity criteria. As a result, the State does
11 not have “criteria, policies, practices, and procedures for establishing coverage for
12 procedures relating to vaginoplasty, and mammoplasty and/or breast reconstruction
13 surgery.” Rather, the State provides benefits for medical services and procedures that are
14 medically necessary and not otherwise excluded from the Plan. Neither “vaginoplasty”
15 nor “mammoplasty/breast reconstruction” are specifically excluded from the Plan *per se*
16 (the Plan excludes cosmetic surgery and gender reassignment surgery which may
17 encompass one or both of these procedures). The State relies on its TPA to establish and
18 define medical necessity. The State establishes specific exclusions based on input from
19 the TPA, fiscal consultants, and through research into other public and private health
20 plans. The Division considers applicable state and federal health care mandates and
21 adjusts its coverage accordingly.
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1 **INTERROGATORY NO. 7:** Describe in detail all Communications that took
2 place between or among any employee of the State of Alaska Department of
3 Administration Division of Retirement and Benefits and/or any other Alaska state
4 agency relating to Ms. Fletcher and the underlying events of this action (beginning with
5 Ms. Fletcher's initial inquiries to the Division of Retirement and Benefits in 2016 to the
6 present).

7
8 **ANSWER:** The State's initial response is incorporated and reasserted in
9 conjunction with this supplementation. The State supplements by referring to its request
10 for production at pages 004615-004758, 005084-005099, 044660-044716,
11 046138-046146, 046161-046164, 046192-046254, 046263-046346, 046353-046358,
12 046394-046428, 046443-046452, 046455-046528, 046544-046595, 046606-04619,
13 046645-046649, 046726-046772, 046812-046853, 046863-046886, 046894-046898,
14 046917-046928, 047010-047069, 047112-047128, 047352-047390, 047447-047472,
15 047530-047669, 047728-047855, 047868-048048, 048590-048591, 049151-049161.
16

17 **INTERROGATORY NO. 8:** Identify all conditions, diagnostic codes, or
18 instances where vaginoplasty coverage is available under AlaskaCare for plan years
19 2014, 2015, 2016, 2017, 2018, and once available, 2019. Include in that identification:
20

- 21 a. Diagnostic code(s);
22 b. Procedure code(s);
23 c. Medical necessity criteria.
24

1 **ANSWER:** The State’s initial response is incorporated and reasserted in
2 conjunction with this supplementation. The State supplements by stating that coverage
3 for medical treatments and services under the AlaskaCare Employee Health Plan is
4 available for procedures that are medically necessary and not otherwise excluded under
5 the terms of the Plan. The State relies on its TPA to determine the medical necessity of
6 “vaginoplasty” and to identify all conditions, diagnostic codes, or instances of coverage
7 for “vaginoplasty.” The State does not specifically exclude coverage for “vaginoplasty”
8 under the terms of the AlaskaCare Employee Health Plan (the Plan excludes cosmetic
9 surgery and gender reassignment surgery which may encompass this procedure). Aetna
10 provides coverage and procedure codes in its publically available Clinical Policy
11 Bulletins. Because the Bulletins are equally accessible to both Plaintiff and Defendant,
12 are not created, compiled, stored, or published by Defendant, and review of the entire
13 Bulletin catalogue is equally burdensome to both parties the State refers Plaintiff to
14 [https://www.aetna.com/health-care-professionals/clinical-policy-bulletins/medical-](https://www.aetna.com/health-care-professionals/clinical-policy-bulletins/medical-clinical-policy-bulletins.html#)
15 [clinical-policy-bulletins.html#](https://www.aetna.com/health-care-professionals/clinical-policy-bulletins/medical-clinical-policy-bulletins.html#) for more information on this request as well as
16 Bates No. 049595-049956.
17
18
19

20 **INTERROGATORY NO. 9:** Identify all conditions, diagnostic codes, or
21 instances where mammoplasty and/or breast reconstruction surgery coverage is available
22 under AlaskaCare for plan years 2014, 2015 2016, 2017, 2018, and once available, 2019.
23 Include in that identification:

- 24 a. Diagnostic code(s);

- b. Procedure code(s);
- c. Medical necessity criteria.

ANSWER: The State’s initial response is incorporated and reasserted in conjunction with this supplementation. The State supplements by stating that coverage for medical treatments and services under the AlaskaCare Employee Health Plan is available for procedures that are medically necessary and not otherwise excluded under the terms of the Plan. The State relies on its TPA to determine the medical necessity of “mammoplasty and/or breast reconstruction” and to identify all conditions, diagnostic codes, or instances of coverage for “mammoplasty and/or breast reconstruction.” The State does not specifically exclude coverage for “mammoplasty and/or breast reconstruction” under the terms of the AlaskaCare Employee Health Plan (the Plan excludes cosmetic surgery and gender reassignment surgery which may encompass this procedure). Aetna provides coverage and procedure codes in its publically available Clinical Policy Bulletins. Because the Bulletins are equally accessible to both Plaintiff and Defendant, are not created, compiled, stored, or published by Defendant, and review of the entire Bulletin catalogue is equally burdensome to both parties the State refers Plaintiff to <https://www.aetna.com/health-care-professionals/clinical-policy-bulletins/medical-clinical-policy-bulletins.html#> for more information on this request as well as Bates No. 049595-049956.

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1 **INTERROGATORY NO. 11:** Identify all Persons involved in and Documents
2 related to Interrogatory 10.

3 **ANSWER:** The State's initial response is incorporated and reasserted in
4 conjunction with this supplementation. The State supplements by stating it is still reviewing
5 communications and documents associated with this interrogatory and will supplement its
6 response when it discovers specifically identifiable persons or documents responsive to this
7 request. The State also supplements by referencing Bates No. 001015-001379,
8 046455-046461, 046481-046498, 046520-046525, 046735-046772.
9

10 **INTERROGATORY NO. 12:** Identify and describe in detail every instance in
11 which a State agency or entity currently provides partial or full coverage for
12 Transition-Related Healthcare of any kind, including but not limited to counseling
13 and/or therapy, hormone therapy, or surgery. Include in your answer the date such
14 coverage began.
15

16 **ANSWER:** The State's initial response is incorporated and reasserted in
17 conjunction with this supplementation. The State supplements by stating treatment,
18 therapy, surgery, or other procedures related to gender reassignment is excluded from
19 the State Medicaid system pursuant to 2 AAC 105.110. The Department of Corrections
20 is required to provide essential health care for incarcerated individuals, which is defined
21 as clinically appropriate indispensable care to prevent the progression of a disease or the
22 deterioration of health. As of the date of this response, the Department of Corrections
23 has not approved or denied a request for gender transition surgery. As to other forms of
24
25

26 *Fletcher v. State of Alaska*

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STATE OF ALASKA'S FIRST SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES

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“Transition-Related Healthcare,” the Department of Corrections provides essential health care on a case-by-case basis. Inmate medical records are confidential pursuant to 22 AAC 05.090-.095.

DATED: February 22, 2019.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: /s/ Kevin M. Dilg
Kevin M. Dilg
Assistant Attorney General
Alaska Bar No. 1406053

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2019 a copy of the foregoing was served via email on the following parties of record:

Peter C. Renn
LAMBDA LEGAL DEFENSE END
EDUCATION FUND, INC.
4221 Wilshire Boulevard, Ste. 280
Los Angeles, CA 90010
prens@lambdalegal.org

Tara L. Borelli
LAMBDA LEGAL DEFENSE END
EDUCATION FUND, INC.
730 Peachtree St. NE, Ste. 640
Atlanta, GA 30308
tborelli@lambdalegal.org

Eric Croft
THE CROFT LAW OFFICE
738 H Street
Anchorage, AK 99501
eric@croftlawoffice.com

/s/ Ivy J. Greever
Ivy J. Greever, Law Office Assistant

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF ALASKA**

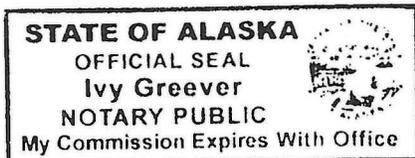
3 JENNIFER FLETCHER,)
4 Plaintiff,)
5 v.)
6 STATE OF ALASKA,)
7 Defendant.) **CIVIL ACTION**
8) **CASE NO. 1:18-cv-00007-HRH**
9)

10 **VERIFICATION**

11 I, Ajay Desai, Division Director, State of Alaska, Department of Administration,
12 Division of Retirement and Benefits, hereby certify and declare that I have read the
13 interrogatory responses to the **STATE OF ALASKA'S FIRST SUPPLEMENTAL**
14 **RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and, but
15 for the response to Interrogatory No. 12, they are true and correct to the best of my
16 knowledge and belief. I have no personal knowledge of the operation of the Department
17 of Health and Social Service or the Department of Corrections.
18

19 Dated: 2/22/2019 *Ajay Desai*
20 Ajay Desai
21 Division Director

22 SUBSCRIBED and SWORN to before me this 22 day of February, 2019.



26 *Ivy Greever*
Notary Public
My Commission Expires: *with office*

Fletcher v. State of Alaska Case No. 1:18-cv-00007-HRH
STATE OF ALASKA'S FIRST SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES Page 9 of 9

Exhibit C

1 JAHNA LINDEMUTH
2 ATTORNEY GENERAL
3 William Milks (Alaska Bar No. 0411094)
4 Kevin Dilg (Alaska Bar No. 1406053)
5 Assistant Attorneys General
6 Department of Law
7 P.O. Box 110300
8 Juneau, AK 99811-0300
9 Telephone: (907) 465-3600
10 Facsimile: (907) 465-2520
11 Email: bill.milks@alaska.gov

12 *Attorneys for defendant*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ALASKA**

15 JENNIFER FLETCHER,)
16)
17 Plaintiff,)
18)
19 v.)
20)
21 STATE OF ALASKA,)
22)
23 Defendant.)

24 CIVIL ACTION

25 CASE NO. 1:18-cv-00007-HRH

26 **STATE OF ALASKA'S RESPONSES TO PLAINTIFF'S FIRST SET OF**
REQUESTS FOR ADMISSION

27 Defendant State of Alaska responds to plaintiff's first set of requests for
28 admission as follows:

29 **REQUEST FOR ADMISSION NO. 1:** Admit that Ms. Fletcher is qualified for
30 her position as a legislative librarian for the State of Alaska.

1 **RESPONSE:** Admitted to the extent of the knowledge of the individual
2 answering these requests with the understanding the answerer is not Plaintiff's
3 supervisor and has no knowledge of Plaintiff's job performance.

4 **REQUEST FOR ADMISSION NO. 2:** Admit that Ms. Fletcher is classified as
5 female on her employment records with the State of Alaska.

6 **RESPONSE:** Admitted.

7 **REQUEST FOR ADMISSION NO. 3:** Admit that Ms. Fletcher is referred to
8 using feminine pronouns while at work.

9 **RESPONSE:** Objection to relevance. The Complaint does not allege any
10 indication of hostile work place or any other cause of action other than whether a gender
11 neutral health plan exclusion is under the purview Title VII of the Civil Rights Act of
12 1964. The gender pronouns used by Plaintiff's co-workers have no bearing on the issue
13 to be decided in this case.

14 **REQUEST FOR ADMISSION NO. 4:** Admit that Ms. Fletcher is transgender.

15 **RESPONSE:** Objection as the question calls for information outside the
16 knowledge, control, or custody of the State. The State admits Plaintiff has alleged she is
17 transgender in her complaint.

18 **REQUEST FOR ADMISSION NO. 5:** Admit that Ms. Fletcher's gender
19 identity is female.

20 **RESPONSE:** Objection as the question calls for information outside the
21 knowledge, control, or custody of the State. The State has no knowledge of Plaintiff's

22 *Fletcher v. State of Alaska*

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23 STATE OF ALASKA'S RESPONSES TO
24 PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

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1 personal thoughts, attitudes, or opinions of herself beyond the fact that Plaintiff has
2 alleged her gender identity is female in her complaint.

3 **REQUEST FOR ADMISSION NO. 6:** Admit that Ms. Fletcher identifies as a
4 woman.

5 **RESPONSE:** Objection as the question calls for information outside the
6 knowledge, control, or custody of the State. The State has no knowledge of Plaintiff's
7 personal thoughts, attitudes, or opinions of herself beyond the fact that Plaintiff has
8 alleged she is woman in her complaint.

9 **REQUEST FOR ADMISSION NO. 7:** Admit that Ms. Fletcher is a woman.

10 **RESPONSE:** Objection as the question calls for information outside the
11 knowledge, control, or custody of the State. Moreover, the term "woman" is vague
12 based upon Plaintiff's own arguments regarding the transmutable nature of sex and
13 gender. The State is without knowledge as to Plaintiff's personal medical information
14 and cannot formulate an answer beyond the State admits Plaintiff presents herself and
15 wishes others to identify her as a stereotypical "woman."

16 **REQUEST FOR ADMISSION NO. 8:** Admit that Ms. Fletcher has been
17 enrolled for health care coverage through the self-funded AlaskaCare plan throughout
18 her employment with the State.

19 **RESPONSE:** Admitted.

20 **REQUEST FOR ADMISSION NO. 9:** Admit that Ms. Fletcher was denied
21 coverage for her vaginoplasty because of the exclusion for transition-related surgical

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23 STATE OF ALASKA'S RESPONSES TO
24 PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

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1 care in AlaskaCare.

2 **RESPONSE:** The State admits Plaintiff requested pre-certification for services
3 that did not require pre-certification under the terms of AlaskaCare. Based on the State's
4 best information as of the date of this response, Plaintiff has not submitted a claim for
5 vaginoplasty for coverage under the terms of the AlaskaCare plan or appealed any
6 determination of the State's third-party administrator. The State admits that surgical
7 procedures related to changing sex or sexual characteristics including procedures to
8 alter the appearance or function of the body are excluded from benefits.
9

10 **REQUEST FOR ADMISSION NO. 10:** Admit that Ms. Fletcher was denied
11 coverage for a mammoplasty and/or breast reconstruction surgery because of the
12 exclusion for transition-related surgical care in AlaskaCare.
13

14 **RESPONSE:** The State admits Plaintiff requested pre-certification for services
15 that did not require pre-certification under the terms of AlaskaCare. Based on the State's
16 best information as of the date of this response, Plaintiff has not submitted a claim for
17 vaginoplasty for coverage under the terms of the AlaskaCare plan or appealed any
18 determination of the State's third-party administrator. The State admits that surgical
19 procedures related to changing sex or sexual characteristics, including procedures to
20 alter the appearance or function of the body, are excluded from benefits.
21

22 **REQUEST FOR ADMISSION NO. 11:** Admit that the State of Alaska serves
23 as the plan administrator for AlaskaCare.
24
25
26

1 **RESPONSE:** Denied to the extent the request conflicts with AS 39.30.090-.095;
2 AS 39.35.003; AS 14.25.003; and AS 22.25.025, otherwise Admitted.

3 **REQUEST FOR ADMISSION NO. 12:** Admit that Aetna Life Insurance
4 Company (“Aetna”) serves as the medical claims administrator for AlaskaCare.

5 **RESPONSE:** Admitted as through December 31, 2018.

6 **REQUEST FOR ADMISSION NO. 13:** Admit that in its capacity as medical
7 claims administrator for AlaskaCare, Aetna denied Plaintiff’s request for
8 pre-certification for transition-related surgery in or around November 2016.

9 **RESPONSE:** Admitted.

10 **REQUEST FOR ADMISSION NO. 14:** Admit that in response to Plaintiff’s
11 request for pre-certification for transition-related surgery, Aetna informed Plaintiff that
12 AlaskaCare excludes coverage for transition-related surgery.

13 **RESPONSE:** Admitted pending a complete review of all communications
14 between Plaintiff, Aetna, and the State. Despite diligent efforts to review all materials,
15 the State has been unable to fully review all relevant documents and materials before the
16 deadline for the response to these requests.

17 **REQUEST FOR ADMISSION NO. 15:** Admit that in response to Plaintiff’s
18 request for pre-certification for transition-related surgery, Aetna informed Plaintiff that
19 plan design decisions are made by the State of Alaska as the plan administrator.

20 **RESPONSE:** Admitted pending a complete review of all communications
21 between Plaintiff, Aetna, and the State. Despite diligent efforts to review all materials,

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1 the State has been unable to fully review all relevant documents and materials before the
2 deadline for the response to these requests. Denied to the extent Plaintiff's definition of
3 "plan administrator" conflicts with AS 39.30.090-.095; AS 39.35.003; AS 14.25.003;
4 and AS 22.25.025.
5

6 **REQUEST FOR ADMISSION NO. 16:** Admit that the exclusion of
7 transition-related surgery in AlaskaCare is a health plan decision made by the State of
8 Alaska as the plan administrator.

9 **RESPONSE:** Admitted to the extent "transition-related surgery" is excluded
10 under the terms of the AlaskaCare plan. Denied to the extent Plaintiff's definition of
11 "plan administrator" conflicts with AS 39.30.090-.095; AS 39.35.003; AS 14.25.003;
12 and AS 22.25.025.
13

14 **REQUEST FOR ADMISSION NO. 17:** Admit that Aetna denied Plaintiff's
15 request for pre-certification for transition-related surgery because of AlaskaCare's
16 exclusion for such surgery.
17

18 **RESPONSE:** Denied to the extent the request for pre-certification was denied
19 because "transition-related surgery" is not on the list of conditions that require
20 pre-certification.

21 **REQUEST FOR ADMISSION NO. 18:** Admit that Aetna was required to deny
22 Plaintiff's request for pre-certification for transition-related surgery because of
23 AlaskaCare's exclusion for such surgery.
24

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STATE OF ALASKA'S RESPONSES TO
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1 **RESPONSE:** Denied to the extent the request for pre-certification was denied
2 because “transition-related surgery” is not on the list of conditions that require
3 pre-certification.

4 **REQUEST FOR ADMISSION NO. 19:** Admit that Aetna must follow the
5 terms of the AlaskaCare plan in its capacity as medical claims administrator.

6 **RESPONSE:** Admitted.

7 **REQUEST FOR ADMISSION NO. 20:** Admit that Aetna may not deviate
8 from the terms of the AlaskaCare plan in its capacity as medical claims administrator.

9 **RESPONSE:** Admitted to the extent that Aetna cannot independently alter the
10 terms of the AlaskaCare plan; however, the Plan incorporates many policies from the
11 third-party administrator and the third-party administrator has control over those policies.

12 **REQUEST FOR ADMISSION NO. 21:** Admit that Aetna was not authorized
13 to violate the exclusion in the AlaskaCare plan for transition-related surgery by
14 approving Ms. Fletcher’s request for such coverage.

15 **RESPONSE:** Objection assumes facts not in evidence, to the best of the State’s
16 knowledge Plaintiff has not submitted any claims for medical benefits for approval or
17 denial. Without waiving this objection, the State admits that surgical procedures related
18 to changing sex or sexual characteristics including procedures to alter the appearance or
19 function of the body are excluded from benefits.

20 **REQUEST FOR ADMISSION NO. 22:** Admit that, even assuming
21 Ms. Fletcher satisfied all other prerequisites under the AlaskaCare plan for

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STATE OF ALASKA’S RESPONSES TO
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1 transition-related surgery, Aetna could not have approved her request because of the
2 exclusion for transition-related surgery.

3 **RESPONSE:** Objection, calls for speculation beyond applying facts to the law.
4 Plaintiff does not define “other prerequisites under the AlaskaCare plan for
5 transition-related surgery.” Without waiving this objection, the State admits the
6 AlaskaCare plan excludes surgical procedures related to changing sex or sexual
7 characteristics including procedures to alter the appearance or function of the body,
8 however the State is without knowledge as to “other prerequisites” that may support
9 procedures that Plaintiff has defined as “for transition-related surgery.”
10

11 **REQUEST FOR ADMISSION NO. 23:** Admit that Defendant engaged Segal
12 Consulting to determine the potential fiscal impact of covering treatment for gender
13 dysphoria, including surgical care, in AlaskaCare.

14 **RESPONSE:** The State admits it has engaged Segal Consulting to review
15 multiple issues with the State’s health plans including an analysis of potential costs
16 associated with expanding coverage for gender dysphoria based on incomplete data
17 models. The request is denied to the extent Plaintiff’s request implies that all coverage
18 for gender dysphoria is currently excluded under the terms of the AlaskaCare plan.
19

20 **REQUEST FOR ADMISSION NO. 24:** Admit that the document Defendant
21 produced at bates numbers SOA – 001255 through SOA – 001259 constitutes a true and
22 authentic copy of the genuine original document provided by Segal Consulting to
23 Defendant (the “Segal Memorandum”), except for redactions applied by Defendant.
24

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STATE OF ALASKA’S RESPONSES TO

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1 **RESPONSE:** Admitted.

2 **REQUEST FOR ADMISSION NO. 25:** Admit that AlaskaCare's expenditures
3 in 2018 for counseling or therapy, and for hormone therapy, relating to gender dysphoria
4 have not exceeded the Segal Memorandum's predicted costs of \$60,000.00 (bates
5 number SOA - 001258).
6

7 **RESPONSE:** The State is still in the process of compiling data responsive to
8 this question. Currently, the State is without complete knowledge of the total costs for
9 counseling or drug therapy for gender dysphoria for 2018, and therefore the request is
10 denied. The State will supplement this response upon the review of additional data.
11

12 **REQUEST FOR ADMISSION NO. 26:** Admit that between January 1, 2017
13 and September 21, 2017, coverage was provided for counseling or therapy relating to
14 gender dysphoria for six State employees (bates number SOA – 001254).
15

16 **RESPONSE:** Admitted to the extent the State provided representative claims
17 data for gender dysphoria treatment in its initial disclosures. Denied to the extent this
18 information is not an exclusive or exhaustive lists of cost or members receiving care.
19

20 **REQUEST FOR ADMISSION NO. 27:** Admit that between January 1, 2017
21 and September 21, 2017, the State expended \$6,439 for counseling or therapy relating to
22 gender dysphoria (bates number SOA – 001254).
23

24 **RESPONSE:** Admitted to the extent the State provided representative claims
25 data for gender dysphoria treatment in its initial disclosures. Denied to the extent this
26 information is not an exclusive or exhaustive lists of cost or members receiving care.

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REQUEST FOR ADMISSION NO. 28: Admit that mammoplasty can be medically necessary for purposes other than gender transition.

RESPONSE: Objection to relevance. Medical necessity is a fact driven case-by-case assessment of an individual's current condition. The fact that specific medical procedures are medically necessary for one purpose does not mean they are medically necessary for another purpose. Moreover, the case at issue is focused on whether a gender neutral exclusion in a health benefit plan is under the purview of Title VII, not what coverage AlaskaCare provides or doesn't provide in general. Without waiving this objection, the State admits that mammoplasty can be medically necessary for purposes other than gender transition.

REQUEST FOR ADMISSION NO. 29: Admit that breast reconstruction surgery can be medically necessary for purposes other than gender transition.

RESPONSE: Objection to relevance. Medical necessity is a fact driven case-by-case assessment of an individual's current condition. The fact that specific medical procedures are medically necessary for one purpose does not mean they are medically necessary for another purpose. Moreover, the case at issue is focused on whether a gender neutral exclusion in a health benefit plan is under the purview of Title VII, not what coverage AlaskaCare provides or doesn't provide in general. Without waiving this objection, the State admits that breast reconstruction surgery can be medically necessary for purposes other than gender transition.

REQUEST FOR ADMISSION NO. 30: Admit that the AlaskaCare plan partially

1 or fully covers mammoplasty and/or breast reconstruction surgery for some diagnoses.

2 **RESPONSE:** Admitted.

3 **REQUEST FOR ADMISSION NO. 31:** Admit that the AlaskaCare plan's
4 coverage for mammoplasty and/or breast reconstruction surgery includes, when
5 medically necessary, "all stages of reconstruction of the breast" (bates number
6 SOA – 000204).
7

8 **RESPONSE:** Objection to relevance. The quoted language pertains to coverage
9 required by the Women's Health and Cancer Rights Act of 1998 (29 U.S.C. § 1185b).
10 There is no allegation that Plaintiff is covered under this act or that the terms of this act
11 are applicable to this litigation.
12

13 **REQUEST FOR ADMISSION NO. 32:** Admit that the AlaskaCare plan's
14 coverage for mammoplasty and/or breast reconstruction surgery includes, when
15 medically necessary, "prostheses" (bates number SOA – 000204).
16

17 **RESPONSE:** Objection to relevance. The quoted language pertains to coverage
18 required by the Women's Health and Cancer Rights Act of 1998 (29 U.S.C. § 1185b).
19 There is no allegation that Plaintiff is covered under this act or that the terms of this act
20 are applicable to this litigation.

21 **REQUEST FOR ADMISSION NO. 33:** Admit that vaginoplasty can be
22 medically necessary for purposes other than gender transition.
23

24 **RESPONSE:** Objection to relevance. Medical necessity is a fact driven
25 case-by-case assessment of an individual's current condition. The fact that specific
26

1 medical procedures are medically necessary for one purpose does not mean they are
2 medically necessary for another purpose. Moreover, the case at issue is focused on
3 whether a gender neutral exclusion in a health benefit plan is under the purview of
4 Title VII, not what coverage AlaskaCare provides or doesn't provide in general.
5
6 Without waiving this objection, the State admits that vaginoplasty can be medically
7 necessary for purposes other than gender transition.

8 **REQUEST FOR ADMISSION NO. 34:** Admit that the AlaskaCare plan
9 partially or fully covers vaginoplasty for some diagnoses.

10 **RESPONSE:** Admitted.

11 **REQUEST FOR ADMISSION NO. 35:** Admit that Aetna's Clinical Policy
12 Bulletin No. 0615 for "Gender Reassignment Surgery" (bates number SOA – 001236)
13 states that vaginoplasty can be medically necessary under certain circumstances.
14

15 **RESPONSE:** The State admits that Aetna's Clinical Policy Bulletin No. 0615
16 for "Gender Reassignment Surgery" (bates number SOA – 001236) states that
17 vaginoplasty can be medically necessary under certain circumstances, but denies that
18 Aetna clinical policy bulletins exclusively control benefit decisions.
19

20 **REQUEST FOR ADMISSION NO. 36:** Admit that the Public Safety
21 Employees Association ("PSEA") is a labor union that represents certain State of Alaska
22 public safety officer employees.

23 **RESPONSE:** Admitted.

24 **REQUEST FOR ADMISSION NO. 37:** Admit that the Public Safety
25

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1 Employees Association Health and Welfare Trust, governs health insurance coverage for
2 state employees who are members of PSEA.

3 **RESPONSE:** Objection to relevance. The actions of an independent third-party
4 has no relevance as to whether the State’s gender neutral health plan exclusion is under
5 the purview of Title VII or amounts to discrimination on the basis of sex. Without
6 waiving this objection, the State admits that pursuant to the collective bargaining
7 agreement between the State and PSEA, which is a legally separate and distinct entity
8 from the State, health insurance for PSEA members is solely managed by the PSEA.
9

10 **REQUEST FOR ADMISSION NO. 38:** Admit that state employee members of
11 the PSEA receive health coverage for sex reassignment surgery, when medically
12 necessary and not for cosmetic purposes, under the terms of the Public Safety
13 Employees Association Health and Welfare Trust.
14

15 **RESPONSE:** Objection to relevance. The actions of an independent third-party
16 has no relevance as to whether the State’s gender neutral health plan exclusion is under
17 the purview of Title VII or amounts to discrimination on the basis of sex. Without
18 waiving this objection, the State lacks sufficient knowledge or information to respond to
19 this request for admission.
20

21 **REQUEST FOR ADMISSION NO. 39:** Admit that the Alaska State
22 Employees Association/American Federation of State, County and Municipal
23 Employees Local 52 (“ASEA/AFSCME Local 52”) is a labor union that represents
24 certain administrative support, technical, and other employees of the State of Alaska.
25

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STATE OF ALASKA’S RESPONSES TO
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1 **RESPONSE:** Admitted.

2 **REQUEST FOR ADMISSION NO. 40:** Admit that the ASEA/AFSCME Local
3 52 Health Benefits Trust governs health insurance coverage for State employees who are
4 members of ASEA/AFSCME Local 52.

5 **RESPONSE:** Objection to relevance. The actions of an independent third-party
6 has no relevance as to whether the State’s gender neutral health plan exclusion is under
7 the purview of Title VII or amounts to discrimination on the basis of sex. Without
8 waiving this objection, the State admits that pursuant to the collective bargaining
9 agreement between the State and ASEA, which is a legally separate and distinct entity
10 from the State, health insurance for ASEA members is solely managed by the ASEA.

11 **REQUEST FOR ADMISSION NO. 41:** Admit that state employee members of
12 the ASEA/AFSCME Local 52 receive health coverage for medically necessary treatment
13 of gender dysphoria, including transition-related surgery, under the terms of the
14 ASEA/AFSCME Local 52 Health Benefits Trust.

15 **RESPONSE:** Objection to relevance. The actions of an independent third-party
16 has no relevance as to whether the State’s gender neutral health plan exclusion is under
17 the purview of Title VII or amounts to discrimination on the basis of sex. Without
18 waiving that objection, the State is without knowledge as to the terms and conditions of
19 health benefits offered by ASEA beyond review of the ASEA Health Trust booklet
20 which states “services, therapy, drugs, or supplies for sex transitions or related to sex
21 change surgery or any treatment of gender identity disorders” is an excluded service.

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1 **REQUEST FOR ADMISSION NO. 42:** Admit that University of Alaska
2 employees receive health coverage for sex reassignment surgery, when medically
3 necessary and not for cosmetic purposes.

4 **RESPONSE:** Objection to relevance. The actions of an independent third-party
5 has no relevance as to whether the State's gender neutral health plan exclusion is under
6 the purview of Title VII or amounts to discrimination on the basis of sex. Without
7 waiving that objection, the State lacks sufficient knowledge or information of the terms
8 and conditions of the University of Alaska health plan to admit or deny this request for
9 admission.
10

11 **REQUEST FOR ADMISSION NO. 43:** Admit that University of Alaska
12 students receive health coverage for sex reassignment surgery, when medically
13 necessary and not for cosmetic purposes.

14 **RESPONSE:** Objection to relevance. The actions of an independent third-party
15 has no relevance as to whether the State's gender neutral health plan exclusion is under
16 the purview of Title VII or amounts to discrimination on the basis of sex. Without
17 waiving that objection, the State lacks sufficient knowledge or information of the terms
18 and conditions of the University of Alaska health plan to admit or deny this request for
19 admission.
20

21 **REQUEST FOR ADMISSION NO. 44:** Admit that the exclusion of
22 transition-related surgical care only affects transgender individuals enrolled in the
23 AlaskaCare plan.
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STATE OF ALASKA'S RESPONSES TO
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RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 45: Admit that the exclusion of transition-related surgical care disproportionately affects transgender individuals enrolled in the AlaskaCare plan.

RESPONSE: Objection, the term “disproportionately affects” is vague and ambiguous. The State notes that any health benefit exclusion differently impacts individuals seeking coverage for services subject to the exclusion. The State denies this difference created any legally significant impact. The State admits the AlaskaCare plan excludes benefits for surgical procedures related to changing sex or sexual characteristics including procedures to alter the appearance or function of the body.

REQUEST FOR ADMISSION NO. 46: Admit that the documents Defendant produced at bates numbers SOA – 000001 through SOA – 001379 constitute true and authentic copies of the genuine original documents.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 47: Admit that all documents Defendant produce in response to Plaintiff’s Requests for Production of Documents and Things constitute true and authentic copies of the genuine original documents. If Defendant is unable to admit that all Documents produced in response to Plaintiff’s Requests for Production of Documents and Things constitute true and authentic copies of the genuine original documents, Defendant shall admit the authenticity of any portion or subset of documents therein that constitute true and authentic copies of the genuine original

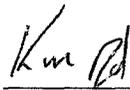
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documents.

RESPONSE: The State is without sufficient knowledge to answer this request and production has not been completed. Counsel for the State will work with Plaintiff's counsel to continually update this response following the production of materials in this case.

DATED: November 30, 2018.

JAHNA LINDEMUTH
ATTORNEY GENERAL

By: 
Kevin M. Dilg
Assistant Attorney General
Alaska Bar No. 1406053

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2018 a copy of the foregoing was served electronically via ECF on the following parties of record pursuant to the Court's electronic filing procedures:

Peter C. Renn	Tara L. Borelli	Eric Croft
LAMBDA LEGAL	LAMBDA LEGAL	THE CROFT LAW
DEFENSE END	DEFENSE END	OFFICE
EDUCATION FUND, INC.	EDUCATION FUND, INC.	



Ivy Greever
Law Office Assistant I

Exhibit D

1 KEVIN G. CLARKSON
2 ATTORNEY GENERAL
3 William Milks (Alaska Bar No. 0411094)
4 Kevin Dilg (Alaska Bar No. 1406053)
5 Assistant Attorneys General
6 Department of Law
7 P.O. Box 110300
8 Juneau, AK 99811-0300
9 Telephone: (907) 465-3600
10 Facsimile: (907) 465-2520
11 Email: bill.milks@alaska.gov

12 *Attorneys for defendant*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ALASKA**

15 JENNIFER FLETCHER,)
16)
17 Plaintiff,)
18)
19 v.)
20)
21 STATE OF ALASKA,)
22) CIVIL ACTION
23 Defendant.)
24) CASE NO. 1:18-cv-00007-HRH
25)
26)

27 **STATE OF ALASKA'S FIRST SUPPLEMENTAL RESPONSES TO**
28 **PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION**

29 Defendant State of Alaska supplements its responses to plaintiff's first set of
30 requests for admission as follows:

31 **REQUEST FOR ADMISSION NO. 12:** Admit that Aetna Life Insurance
32 Company ("Aetna") serves as the medical claims administrator for AlaskaCare.
33
34
35
36

1 **RESPONSE:** The State’s initial response is incorporated and reasserted in
2 conjunction with this supplementation. The State supplements by admitting that Aetna
3 is currently expected to serve as claims administrator through December 31, 2019.
4 The State conditions this admission on the fact that the Division of Retirement and
5 Benefits is currently engaging in the procurement process for its third-party health
6 benefits claims administrator.
7

8 **REQUEST FOR ADMISSION NO. 14:** Admit that in response to Plaintiff’s
9 request for pre-certification for transition-related surgery, Aetna informed Plaintiff that
10 AlaskaCare excludes coverage for transition-related surgery.
11

12 **RESPONSE:** The State’s initial response is incorporated and reasserted in
13 conjunction with this supplementation. As discussed by the parties at their
14 February 14, 2019 teleconference, the State will supplement this response following the
15 review of documents to be provided by Aetna.
16

17 **REQUEST FOR ADMISSION NO. 15:** Admit that in response to Plaintiff’s
18 request for pre-certification for transition-related surgery, Aetna informed Plaintiff that
19 plan design decisions are made by the State of Alaska as the plan administrator.
20

21 **RESPONSE:** The State’s initial response is incorporated and reasserted in
22 conjunction with this supplementation. As discussed by the parties at their
23 February 14, 2019 teleconference, the State will supplement this response following the
24 review of documents to be provided by Aetna.
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REQUEST FOR ADMISSION NO. 17: Admit that Aetna denied Plaintiff's request for pre-certification for transition-related surgery because of AlaskaCare's exclusion for such surgery.

RESPONSE: The State's initial response is incorporated and reasserted in conjunction with this supplementation. The State supplements by admitting that the AlaskaCare Employee Health Plan excludes coverage for surgical services related to the changing of sex or sexual characteristics including procedures to alter the appearance of function of the body and prosthetic devices. The State is still without knowledge of the content of communications between Plaintiff and Aetna and will supplement this response upon receipt and review of any communications from Aetna.

REQUEST FOR ADMISSION NO. 18: Admit that Aetna was required to deny Plaintiff's request for pre-certification for transition-related surgery because of AlaskaCare's exclusion for such surgery.

RESPONSE: The State's initial response is incorporated and reasserted in conjunction with this supplementation. The State supplements by admitting that the AlaskaCare Employee Health Plan excludes coverage for surgical services related to the changing of sex or sexual characteristics including procedures to alter the appearance of function of the body and prosthetic devices.

//
//

1 **REQUEST FOR ADMISSION NO. 25:** Admit that AlaskaCare's expenditures
2 in 2018 for counseling or therapy, and for hormone therapy, relating to gender dysphoria
3 have not exceeded the Segal Memorandum's predicted costs of \$60,000.00
4 (bates number SOA - 001258).

5
6 **RESPONSE:** The State's initial response is incorporated and reasserted in
7 conjunction with this supplementation. The State supplements by admitting the request
8 subject to the caveat that the claims filing deadline for 2018 has not elapsed and the fact
9 the State is without knowledge of benefit claims relating to gender dysphoria which
10 have not been coded as services for gender dysphoria (*e.g.* a service provider may report
11 a diagnosis of major depression when treating for depression associated with gender
12 dysphoria).

13
14 **REQUEST FOR ADMISSION NO. 26:** Admit that between January 1, 2017
15 and September 21, 2017, coverage was provided for counseling or therapy relating to
16 gender dysphoria for six State employees (bates number SOA – 001254).

17
18 **RESPONSE:** The State's initial response is incorporated and reasserted in
19 conjunction with this supplementation. The State supplements by continuing to admit
20 that the State disclosed gender dysphoria coverage for six individuals in its initial
21 disclosures.

22 **REQUEST FOR ADMISSION NO. 27:** Admit that between January 1, 2017
23 and September 21, 2017, the State expended \$6,439 for counseling or therapy relating to
24 gender dysphoria (bates number SOA – 001254).
25

26 *Fletcher v. State of Alaska*

Case No. 1:18-cv-00007-HRH

SOA'S FIRST SUPPLEMENTAL RESPONSES TO

PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

Page 4 of 6

Case 1:18-cv-00007-HRH Document 32-5 Filed 07/01/19 Page 5 of 7

1 **RESPONSE:** The State's initial response is incorporated and reasserted in
2 conjunction with this supplementation. The State supplements by continuing to admit
3 that the State disclosed costs totaling approximately \$6,439 for treatments and services
4 associated with gender dysphoria in its initial disclosures.
5

6 **REQUEST FOR ADMISSION NO. 47:** Admit that all documents Defendant
7 produce in response to Plaintiff's Requests for Production of Documents and Things
8 constitute true and authentic copies of the genuine original documents. If Defendant is
9 unable to admit that all Documents produced in response to Plaintiff's Requests for
10 Production of Documents and Things constitute true and authentic copies of the genuine
11 original documents, Defendant shall admit the authenticity of any portion or subset of
12 documents therein that constitute true and authentic copies of the genuine original
13 documents.
14

15 **RESPONSE:** The State's initial response is incorporated and reasserted in
16 conjunction with this supplementation. The State supplements by admitting the request
17 through Bates Number SOA – 049710.
18

19 DATED: February 21, 2019.

20 KEVIN G. CLARKSON
21 ATTORNEY GENERAL

22 By: 
23 Kevin M. Dilg
24 Assistant Attorney General
25 Alaska Bar No. 1406053

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2019, a copy of the foregoing was served electronically via ECF on the following parties of record pursuant to the Court's electronic filing procedures:

Peter C. Renn	Tara L. Borelli	Eric Croft
LAMBDA LEGAL	LAMBDA LEGAL	THE CROFT LAW
DEFENSE END	DEFENSE END	OFFICE
EDUCATION FUND,	EDUCATION FUND,	
INC.	INC.	



Ivy Greever
Law Office Assistant I

Exhibit E

1 KEVIN G. CLARKSON
2 ATTORNEY GENERAL

3 William Milks (Alaska Bar No. 0411094)
4 Kevin Dilg (Alaska Bar No. 1406053)
5 Assistant Attorneys General
6 Department of Law
7 P.O. Box 110300
8 Juneau, AK 99811-0300
9 Telephone: (907) 465-3600
10 Facsimile: (907) 465-2520
11 Email: bill.milks@alaska.gov

12 *Attorneys for defendant*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ALASKA**

15 JENNIFER FLETCHER,)

16 Plaintiff,)

17 v.)

18 STATE OF ALASKA,)

19 Defendant.)

CIVIL ACTION

CASE NO. 1:18-cv-00007-HRH

20 **STATE OF ALASKA’S FIRST SUPPLEMENTAL RESPONSES TO**
21 **PLAINTIFF’S FIRST SET OF REQUESTS FOR ADMISSION**

22 Defendant State of Alaska supplements its responses to plaintiff’s first set of

23 **REQUEST FOR ADMISSION NO. 47:** Admit that all documents Defendant
24 produce in response to Plaintiff’s Requests for Production of Documents and Things
25 constitute true and authentic copies of the genuine original documents. If Defendant is
26 unable to admit that all Documents produced in response to Plaintiff’s Requests for

1 Production of Documents and Things constitute true and authentic copies of the genuine
2 original documents, Defendant shall admit the authenticity of any portion or subset of
3 documents therein that constitute true and authentic copies of the genuine original
4 documents.
5

6 **RESPONSE:** The State's initial response is incorporated and reasserted in
7 conjunction with this supplementation. The State supplements by admitting the request
8 through Bates Number SOA – 058810.

9 DATED: June 17, 2019.

10
11 KEVIN G. CLARKSON
ATTORNEY GENERAL

12
13 By: 
14 Kevin M. Dilg
15 Assistant Attorney General
16 Alaska Bar No. 1406053
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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2019 a copy of the foregoing was served electronically via ZendTo and USPS on the following:

Peter C. Renn	Tara L. Borelli	Eric Croft
LAMBDA LEGAL	LAMBDA LEGAL	THE CROFT LAW
DEFENSE END	DEFENSE END	OFFICE
EDUCATION FUND, INC.	EDUCATION FUND, INC.	



Harry Hale
Law Office Assistant I

Exhibit F

STATE OF ALASKA

AlaskaCare Employee Health Plan

JANUARY 1, 2017

Contact Information

AlaskaCare Plan Administrator

TELEPHONE NUMBERS

State of Alaska, Division of Retirement and Benefits
Toll-free(800) 821-2251
In Juneau(907) 465-4460
TDD for hearing impaired.....(907) 465-2805

MAILING ADDRESS

State of Alaska
Division of Retirement and Benefits
P.O. Box 110203
Juneau, AK 99811-0203

PHYSICAL ADDRESS

333 Willoughby Avenue, 6th Floor
Juneau, AK 99801

EMAIL ADDRESS

Division of Retirement and Benefits
Member Services Contact Centerdoa.drb.mscc@alaska.gov

WEB SITES

AlaskaCare PlansAlaskaCare.gov
Division of Retirement and Benefits.....Alaska.gov/drb

The Alaska Department of Administration complies with Title II of the Americans with Disabilities Act (ADA) of 1990. This publication is available in alternative communication formats upon request. To make necessary arrangements, contact the ADA Coordinator for the Division of Retirement and Benefits at (907) 465-4460 or contact the TDD for the hearing impaired at (907) 465-2805.

AlaskaCare Claims Administrators

MEDICAL CLAIMS ADMINISTRATOR

Aetna Life Insurance Company
P.O. Box 14079
Lexington, KY 40512-4079
www.aetna.com

Customer Service/Provider Locator(855) 784-8646
 TDD for hearing impaired(800) 628-3323

24-Hour Nurse Line(800) 556-1555

Employee Assistance Plan(855) 417-2493

PRESCRIPTION DRUG CLAIMS ADMINISTRATOR

Paper Claims:
Aetna Pharmacy
P.O. Box 52444
Phoenix, AZ 85072-2444

Mail Order:
Aetna Rx Home Delivery
P.O. Box 417019
Kansas City, MO 64179-7019

Specialty:
Aetna Specialty Pharmacy
503 Sunport Lane
Orlando, FL 32809

Customer Service/Provider Locator(855) 784-8646
 TDD for hearing impaired(800) 823-6373

Aetna Mail Order Pharmacy(888) 792-3862
 TDD for hearing impaired(800) 823-6373

Aetna Specialty Pharmacy(866) 782-2779
 TDD for hearing impaired(877) 833-2779

DENTAL CLAIMS ADMINISTRATOR

Delta Dental of Alaska
P.O. Box 40384
Portland, OR 97240
www.deltadentalak.com

Customer Service(855) 718-1768

Customer Service-Spanish(877) 299-9063

VISION CLAIMS ADMINISTRATOR

Vision Services Plan (VSP)
P.O. Box 997105
Sacramento, CA 95899-7105
www.vsp.com

Customer Service(800) 877-7195

HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS ADMINISTRATOR

PayFlex Systems USA, Inc.
P.O. Box 4000
Richmond, KY 40476-4000
www.alaskacare.payflexdirect.com

Customer Service(888) 678-8242

COBRA ADMINISTRATOR

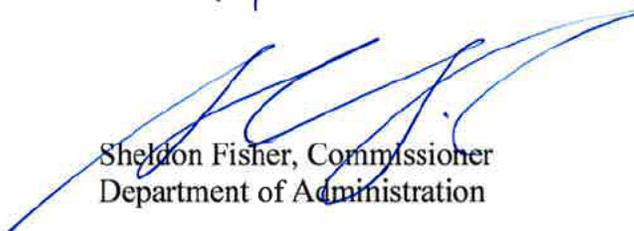
PayFlex Systems USA, Inc.
P.O. Box 4000
Richmond, KY 40476-4000
www.alaskacare.payflexdirect.com

Customer Service(888) 678-8242

Adoption Order

Sheldon Fisher, Commissioner of the Department of Administration, hereby adopts, pursuant to authority under AS 39.30-090-098, the AlaskaCare Employee Health Plan dated January 1, 2017 ("**plan**"), as the official plan document governing the benefits contained therein. The **plan** is effective upon adoption and applies to claims submitted for payment with dates of service on or after the date indicated below. All prior **plan** booklets, documents and related amendments are hereby repealed in their entirety.

Dated: 1/1/17


Sheldon Fisher, Commissioner
Department of Administration

3.6.13. Pharmacy Benefit Limitations

- A **network pharmacy** may refuse to fill a **prescription** order or refill when in the professional judgment of the pharmacist the **prescription** should not be filled.
- The **medical plan** will not cover expenses for any **prescription drug** for which the actual charge to you is less than the required **copayment** or **deductible**, or for any **prescription drug** for which no charge is made to you.
- You will be charged the out-of-network **prescription drug** cost sharing for **prescription drugs** recently approved by the FDA, but which have not yet been reviewed by the **Aetna** Health Pharmacy Management Department and Therapeutics Committee.
- **Aetna** has the right to review all requests for reimbursement and in its sole discretion make reimbursement determinations subject to section 7.14, *If a Claim Is Denied*.
- The number of **copayments** and/or **deductibles** you are responsible for per vial of Depo-Provera, an injectable contraceptive, or similar type contraceptive dispensed for more than a 30 day supply, will be based on the 90 day supply level. Coverage is limited to a maximum of 5 vials per **benefit year**.

3.6.14. Pharmacy Benefit Exclusions

Not every health care service or supply is covered by the **medical plan**, even if prescribed, recommended, or approved by your **provider**. The **medical plan** covers only those services and supplies that are **medically necessary** and included in section 3.5, *Covered Medical Expenses*, or section 3.6, *Your Prescription Drug Benefits*. Charges made for the following are not covered except to the extent listed under section 3.5, *Covered Medical Expenses*, section 3.6, *Your Prescription Drug Benefits*.

The following **prescription drug** exclusions are in addition to the exclusions listed under section 3.7, *Medical Benefit Exclusions*.

1. Administration or injection of any drug.
2. Allergy sera and extracts.
3. Any drugs or medications, services and supplies that are not **medically necessary** for the diagnosis, care or treatment of the **illness** or **injury** involved. This applies even if they are prescribed, recommended or approved by your **physician** or **dentist**.

28. Replacement of lost or stolen **prescriptions**.
29. Drugs, services and supplies provided in connection with treatment of an occupational **injury** or occupational **illness**.
30. Drugs or preparations, devices and supplies to enhance strength, physical condition, endurance or physical performance, including performance enhancing steroids.
31. Any treatment, drug or supply related to changing sex or sexual characteristics, including hormones and hormone therapy.
32. Any drug or supply to treat sexual dysfunction, enhance sexual performance or increase sexual desire, including drugs, implants, devices or preparations to correct or enhance erectile function, enhance sensitivity, or change the shape or appearance of a sex organ.
33. Supplies, devices or equipment of any type.
34. Test agents except diabetic test agents.

3.7. MEDICAL BENEFIT EXCLUSIONS

Not every medical service or supply is covered by the **medical plan**, even if prescribed, recommended, or approved by your **provider**. The **medical plan** covers only those services and supplies that are **medically necessary** and included under section 3.5, *Covered Medical Expenses*, or section 3.6, *Your Prescription Drug Benefits*. The exclusions listed below apply to all coverage under the **medical plan**. Additional exclusions apply to specific **prescription drug** coverage under section 3.6.13, *Pharmacy Benefit Limitations* and section 3.6.14, *Pharmacy Benefit Exclusions*.

The **medical plan** does not cover any condition, ailment, or injury for which you receive:

- benefits from your employer's liability plan, federal or state workers' compensation, or similar law; or
- benefits available under any Federal or state act (except services received from Alaska Native Health), even though you waive rights to those benefits.

Charges made for the following are not covered except to the extent listed under section 3.5, *Covered Medical Expenses*.

1. Acupuncture, acupressure and acupuncture therapy.
2. Specific non-standard allergy services and supplies, including but not limited to, skin titration (Rinkel method), cytotoxicity testing (Bryan's Test), treatment of non-specific candida sensitivity, and urine autoinjections.

36. Private duty nursing during your **stay** in a **hospital**, and outpatient private duty nursing services.
37. Any treatment, drug, service or supply related to changing sex or sexual characteristics, including:
 - Surgical procedures to alter the appearance or function of the body.
 - Hormones and hormone therapy.
 - Prosthetic devices.
 - Medical or psychological counseling.
38. Services provided by a **spouse**, parent, **child**, brother, sister, in-law, or any household member.
39. Services of a resident **physician** or intern rendered in that capacity.
40. Services provided where there is no evidence of pathology, dysfunction, or disease, except as specifically provided in connection with covered routine care and cancer screenings.
41. Any treatment, drug, service or supply to treat sexual dysfunction, enhance sexual performance or increase sexual desire, including:
 - Surgery, drugs, implants, devices or preparations to correct or enhance erectile function, enhance sensitivity, or alter the shape or appearance of a sex organ.
 - Sex therapy, sex counseling, marriage counseling or other counseling or advisory services.
42. Services, including those related to pregnancy, rendered before the effective date or after the termination of coverage, unless coverage is continued under section 8, *Consolidated Omnibus Budget Reconciliation Act (COBRA) and Extended Health Coverage*.
43. Services that are not covered under the **medical plan**.
44. Services and supplies provided in connection with treatment or care that is not covered under the **medical plan**.
45. Speech therapy for treatment of delays in speech development. For example, the **medical plan** does not cover therapy when it is used to improve speech skills that have not fully developed.

d. Employee Contributions

Eligible employees will pay any applicable employee contributions under the **health plan**.

The **State** may recover from the **eligible employee**: (i) contributions made by the **State** during a period of unpaid FMLA leave for maintaining the **eligible employee's** health benefit coverage if the **eligible employee** fails to return to work after the FMLA leave has been exhausted, unless the failure to return to work is due to a serious health condition of the **eligible employee** or a family member, or a serious injury or illness of a covered servicemen which would otherwise entitle the **eligible employee** to FMLA leave, or other circumstances beyond the **eligible employee's** control; or (ii) the **eligible employee's** share of contributions the **eligible employee** was obligated to make but which the **State** elected to make on the **eligible employee's** behalf in order to maintain the **eligible employee's** health benefit coverage (or non-health benefit coverage, as appropriate), regardless of whether the **eligible employee** returns from such leave.

13.10. STATEMENT OF RIGHTS UNDER THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998 (WHCRA)

If you have had or are going to have a mastectomy, you may be entitled to certain benefits under the WHCRA. For individuals receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending **physician** and the patient, for:

- all stages of reconstruction of the breast on which the mastectomy was performed;
- surgery and reconstruction of the other breast to produce a symmetrical appearance;
- prostheses; and
- treatment of physical complications of the mastectomy, including lymphedema.

These benefits will be provided subject to the same **deductibles** and **coinsurance** applicable to other medical and surgical benefits provided under the **plan**. See section 2.1.1, *Medical Benefit Schedule*.

Exhibit G

STATE OF ALASKA

AlaskaCare Employee Health Plan

JANUARY 1, 2018

Contact Information

AlaskaCare Plan Administrator

TELEPHONE NUMBERS

State of Alaska, Division of Retirement and Benefits
Toll-free(800) 821-2251
In Juneau(907) 465-4460
TDD for hearing impaired.....(907) 465-2805

MAILING ADDRESS

State of Alaska
Division of Retirement and Benefits
P.O. Box 110203
Juneau, AK 99811-0203

PHYSICAL ADDRESS

333 Willoughby Avenue, 6th Floor
Juneau, AK 99801

EMAIL ADDRESS

Division of Retirement and Benefits
Member Services Contact Centerdoa.drb.mscc@alaska.gov

WEB SITES

AlaskaCare PlansAlaskaCare.gov
Division of Retirement and Benefits.....Alaska.gov/drb

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www.aetna.com

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Employee Assistance Plan(855) 417-2493

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Phoenix, AZ 85072-2444

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Kansas City, MO 64179-7019

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Customer Service(888) 678-8242

COBRA ADMINISTRATOR

PayFlex Systems USA, Inc.
P.O. Box 4000
Richmond, KY 40476-4000
www.alaskacare.payflexdirect.com

Customer Service(888) 678-8242

Adoption Order

Leslie Ridle, Commissioner of the Department of Administration, hereby adopts, pursuant to authority under AS 39.30.090-098, the AlaskaCare Employee Health Plan dated January 1, 2018 ("**plan**"), as the official plan document governing the benefits contained therein. The **plan** is effective January 1, 2018 and applies to claims submitted for payment with dates of service on or after the effective date. All prior **plan** booklets, documents and related amendments are hereby repealed in their entirety.

Dated: January 1, 2018

A handwritten signature in blue ink that reads "Leslie D. Ridle". The signature is written in a cursive style with a large initial 'L'.

Leslie Ridle, Commissioner
Department of Administration

- You will be charged the out-of-network **prescription drug** cost sharing for **prescription drugs** recently approved by the FDA, but which have not yet been reviewed by the **Aetna** Health Pharmacy Management Department and Therapeutics Committee.
- **Aetna** has the right to review all requests for reimbursement and in its sole discretion make reimbursement determinations subject to section 8.14, *If a Claim Is Denied*.
- The number of **copayments** and/or **deductibles** you are responsible for per vial of Depo-Provera, an injectable contraceptive, or similar type contraceptive dispensed for more than a 30 day supply, will be based on the 90 day supply level. Coverage is limited to a maximum of 5 vials per **benefit year**.

3.6.14. Pharmacy Benefit Exclusions

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The following **prescription drug** exclusions are in addition to the exclusions listed under section 3.7, *Medical Benefit Exclusions*.

1. Administration or injection of any drug.
2. Allergy sera and extracts.
3. Any drugs or medications, services and supplies that are not **medically necessary** for the diagnosis, care or treatment of the **illness** or **injury** involved. This applies even if they are prescribed, recommended or approved by your **physician** or **dentist**.
4. Any drugs or medications, listed on the Aetna current year *Exclusion Drug List*.
5. Biological sera, blood, blood plasma, blood products or substitutes or any other blood products.
6. Over-the-counter contraceptive supplies except as provided under section 3.6.12, *Other Covered Expenses - Preventive Care Drugs and Supplements*, including but not limited to:

➤ condoms

31. Drugs, services and supplies provided in connection with treatment of an occupational **injury** or occupational **illness**.
32. Drugs or preparations, devices and supplies to enhance strength, physical condition, endurance or physical performance, including performance enhancing steroids.
33. Any treatment, drug or supply related to changing sex or sexual characteristics, with the exception of hormones and hormone therapy.
34. Any drug or supply to treat sexual dysfunction, enhance sexual performance or increase sexual desire, including drugs, implants, devices or preparations to correct or enhance erectile function, enhance sensitivity, or change the shape or appearance of a sex organ.
35. Supplies, devices or equipment of any type.
36. Test agents except diabetic test agents.

3.7. MEDICAL BENEFIT EXCLUSIONS

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The **medical plan** does not cover any condition, ailment, or injury for which you receive:

- benefits from your employer's liability plan, federal or state workers' compensation, or similar law; or
- benefits available under any Federal or state act (except services received from Alaska Native Health), even though you waive rights to those benefits.

Charges made for the following are not covered except to the extent listed under section 3.5, *Covered Medical Expenses*.

1. Acupuncture, acupressure and acupuncture therapy.
2. Specific non-standard allergy services and supplies, including but not limited to, skin titration (Rinkel method), cytotoxicity testing (Bryan's Test), treatment of non-specific candida sensitivity, and urine autoinjections.

- Annual or other charges to be in a **physician's** practice.
 - Charges to have preferred access to a **physician's** services such as boutique or concierge **physician** practices.
 - Cancelled or missed appointment charges or charges to complete claim forms.
 - Charges the recipient has no legal obligation to pay.
 - Charges that would not be made if the recipient did not have coverage (to the extent exclusion is permitted by law) including:
 - Care in charitable institutions
 - Care for conditions related to current or previous military service
 - Care while in the custody of a governmental authority
 - Any care a public **hospital** or other facility is required to provide
 - Any care in a **hospital** or other facility owned or operated by any federal, state or other governmental entity, except to the extent coverage is required by applicable laws.
33. Nursing and home health aide services provided outside of the home (such as in conjunction with school, vacation, work, or recreational activities).
34. Non-**medically necessary** services, including but not limited to, those treatments, services, **prescription drugs** and supplies which are not **medically necessary**, as determined by **Aetna**, for the diagnosis and treatment of **illness, injury**, restoration of physiological functions, or covered preventive services. This applies even if they are prescribed, recommended or approved by your **physician** or **dentist**.
35. Any service or supply primarily for your convenience and personal comfort or that of a third party, including: telephone, television, internet, barber or beauty service or other guest services; housekeeping, cooking, cleaning, shopping, monitoring, security or other home services; and travel, transportation, or living expenses, rest cures, recreational or diversional therapy.
36. Private duty nursing during your **stay** in a **hospital**, and outpatient private duty nursing services.
37. Any treatment, drug, service or supply related to changing sex or sexual characteristics, including:
- Surgical procedures to alter the appearance or function of the body.
 - Prosthetic devices.

d. Employee Contributions

Eligible employees will pay any applicable employee contributions under the **health plan**.

The **State** may recover from the **eligible employee**: (i) contributions made by the **State** during a period of unpaid FMLA leave for maintaining the **eligible employee's** health benefit coverage if the **eligible employee** fails to return to work after the FMLA leave has been exhausted, unless the failure to return to work is due to a serious health condition of the **eligible employee** or a family member, or a serious injury or illness of a covered servicemen which would otherwise entitle the **eligible employee** to FMLA leave, or other circumstances beyond the **eligible employee's** control; or (ii) the **eligible employee's** share of contributions the **eligible employee** was obligated to make but which the **State** elected to make on the **eligible employee's** behalf in order to maintain the **eligible employee's** health benefit coverage (or non-health benefit coverage, as appropriate), regardless of whether the **eligible employee** returns from such leave.

14.10. STATEMENT OF RIGHTS UNDER THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998 (WHCRA)

If you have had or are going to have a mastectomy, you may be entitled to certain benefits under the WHCRA. For individuals receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending **physician** and the patient, for:

- all stages of reconstruction of the breast on which the mastectomy was performed;
- surgery and reconstruction of the other breast to produce a symmetrical appearance;
- prostheses; and
- treatment of physical complications of the mastectomy, including lymphedema.

These benefits will be provided subject to the same **deductibles** and **coinsurance** applicable to other medical and surgical benefits provided under the **plan**. See section 2.1.1, *Medical Benefit Schedule*.

Exhibit H

STATE OF ALASKA

AlaskaCare Employee Health Plan

JANUARY 1, 2019

Contact Information

AlaskaCare Plan Administrator

TELEPHONE NUMBERS

State of Alaska, Division of Retirement and Benefits
Toll-free(800) 821-2251
In Juneau(907) 465-4460
TDD *for hearing impaired*.....(907) 465-2805

MAILING ADDRESS

State of Alaska
Division of Retirement and Benefits
P.O. Box 110203
Juneau, AK 99811-0203

PHYSICAL ADDRESS

333 Willoughby Avenue, 6th Floor
Juneau, AK 99801

EMAIL ADDRESS

Division of Retirement and Benefits
Member Services Contact Center doa.drb.benefits@alaska.gov

WEB SITES

AlaskaCare Plans AlaskaCare.gov
Division of Retirement and Benefits..... Alaska.gov/drb

The Alaska Department of Administration complies with Title II of the Americans with Disabilities Act (ADA) of 1990. This publication is available in alternative communication formats upon request. To make necessary arrangements, contact the ADA Coordinator for the Division of Retirement and Benefits at (907) 465-4460 or contact the TDD for the hearing impaired at (907) 465-2805.

AlaskaCare Claims Administrators

MEDICAL CLAIMS ADMINISTRATOR

Aetna Life Insurance Company
P.O. Box 14079
Lexington, KY 40512-4079
www.aetna.com

Customer Service/Provider Locator(855) 784-8646
TDD *for hearing impaired*(800) 628-3323

24-Hour Nurse Line(800) 556-1555

Teladoc Services(855) Teladoc (835-2362)
www.Teladoc.com/Aetna

Employee Assistance Plan(855) 417-2493

SugeryPlus Care Advocates(855) 715-1680
www.Alaska.SurgeryPlus.com

PRESCRIPTION DRUG CLAIMS ADMINISTRATOR

Paper Claims:

OptumRx Pharmacy
P.O. Box 29044
Hot Springs, AR 71903

Customer Service/Provider Locator(855) 409-6999
TDD *for hearing impaired*Dial 711

BriovaRx Specialty Pharmacy(855) 427-4682
TDD *for hearing impaired*Dial 711

DENTAL CLAIMS ADMINISTRATOR

Delta Dental of Alaska
P.O. Box 40384
Portland, OR 97240
www.deltadentalak.com

Customer Service(855) 718-1768

Customer Service-Spanish(877) 299-9063

VISION CLAIMS ADMINISTRATOR

Vision Services Plan (VSP)
P.O. Box 997105
Sacramento, CA 95899-7105
www.vsp.com

Customer Service(800) 877-7195

HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS ADMINISTRATOR

PayFlex Systems USA, Inc.
P.O. Box 4000
Richmond, KY 40476-4000
www.alaskacare.payflexdirect.com

Customer Service(888) 678-8242

COBRA ADMINISTRATOR

PayFlex Systems USA, Inc.
P.O. Box 4000
Richmond, KY 40476-4000
www.alaskacare.payflexdirect.com

Customer Service(888) 678-8242

Adoption Order

Ajay Desai, Director of the Department of Administration Division of Retirement and Benefits, hereby adopts, pursuant to authority under AS 39.30.090-098, the AlaskaCare Employee Health Plan dated January 1, 2019 (“**plan**”), as the official plan document governing the benefits contained therein. The **plan** is effective January 1, 2019 and applies to claims submitted for payment with dates of service on or after the effective date. All prior **plan** booklets, documents and related amendments are hereby repealed in their entirety.

Dated: December 31, 2018

A handwritten signature in black ink that reads "Ajay Desai". The signature is written in a cursive style with a horizontal line underneath the name.

Ajay Desai, Director
Division of Retirement and Benefits
Department of Administration

3.6.14. Pharmacy Benefit Limitations

- A **network pharmacy** may refuse to fill a **prescription** order or refill when in the professional judgment of the pharmacist the **prescription** should not be filled.
- The **medical plan** will not cover expenses for any **prescription drug** for which the actual charge to you is less than the required **copayment** or **deductible**, or for any **prescription drug** for which no charge is made to you.
- You will be charged the out-of-network **prescription drug** cost sharing for **prescription drugs** recently approved by the FDA, but which have not yet been reviewed by the **OptumRx** Health Pharmacy Management Department and Therapeutics Committee.
- **OptumRx** has the right to review all requests for **prescription drug** reimbursement and in its sole discretion make reimbursement determinations subject to section 8.14, *If a Claim Is Denied*.
- The number of **copayments** and/or **deductibles** you are responsible for per vial of Depo-Provera, an injectable contraceptive, or similar type contraceptive dispensed for more than a 30 day supply, will be based on the 90 day supply level. Coverage is limited to a maximum of 5 vials per **benefit year**.

3.6.15. Pharmacy Benefit Exclusions

Not every health care service or supply is covered by the **medical plan**, even if prescribed, recommended, or approved by your **provider**. The **medical plan** covers only those services and supplies that are **medically necessary** and included in section 3.5, *Covered Medical Expenses*, or section 3.6, *Your Prescription Drug Benefits*. Charges made for the following are not covered except to the extent listed under section 3.5, *Covered Medical Expenses*, section 3.6, *Your Prescription Drug Benefits*.

The following **prescription drug** exclusions are in addition to the exclusions listed under section 3.7, *Medical Benefit Exclusions*.

1. Administration or injection of any drug.
2. Allergy sera and extracts.
3. Any drugs or medications, services and supplies that are not **medically necessary** for the diagnosis, care or treatment of the **illness** or **injury** involved. This applies even if they are prescribed, recommended or approved by your **physician** or **dentist**.

25. Prescription drug or medication that is therapeutically equivalent or therapeutically alternative to an over-the-counter (OTC) product.
26. **Prescription drugs**, medications, injectables or supplies provided through a third party vendor contract.
27. **Prescription** orders filled prior to the effective date or after the termination date of coverage under the **medical plan**.
28. Prophylactic drugs for travel.
29. Refills in excess of the amount specified by the **prescription** order. Before recognizing charges, **OptumRx** may require a new **prescription** or evidence as to need, if a **prescription** or refill appears excessive under accepted medical practice standards.
30. Refills dispensed more than one year from the date the latest **prescription** order was written, or as otherwise permitted by applicable law of the jurisdiction in which the drug is dispensed.
31. Replacement of lost or stolen **prescriptions**.
32. Drugs, services and supplies provided in connection with treatment of an occupational **injury** or occupational **illness**.
33. Drugs or preparations, devices and supplies to enhance strength, physical condition, endurance or physical performance, including performance enhancing steroids.
34. Any treatment, drug or supply related to changing sex or sexual characteristics, with the exception of hormones and hormone therapy.
35. Any drug or supply to treat sexual dysfunction, enhance sexual performance or increase sexual desire, including drugs, implants, devices or preparations to correct or enhance erectile function, enhance sensitivity, or change the shape or appearance of a sex organ.
36. Supplies, devices or equipment of any type.
37. Test agents except diabetic test agents.

3.7. MEDICAL BENEFIT EXCLUSIONS

Not every medical service or supply is covered by the **medical plan**, even if prescribed, recommended, or approved by your **provider**. The **medical plan** covers only those services and supplies that are **medically necessary** and included under section 3.5, *Covered Medical Expenses*, or section 3.6, *Your Prescription Drug Benefits*. The

33. Nursing and home health aide services provided outside of the home (such as in conjunction with school, vacation, work, or recreational activities).
34. Non-**medically necessary** services, including but not limited to, those treatments, services, **prescription drugs** and supplies which are not **medically necessary**, as determined by **Aetna**, for the diagnosis and treatment of **illness, injury**, restoration of physiological functions, or covered preventive services. This applies even if they are prescribed, recommended or approved by your **physician** or **dentist**.
35. Any service or supply primarily for your convenience and personal comfort or that of a third party, including: telephone, television, internet, barber or beauty service or other guest services; housekeeping, cooking, cleaning, shopping, monitoring, security or other home services; and travel, transportation, or living expenses, rest cures, recreational or diversional therapy.
36. Private duty nursing during your **stay** in a **hospital**, and outpatient private duty nursing services.
37. Any treatment, drug, service or supply related to changing sex or sexual characteristics, including:
 - Surgical procedures to alter the appearance or function of the body.
 - Prosthetic devices.
38. Services provided by a **spouse**, parent, **child**, brother, sister, in-law, or any household member.
39. Services of a resident **physician** or intern rendered in that capacity.
40. Services provided where there is no evidence of pathology, dysfunction, or disease, except as specifically provided in connection with covered routine care and cancer screenings.
41. Any treatment, drug, service or supply to treat sexual dysfunction, enhance sexual performance or increase sexual desire, including:
 - Surgery, drugs, implants, devices or preparations to correct or enhance erectile function, enhance sensitivity, or alter the shape or appearance of a sex organ.
 - Sex therapy, sex counseling, marriage counseling or other counseling or advisory services.
42. Services, including those related to pregnancy, rendered before the effective date or after the termination of coverage, unless coverage is continued under section 9, *Consolidated Omnibus Budget Reconciliation Act (COBRA) and Extended Health Coverage*.

d. Employee Contributions

Eligible employees will pay any applicable employee contributions under the **health plan**.

The **State** may recover from the **eligible employee**: (i) contributions made by the **State** during a period of unpaid FMLA leave for maintaining the **eligible employee's** health benefit coverage if the **eligible employee** fails to return to work after the FMLA leave has been exhausted, unless the failure to return to work is due to a serious health condition of the **eligible employee** or a family member, or a serious injury or illness of a covered servicemen which would otherwise entitle the **eligible employee** to FMLA leave, or other circumstances beyond the **eligible employee's** control; or (ii) the **eligible employee's** share of contributions the **eligible employee** was obligated to make but which the **State** elected to make on the **eligible employee's** behalf in order to maintain the **eligible employee's** health benefit coverage (or non-health benefit coverage, as appropriate), regardless of whether the **eligible employee** returns from such leave.

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If you have had or are going to have a mastectomy, you may be entitled to certain benefits under the WHCRA. For individuals receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending **physician** and the patient, for:

- all stages of reconstruction of the breast on which the mastectomy was performed;
- surgery and reconstruction of the other breast to produce a symmetrical appearance;
- prostheses; and
- treatment of physical complications of the mastectomy, including lymphedema.

These benefits will be provided subject to the same **deductibles** and **coinsurance** applicable to other medical and surgical benefits provided under the **plan**. See section 2.1.1, *Medical Benefit Schedule*.

Exhibit I

MEMORANDUM

To: Michele Michaud
From: Richard Ward, FSA, FCA, MAAA
Date: September 20, 2016
Re: Fiscal Impact of Potential Plan Changes

The State of Alaska has asked Segal to determine the fiscal impact for the following three potential 2017 plan changes:

1. **(Active and Retiree Plans)** Adding Transgender coverage including Gender Dysphoria and Sex Reassignment Surgery for adults over 18 years of age

[REDACTED]

Below are Segal's findings for each of these changes, including a description of our methodology in determining the fiscal impact.

TRANSGENDER COVERAGE

To determine the impact Segal has estimated utilization and cost factors leveraging leading industry research and the State's historical claims and enrollment data.

Reviewing what major insurance carriers consider medically necessary regarding gender dysphoria is a good litmus test for benefits coverage and provides guidance as to which services are and are not regarded as medically necessary. Research of the major insurance carriers covering gender dysphoria or some type of transgender benefit indicates that carriers typically view some combination of psychotherapy, HRT and gender reassignment surgery as "medically necessary" services/procedures. In addition, medically necessary services are generally covered without limitations such as annual or lifetime maximums. The major carriers often regard cosmetic surgery and other procedures that enhance overall appearance as non-medically necessary services and therefore, are not typically covered. However, with the final ruling on Section 1557 of the Affordable Care Act plan sponsors will need to review current coverage offerings and any coverage extensions under consideration to ensure they are applied in the same manner to all plan members.

Currently the State only provides coverage in the active and retiree plan for cosmetic surgeries if it is deemed medically necessary, such as reconstruction after a mastectomy or as a result of a severe birth defect. The state excludes any treatment, drug, service or supply related to changing sex or sexual characteristics, including medical and psychological counseling, hormone therapy, prosthetic devices, and procedures to alter appearance or body function. As transgender treatments often include both therapies and surgical procedures, the State should refer to legal counsel for authoritative advice on the MHPAEA, Affordable Care Act, and the regulations promulgated thereunder.

Defining Medically Necessary Coverages

According to the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), any individual whose birth gender is different from the gender they identify with will be diagnosed with gender dysphoria. Gender dysphoria is a mental health disorder in which an individual identifies with a gender that is contrary to the gender assigned to him/her and must be present for at least six months. Treatment options for this condition may include psychotherapy/counseling, hormone replacement therapy (HRT), gender reassignment surgery, cosmetic surgery and social and legal transition to the desired gender.¹

Generally, there are three services/procedures commonly considered the most crucial to address gender dysphoria and produce optimal outcomes for the individual - psychotherapy, HRT and gender reassignment surgery. These treatments are usually regarded as “medically necessary”. Health plans typically require that an expense be medically necessary in order to be payable under the terms of the plan. The determination of medically necessary should be made by the State based on consultation with medical experts and be consistent with the Program’s definition of “medically necessary”.

Fiscal Impact Analysis

The following table shows the projected costs for a single occurrence and includes treatment for counseling, HRT and reassignment surgery. It should be noted that treatment for individuals with gender dysphoria may also include health costs associated with living full-time as the target sex, post-surgical care, and ongoing costs such as hormone therapy, follow-up doctor visits, and psychotherapy.

¹ Gender Dysphoria Fact Sheet, American Psychiatric Association, 2013.

	Estimated Costs ²
Counseling/Therapy	\$2,000 - \$7,000*
HRT	\$3,000 - \$13,000*
Reassignment Surgery	\$15,000 - \$80,000
Total Cost	\$20,000 - \$100,000
Ongoing Annual Cost "Post Procedure" **	\$2,500 - \$10,000

* Includes related counseling and therapies in the 24 months leading up to the initial procedure(s).

** Includes ongoing therapy and increased overall morbidity.

Annually, approximately 300-500 adults in the US undergo gender reorientation procedure(s). With approximately 225,000,000 adults in the US and approximately 84,000 eligible adults covered in the State's active and retiree, this suggests an annual utilization rate well below one procedure annually for all plans:

$$500/225,000,000 \times 84,000 = 0.19$$

Assuming similar utilization patterns for the State, Segal projects that there will be one transgender reorientation claim every 4-5 years representing an annual increase in total claims of \$60,000. Additionally, Segal anticipates a higher probability of utilization within the active plan and that an active will be three times as likely to incur a transgender claims as an retiree. With active membership representing approximately 10% of the total population, Segal estimates that this group would represent 25% of the total annual costs for transgender costs.

The State's projected Calendar Year (CY) 2017 claims costs are approximately \$139 million for the active plan and \$649 million for the retiree plan. As stated above, it is expected that the active membership will experience a higher prevalence of transgender claims. However, given the size of the active group compared to the retirees, the actives would only represent 25% of the \$60,000 annual cost increase. Splitting the annual cost increase of \$60,000 between the two populations, the active plan would experience an annual increase of \$15,000 and the retiree plan \$45,000, an increase on CY2017 costs for each plan of 0.01% and 0.007% respectively.

Several years after implementing this coverage, it is possible the State may be providing coverage for several members on a "post-procedure" basis. At that point, when additional members undergo the initial procedure(s), it is conceivable costs for that year could be \$200,000-\$300,000 higher than if coverage were not provided. In this instance, the increase in annual costs

² Cost estimates based in part on information from (1) Transgender At Work, see "The Cost of Transgender Health Benefits" at: <http://www.tgender.net/taw/thb/THBWorkshopOE2008.pdf> (2) CostHelper.com, see "How Much Does Sex Reassignment Surgery Cost?" at: <http://health.costhelper.com/sex-reassignment-surgery.html> and (3) TSRoadmap.com, see "Transsexual Road Map" at: <http://www.tsroadmap.com/index.html>

would be approximately 0.03%-0.04% overall. Using the same assumption of actives representing 25% of overall claims, annual increases may reach \$75,000 – \$100,000 an increase of 0.05% - 0.07% on CY2017 projected claims of \$139 million. The retiree plan may experience increases of \$225,000 – \$300,000 annually, representing a 0.03% - 0.05% to CY2017 projected claims of \$349 million.

As noted above, Segal projects a \$60,000 overall increase in annual costs, or 0.01%, to the State for the cost of the initial procedure(s) and related drug therapy and counseling. Also, it is reasonable to assume that costs may increase as medical technology and treatments for gender dysphoria advance. Additionally, as any possible stigma associated with this disorder decreases, the prevalence of individuals requesting such treatments may increase.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please note that the projections in this report are estimates of future costs and are based on information available to Segal at the time the projections were made. Segal Consulting has not audited the information provided. Projections are not a guarantee of future results. Actual experience may differ due to, but not limited to, such variables as changes in the regulatory environment, local market pressure, trend rates, and claims volatility. The accuracy and reliability of projections decrease as the projection period increases. Unless otherwise noted, these projections do not include any cost or savings impact resulting from The Patient Protection and Affordable Care Act (PPACA) or other recently passed state or federal regulations.

cc: Linda Johnson, Segal

Michael Macdissi, Segal

Aaron Polkoski, Segal

Carole Henry, Segal

Noel Cruse, Segal

Exhibit J

Dudley, Daniel

From: Dudley, Daniel
Sent: Tuesday, December 19, 2017 2:10 PM
To: Michaud, Michele M (DOA)
Cc: Robison, Andrew
Subject: Gender Dysphoria/Transgender Service Claim Analysis
Attachments: Gender Dysphoria Claim Summary.xlsx

Hello Michele,

We have completed analysis of the claims around your requests concerning transgender/gender dysphoria related services. Our data entails **analysis of claims over the past 2 years** with data sets based on **Gender Dysphoria diagnosis codes and procedure codes** for services related to the treatment of sexual identity disorders, dysfunction or addiction, vasectomies and chest reconstructions. I have attached the findings on a spreadsheet above.

For claims beginning in 12/2015 there were **313 claims with gender dysphoria as primary diagnosis codes**. Out of these **313 gender dysphoria diagnosis claims** the bulk of the services were for **counseling, office visits, lab work, etc.** There were **42 claims related to hormone therapies** and we can assume that these services were related transgender service though that is an assumption. The spend related to these therapies **totalled \$5,515**. There was **1 surgery paid** for that is assumed to be transgender in nature **totaling \$2,401**. This claim was **paid in error** due to manual processing and following COB rules around medical necessity that the State advised to be covered. Since this service is considered an exclusion the processing for medical necessity was an error on our part. I have included utilization data on non-primary diagnosis related to gender dysphoria and the utilization of possible transgender claims drops off greatly after the primary diagnosis (2nd, 3rd, 4th, 5th diagnosis tabs).

I've also included a tab for claims where the allowed amounts were priced at zero (denials) for primary diagnosis codes for gender dysphoria. There were a total of **65 denied claims for gender dysphoria primary diagnosis's** during this timeframe. Along with these I have included the action codes utilized for each of these denials. The majority of the codes were related to procedure considered cosmetic or procedure is excluded from benefits which is what we would want to see (Action Code Definitions tab).

For claims related to vasectomies and chest reconstructions, Out of 2689 claims, there was only **\$1,440 in spend** related to gender dysphoria diagnosis with **2 surgeries being denied**. The remaining spend for vasectomies and chest reconstructions were for diagnosis's not transgender related.

The list of all AlaskaCare employees who requested an appeal for the services you listed cannot be completed due to the high volume of denials for these services (**869 denials for vasectomies and chest reconstruction services** alone). As we discussed, we did identify **8 members who made up the vast majority of services with gender dysphoria diagnosis's** and have provided their requests for precertification's, appeals and interactions with concierges (See tabs with last names for details). We believe this approach is sufficient in providing insight into transgender related service utilization over the past few years. Rather than trying to search for a needle within a haystack if we were to manually review each denied claim for services outside of the gender dysphoria diagnosis.

Please let me know if this information is sufficient for what you need and we can discuss adding to it if needed.

Have a great evening!

Thank you!

Daniel Dudley – Senior Account Manager – Public & Labor – West

One Union Square | 600 University St Ste 920 | Seattle WA, 98101 |

DudleyD@Aetna.com | P: (206) 701-8199 | F: (959) 282-1259



"With Aetna, the power of health is in your hands"

From: Michaud, Michele M (DOA) [<mailto:michele.michaud@alaska.gov>]

Sent: Monday, November 27, 2017 5:10 PM

To: Robison, Andrew

Subject: Claim Report

I need to know if the following information can be gathered. If it can, how long would it take, and would there be a cost associated?

List of all AlaskaCare employees who, between December 1, 2014 and the present, requested health plan coverage for:

- Services related to and including changing sex, sexual characteristics, or a sex-change operation
- Services for the diagnosis and treatment of sexual disorders or dysfunctions, regardless of gender or cause
- Services related to the treatment of sexual identity disorders, dysfunction or addiction
- Services related to sexual identity dysphoria
- Gender transition-related surgeries
- Vasectomy
- Reconstructive surgery
- Chest reconstruction surgery

The information would need to include the specific nature and date of the request, the date of denial/approval, specific reason for denial (if applicable) and a copy of the notices denying the request(s). Also, we would need the full name and position title of the person(s) responsible for the decision(s) made to deny/approve these requests and all documents that state, describe, reference, or relate to the denial/approval of the request.

Similarly, we would need a list of all AlaskaCare employees who requested to appeal the denial for the services above, regardless of the reason. This would need to include the specific nature and date of the

request, date of the denial/approval, specific reason for the denial (if applicable), and a copy of the notices denying the request(s). Would need to include the full name, and position title of the person(s) responsible for the decision(s) made to deny/approve these requests and all documents that state, describe, reference, or relate to the denial/approval of the requests.

Michele Michaud, Chief Health Official
Division of Retirement and Benefits
State of Alaska
Department of Administration
333 Willoughby Ave, 6th Floor
Juneau, AK 99811-0203
Phone: (907) 465-3225
FAX: (907) 465-3086
Toll-Free: 1-800-821-2251

Michele.Michaud@alaska.gov
www.alaskacare.gov



STAY CONNECTED:



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