**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Patricia Pranger (Respondent) was enrolled in a combination CalPERS Medicare health plan. In September 2015, Respondent requested a change in her health plan. CalPERS' Staff (Staff) processed and/or implemented the health plan change requested by Respondent. In October 2015, after the close of the Open Enrollment period, Respondent requested of Staff, that she be allowed to rescind her health plan change, and revert back to her previous coverage. Staff reviewed Respondent's file and determined that there was no qualifying event that would allow the change in health plans. Notice of the determination was sent to Respondent on November 17, 2015. Respondent appealed Staff's determination and a hearing was held on December 22, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Documentary evidence was received into the record and reviewed and considered by the Administrative Law Judge (ALJ). Part of the documentary evidence was proof that Respondent had received proper and sufficient notice of the date, time, and location of the hearing. Respondent did not appear at the hearing. The ALJ found that CalPERS had properly served Respondent with the Statement of Issues and Notice of Hearing. Accordingly, the ALJ ruled that the hearing proceed as a default against Respondent.

A Program witness testified at the hearing.

Based on the documentary evidence and the testimony of the Program witness, the ALJ found that the Public Employees' Medical and Hospital Care Act (PEMHCA) is administered by CalPERS. Government Code section 22841(a) provides that "a transfer of enrollment from one health plan to another may be made by an employee or annuitant at times and under conditions as may be prescribed by regulations of the Board." The conditions under which a health plan change can be made are set forth in California Code of Regulations, title 2, section 599.502. (See Legal Conclusion No. 4.)

In this matter, Respondent and her spouse were both enrolled in a combination CalPERS Medicare plan, which included Blue Shield Access Plus. A CalPERS Medicare health plan coordinates benefits between Medicare and CalPERS to reduce participant health premiums and provide additional coverage beyond Medicare. A combination plan exists when at least one family member is enrolled in a CalPERS Medicare health plan and at least one family member is enrolled in a CalPERS Basic health plan.

In August 2015, CalPERS' staff sent a letter to Respondent informing her that she and her dependents were enrolled in a combination plan that included a CalPERS plan that would no longer provide a Medicare health plan after December 31, 2015. The letter provided Respondent with two options: 1) take no action; or 2) select another health plan during the Open Enrollment period (September 14 through October 9, 2015). (See Factual Finding No. 4.)

On September 9, 2015, Staff sent a second letter to Respondent which contained the same information, advisory regarding options and instructions, should Respondent choose to change health plans.

On September 14, 2015, during the Open Enrollment period, Respondent called CalPERS and requested that her health plan be changed to PERS Choice. On that same date, Staff processed Respondent's requested change in health plan enrollment with an effective date of January 1, 2016, and provided Respondent with written confirmation of the health plan change.

On October 19, 2015, (10 days after the close of the Open Enrollment period) Staff received a letter from Respondent in which she asked to "revert back" to her previous health plan coverage. Staff reviewed Respondent's file. It was impossible for Respondent to "revert back" to her previous coverage, as the point of the August and September letters to her was to tell her that her existing combination plan was not going to be available after December 31, 2015, because the Medicare part of the plan was no longer going to be available. Staff also reviewed applicable regulation conditions and could not find that Respondent's admitted "error" was a "qualifying event", which would permit a health plan change out of the Open Enrollment period. Staff denied Respondent's request.

After considering all of the documentary evidence and the testimony of the CalPERS' witness, the ALJ found as follows:

> "To receive the requested health plan change, [R]espondent had to offer sufficient evidence, based upon the rules and regulations of the PEMHCA, to establish that she was entitled to the plan change she sought. Respondent did not appear at the hearing and failed to offer such evidence. Consequently, [R]espondent's appeal is denied." (See Legal Conclusion No. 5.)

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

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Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

March 15, 2017

RORY J. COFFEY
Senior Staff Attorney