ATTACHMENT B

STAFF'S ARGUMENT

Attachment B

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

CalPERS provides medical benefits to its members through the CalPERS Health Program, which is governed by the Public Employees' Medical and Hospital Care Act (PEMHCA). (California Government Code § 22750, et seq., 2 Cal. Code Regs. § 599.500 et seq.)

PEMHCA grants CalPERS the authority to contract with Health Care Administrators to provide health benefits to members. (Government Code § 22793.) CalPERS contracts with Anthem Blue Cross (Anthem) to offer PERS Choice, a Preferred Provider Organization (PPO) health plan. Anthem administers the PERS Choice plan pursuant to the PERS Choice Evidence of Coverage Booklet (EOC). The EOC is a contract between CalPERS and its members, setting forth the sole and exclusive provisions by which Anthem is authorized to provide benefits to PERS Choice members.

Relevant to this proceeding, Andrew Sisk (Respondent) is an employee of the County of Placer and member of PERS Choice. In March 2018, Respondent underwent emergency surgery at Sutter Roseville Hospital (Sutter) to remove a tumor from his brain. The procedure was performed by a physician who, under the terms and conditions of the PERS Choice EOC, was not a preferred provider. Anthem issued payment to the physician for the emergency surgery performed on Respondent, at the allowable amount available under the PERS Choice EOC, which is the maximum benefit amount payable on behalf of all members of the PERS Choice PPO plan. CalPERS upheld Anthem's determination. The physician then sought to recover from Respondent directly the difference between the allowable amount and the total charges billed. In response, Respondent appealed CalPERS' determination, and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on November 18, 2019. Respondent represented himself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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.

At the hearing, a CalPERS analyst testified and explained that the PERS Choice EOC sets forth the health benefits available to plan members. Pursuant to the EOC, Anthem enters into contracts with hospitals and physicians, known as "Preferred Providers," who have agreed to accept what is known as the "Allowable Amount" as payment in full for services performed on behalf of PERS Choice members. A PERS Choice member may elect to receive medical services performed by "Non-Preferred Providers," meaning providers who do not contract with Anthem. However, Non-Preferred Providers are not

subject to the Allowable Amount maximum under the PERS Choice EOC. This means that Anthem will pay a percentage of the Allowable Amount to a Non-Preferred Provider for services provided to a PERS Choice member, but that the member can be charged for and may be responsible for any amounts above the Allowable Amount that may be billed by a Non-Preferred Provider.

Pursuant to the terms of the PERS Choice EOC, for non-emergency services, Anthem will pay 80 percent of the Allowable Amount for services performed by a Preferred Provider, subject to a member's Out of Pocket Maximum. Once the member reaches that maximum, Anthem will pay Preferred Providers 100 percent of the Allowable Amount. For Non-Preferred Providers, Anthem agrees to pay 60 percent of the Allowable Amount.

When a member receives Emergency Room services, Anthem pays all providers—whether Preferred or Non-Preferred—80 percent of the Allowable Amount. Preferred Providers who perform Emergency Room services are still capped at the Allowable Amount, whereas emergency services provided by Non-Preferred Providers can still be charged to the member.

At the hearing, CalPERS explained that Respondent was admitted to the Sutter Roseville Hospital Emergency Room (ER) on or about March 11, 2018. A Magnetic Resonance Image (MRI) revealed that Respondent had a large tumor in the front left side of his brain, and a subsequent scan showed a tumor in Respondent's kidney. Dr. Hamid Aliabadi of Spine and Neurosurgery Associates evaluated Respondent in the ER on that day and performed brain surgery on March 12, 2018. Respondent's kidney surgery was scheduled for a later date.

Spine and Neurosurgery Associates billed Anthem in two separate invoices, combined totaling $36,464. Anthem originally paid the surgery bills at 60 percent of the Allowable Amount, because Spine and Neurosurgery Associates is a Non-Preferred Provider under the PERS Choice EOC. Following a grievance filed by Respondent, Anthem acknowledged it erred in paying only 60 percent of the Allowable Amount, because ER services under the terms of the PERS Choice EOC required Anthem to pay 80 percent of the Allowable Amount. Later in 2018, Anthem increased its payments to Spine and Neurosurgery to 100 percent of the Allowable Amount because Respondent, by that time, had reached his Out of Pocket Maximum for the year.

At the hearing, Respondent testified that he understood the provisions of the PERS Choice EOC, but that he felt that in emergency situations, Anthem should have considered Spine and Neurosurgery Associates to be a Preferred Provider. Respondent argued he was taken to the hospital in an ambulance and had no choice over which doctors treated him, and that all other physicians assigned to treat him other than Dr. Aliabadi were Preferred Providers.

After considering all of the evidence, the ALJ denied Respondent's appeal. The ALJ held that it was undisputed that (1) Respondent received life-saving treatment at a Preferred Hospital and (2) that Dr. Aliabadi is not a Preferred Provider. Given the fact that Respondent was not in a position to choose a provider or even know who was treating him, the ALJ found Respondent's arguments on appeal to be reasonable, but ultimately not supported by the law or the terms of the PERS Choice EOC.

The ALJ further ruled that even if Anthem treated Dr. Aliabadi as a Preferred Provider, the result would be the same, because Anthem does not pay anyone, Preferred Providers or otherwise, any amount above the Allowable Amount. If Dr. Aliabadi would have been considered a Preferred Provider, then he, not Anthem, would have been forced to write off the amount in excess of the Allowable Amount. For these reasons, the ALJ denied Respondent's appeal.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

February 19, 2020

_____

Kevin Kreutz
Senior Attorney