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

The Coalition for Reliable Medical Access, Inc., the Alaska State Medical Association, the Alaska Medical Group Management Association, the Alaska Podiatric Medical Association, the Alaska Physical Therapy Association, Inc., and the Alaska Chiropractic Society, Plaintiffs, vs. State of Alaska, Department of Commerce, Community and Economic Development, Division of Insurance, Defendant.	)	Case No. 3AN-23-09425 CI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this case, the Coalition for Reliable Medical Access, Inc. et al. ("Plaintiffs") challenge the State of Alaska, Department of Commerce, Community, and Economic Development's Division of Insurance (the "Division") decision to repeal the 80th Percentile Rule ("the Rule"). Plaintiffs filed an Amended Complaint on November 6, 2024 seeking (1) a judicial declaration that the repeal of the regulation was unreasonable and arbitrary, (2) injunctions invalidating the repeal of the Rule and requiring the Division to reinstate it, and (3) a declaration that the Division violated the Alaska Public Records Act (APRA). The Division filed an Answer to the Amended Complaint on December 16, 2024.

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A four-day bench trial was held on February 24-27, 2025. The Court heard closing arguments on February 28, 2025. Plaintiffs were present and represented by David Shoup. The Division was present and represented by Jeff Pickett and Helen Lober. The Court heard testimony from Jeffrey Davis, Division of Insurance Director Lori Wing-Heier, Timothy Renjilian, Dr. John Morris, Dr. Ilona Farr, Sarah Bailey, and Department of Commerce, Community, and Economic Development Commissioner Julie Sande. Having considered the evidence and arguments, the Court enters these findings of fact and conclusions of law.

FINDINGS OF FACT

Background

1. In 2004, the Division promulgated a regulation known as the 80th Percentile Rule. The Rule required health insurance companies to reimburse out-of-network health care providers no less than the 80th percentile of the billed charges for a service provided in a particular geographic area in which the service was received.[1]

2. The Rule provided, in relevant part:

> [A] person who provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall . . . determine the final payment for a covered service or supply based on an amount that . . . is equal to or greater than the 80th percentile of

[1] Ex. 1001; 3 AAC 26.110(a) (repealed 1/1/24).

charges (based on a statistically credible profile for each geographical area) for the health care services or supplies.[2]

3. In Alaska, the usual, customary, and reasonable (UCR) charge for a service is determined in four distinct geographic areas throughout the state.[3]

4. The Rule applied only to private insurance plans in the individual, small group, and large group markets, which make up about 15% of the overall health insurance market in Alaska.[4] The Rule did not apply to self-funded health benefit plans.[5]

5. The Rule was promulgated under the Division's Title 21 authority. The Division's mission is to regulate the insurance industry to protect Alaska consumers.[6] The Division's metrics of success with regards to protecting consumers under Title 21 include ensuring access to health care, ensuring their policies are in line with the Affordable Care Act (ACA), looking at benefits that transcend premium costs, and balancing the interests of all to ensure there is a viable insurance market.[7]

6. The Rule was originally adopted to protect consumers from excessive balance billing.[8] While medical providers were never prohibited from

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[2] 3 AAC 26.110(a) (repealed 1/1/24).
[3] Davis Testimony.
[4] Ex. 1001 at 5; Wing-Heier Testimony.
[5] Ex. 1001 at 5.
[6] Ex. 2003 at 2.
[7] Wing-Heier Testimony.
[8] Ex. 1001 at 6.

balance billing under the Rule, consumers with regulated health care coverage rarely saw large balance bills when the Rule was in effect.[9]

7. Plaintiffs' expert, Jeffrey Davis, testified that the Rule had two unintended consequences: (1) the positive unintended consequence of establishing a floor for reimbursements for providers in Alaska, and (2) the negative unintended consequence of allowing providers to raise rates and set an unreasonable floor by establishing minimum charges for a particular service in that provider's region.[10]

8. The Division previously applied for and received about $700 million in federal funding under the ACA Section 1332 waiver.[11] Through a reinsurance program, the funding was intended to help lower costs in the individual market and subsidize premium payments for moderate to lower-income consumers who do not qualify for Medicaid. Director Wing-Heier testified that the reinsurance program was effective at the outset, but eventually rates continued to increase.[12]

Repealing the Rule

9. The Division considered repealing the Rule for over a decade as a way to address rising health care costs in Alaska.[13]

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[9] Wing-Heier Testimony; Ex. 1001 at 8.
[10] Davis Testimony.
[11] Wing-Heier Testimony.
[12] *Id.*
[13] *Id.*; Bailey Testimony.

10. Mr. Davis, while working for Premera, advocated for changes to the Rule and engaged in discussions with the Division starting in 2010. Mr. Davis proposed alternatives to modify the Rule after its enactment, such as freezing the 80th percentile or treating all of Alaska as one region, rather than four, for UCR determination.[14] Mr. Davis sought to address the provider monopolies he believed were forming under the Rule, but he never suggested repealing the Rule.[15]

11. In 2017 and 2018, the Division held two public scoping hearings that gave notice of possible changes to the Rule, but did not move forward with the rulemaking process.[16]

12. In 2021, Governor Dunleavy convened an ad hoc group with the Department of Health and the Department of Commerce to discuss the cost of health care and the ability to pay for health care under the Healthy Alaskans Program.[17]

13. In early 2022, Governor Dunleavy listed as a priority for the Department of Commerce addressing the cost of health care as a way to reduce the barriers to doing business in Alaska.[18] After discussions with community stakeholders, Commissioner Sande told the Governor that repealing the

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[14] Davis Testimony.
[15] *Id.*
[16] Exs. 1041, 2003, 2008; Wing-Heier Testimony.
[17] Wing-Heier Testimony.
[18] Sande Testimony.

Rule was one of the ways the Department could impact or stabilize the cost of health care and business in Alaska.[19]

14. In spring of 2022, Director Wing-Heier was involved in conversations with the Governor and the Commissioner's Office in consideration of repealing the Rule.[20]

15. In February 2022, Director Wing-Heier sent an email to insurance companies in the Alaska market notifying them of her intent to open up the Rule for public comment.[21]

16. Premera occupies approximately 90% of the health insurance market in Alaska.[22] Director Wing-Heier engaged in conversations with Premera prior to, during, and after the repeal regarding the repeal's potential impact.[23]

17. In March 2022, Director Wing-Heier emailed Premera asking for a projected estimate of how much Premera would save if the Rule were repealed.[24] Premera responded that it believed the impact would be about 1.3% claims savings and approximately 1.0% discount to premium rates.[25]

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[19] *Id.*
[20] Wing-Heier Testimony.
[21] Ex. 1013.
[22] Wing-Heier Testimony; Davis Testimony.
[23] Wing-Heier Testimony; *See* Exs. 1020, 1026.
[24] Ex. 1016.
[25] Wing-Heier Testimony.

18. Director Wing-Heier believed there would be a 2-3% reduction in premium rates based on a separate conversation she had with Premera.[26]

19. In late 2022, Director Wing-Heier received a call from Commissioner Sande who received directive from the Governor to move forward with the proposed repeal.[27] This proposal was part of a larger reform package to stabilize the cost of health insurance premiums in Alaska.[28]

20. On January 31, 2023, the Division issued a Notice of Proposed Changes to the Rule.[29] The Notice explained how to submit comments and written questions about the proposed changes.[30]

21. The Division provided the public with two reasons supporting repeal: (1) the Rule was criticized for influencing the cost of health care in Alaska; and (2) the consumer protection may no longer be necessary due to Congress passing the No Surprise Act (NSA) in 2020.[31]

22. The NSA prohibits surprise balance bills for out-of-network services during an emergency visit, from non-network providers at an in-network hospital without advance notice (e.g. anesthesiology, radiology, etc.), and services from an out-of-network air ambulance service provider.[32] The

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[26] *Id.*
[27] *Id.*
[28] Sande Testimony.
[29] Ex. 2007.
[30] *Id.*
[31] Ex. 1001 at 7; Wing-Heier Testimony.
[32] Ex. 1001 at 9.

NSA does not prohibit surprise balance bills from out-of-network providers for primary care services. The NSA also requires out-of-network providers to provide a good faith estimate of the expected charges in advance of scheduled services and to disclose information regarding balance billing protections.[33]

23. The Division's position is that the NSA offers different consumer protections but not less protections than the Rule.[34] Director Wing-Heier testified that "there could be some gaps" in the consumer protections after repeal of the Rule, such as when a provider fails to give transparent or correct estimates.[35] The Division's position is that the NSA protects consumers by giving them information to make their own choices regarding whether to pursue in-network or out-of-network care before seeing a provider, allowing consumers to be an active part of their health care.[36]

24. Mr. Davis opined that health care consumers would be better protected with both the NSA and the Rule in effect.[37]

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[33] *Id.* at 10.
[34] Wing-Heier Testimony.
[35] *Id.*; *see also* Ex. 1002.
[36] Wing-Heier Testimony.
[37] Davis Testimony.

25. The public comment period for the proposed repeal was open for six weeks.[38] During that time, the Division hosted three town hall meetings, two in Anchorage and one in Juneau.[39]

26. The Division received approximately 304 public comment letters during the comment period.[40] The comments were collected by the Division's Life and Health Supervisor, Sarah Bailey. Ms. Bailey reviewed all of the comments with her administrative staff and created a summary chart of the comments for Director Wing-Heier.[41] Director Wing-Heier and Commissioner Sande also reviewed and considered the public comments.[42]

27. Of the comments submitted, many of those in support of the repeal came from small businesses and individuals, and many of those against the repeal came from providers.[43]

28. In reviewing the comments, the Division looked for whether someone was for or against the repeal and whether they had additional ideas or proposals for addressing health care costs.[44] Director Wing-Heier testified that the Division did not have the staff or financial bandwidth to

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[38] Wing-Heier Testimony.
[39] Ex. 2002 at 1.
[40] *Id.* at 51.
[41] Bailey Testimony; Ex. 2002.
[42] Wing-Heier Testimony; Sande Testimony.
[43] Wing-Heier Testimony; *See* Ex. 1046.
[44] Wing-Heier Testimony.

research every issue raised in the comment letters.[45] Director Wing-Heier also testified that the comments submitted did not propose solutions or replacements to the repeal.[46]

29. The Division also responded to individual questions received during the public comment period.[47]

30. The Division anticipated that providers would move in-network after the repeal because it would offer certainty over payment from insurers.[48] On April 18, 2023, Director Wing-Heier requested information from Ms. Bailey about the potential income loss to providers due to the repeal.[49] Ms. Bailey emailed Director Wing-Heier that "[t]heoretically the doctors won't lose anything. They will balance bill their patients."[50] Director Wing-Heier responded: "There will be some doctors that go in-network (so balance billing concerns are reduced) and find that the in-network may not be that much different."[51]

31. In considering repeal, the Division relied in part on third-party contracted studies that examined the relationship between increasing health care

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[45] *Id.*
[46] *Id.*
[47] Ex. 1003.
[48] Wing-Heier Testimony.
[49] Ex. 1004 at 2.
[50] *Id.* at 1.
[51] *Id.*

costs in Alaska and the Rule.[52] The studies are posted on the Division's publicly-available website with information about the Rule.[53]

32. A 2018 UAA Institute of Social and Economic Research study authored by Mouhcine Guettabi for the Alaska Office of Management and Budget ("Guettabi study") concluded that Alaska's health care expenditures would have been lower in the absence of the Rule.[54] The Guettabi study examines expenditure data from 1991 to 2014. The Guettabi study "evaluates the effect of the 80th percentile rule on expenditures and not costs" and it "does not make a recommendation regarding the 80th percentile rule, since it only examines one aspect of the question."[55] Further, the study acknowledges limitations of the analysis, including that "[e]xpenditures are the product of prices and quantity of services used" and that the analysis "can not disentangle usage from prices."[56]

33. Director Wing-Heier testified that she did not review the Guettabi study specifically during this repeal process, but she was familiar with its conclusions.[57]

34. The Division commissioned a study from Fair Health in 2018 to examine the 100 most frequently billed Current Procedural Terminology (CPT)

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[52] Wing-Heier Testimony.
[53] Ex. 1039.
[54] Ex. 1038 at 1.
[55] *Id.* at 7.
[56] *Id.*
[57] Wing-Heier Testimony.

codes from 2017, and an additional 17 CPT codes that were requested by Senator Giessel.[58] These CPT code prices were compared with prices in North Dakota and Seattle between 2013 and 2017. North Dakota and Seattle were chosen by the Division as comparison locations because North Dakota has similar characteristics to Alaska and because many Alaskans travel to Seattle to receive medical care.[59] Director Wing-Heier testified that the results of the study informed the repeal decision because the results indicated that the costs of health care in Alaska had increased over time and were overall higher than in North Dakota and Seattle.[60]

35. The Division also commissioned two studies in 2018 and 2019 from actuarial consulting firm Oliver Wyman to update the Fair Health analysis using MarketScan technology.[61] These studies ("MarketScan studies") compared health care costs in Alaska to costs in Idaho, Montana, North Dakota, and Seattle, from 2014-2016 in the first study and from 2014-2017 in the second study.[62] Director Wing-Heier testified that the Division chose those comparison locations because of their characteristics similar to Alaska. The MarketScan studies do not mention the Rule specifically. The studies reflect that the average commercial

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[58] *Id.*
[59] *Id.*; Ex. 1037.
[60] Wing-Heier Testimony; Ex. 1037.
[61] Exs. 1040, 1042; Wing-Heier Testimony.
[62] Ex. 1040 at 4; Ex. 1042 at 4.

reimbursement rate as a percentage of the Medicare Fee Schedule increased between 2014 and 2017 in Alaska, from 269% in 2014 to 281% in 2017.[63] In addition, the studies reflect that Alaska has the highest average reimbursement rate compared to the other locations for each of the years 2014 through 2017.[64] For example, in 2017, Alaska was at 281% of Medicare, North Dakota was at 202% of Medicare, Idaho was at 155% of Medicare, Montana was at 154% of Medicare, and Seattle was at 148% of Medicare.[65] Director Wing-Heier testified that the studies helped inform the repeal decision.[66]

36. Plaintiffs' expert at trial, Timothy Renjilian, conducted his own study of Alaska-billed charges by looking at public use file data published by the Center for Medicare and Medicaid Services (CMS).[67] Mr. Renjilian opined that the overall charges incurred for Medicare patients in Alaska between 2013-2022 resulted from more services being provided as opposed to price increases.[68] Mr. Renjilian also concluded that there was "no clear-cut systematic trend" in the rates of increased charges in Alaska versus increased rates in other states.[69]

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[63] Ex. 1042 at 4.
[64] *Id.*
[65] *Id.*
[66] Wing-Heier Testimony.
[67] Renjilian Depo. at 55.
[68] *Id.* at 56-57.
[69] *Id.* at 58-59.

37. Mr. Renjilian testified that the Division could have considered more comprehensive and additional data in trying to fully evaluate the impact of the repeal.[70] Mr. Renjilian also opined that based on his own analysis, and after reviewing the four studies considered by the Division, there was nothing to support the conclusion that the Rule was driving up health care costs.[71]

38. The Medical Group Management Association (MGMA) released a report in May 2024 regarding the highest and lowest-paying states for physicians by specialty.[72] Alaska is listed as the lowest-paying state for primary care physicians and non-surgical specialists, and among one of the highest-paying states for advanced practice providers.[73] The MGMA study was not available prior to the repeal becoming effective and was not considered by the Division.[74]

39. The Division did not commission a follow-up study to the Guettabi, Fair Health, and MarketScan studies, and reasoned that because health care prices continued to rise, the Division had no reason to suspect more recent data would depict something new.[75]

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[70] *Id.* at 59-60.
[71] *Id.* at 59.
[72] Ex. 1047.
[73] *Id.*
[74] Wing-Heier Testimony.
[75] *Id.*

40. On March 16, 2023, Premera's Senior Vice President, Washington & Alaska Group Markets, emailed the Division asking when the Division expected to make a decision on the Rule.[76] Director Wing-Heier responded that she expected to make a decision in late May 2023.[77]

41. On March 28, 2023, Director Wing-Heier requested claims data from Premera to provide the Governor with examples of billed charges and payments under the Rule.[78] Director Wing-Heier sought data showing whether the same charges would have been paid in Seattle and North Dakota or another similar state. Director Wing-Heier acknowledged that the Fair Health and other studies did not give the type of examples she was looking for.[79]

42. On November 27, 2023, the Vice President of Premera sent the Division its financial statements, highlighting "a significant rate increase in 2024."[80]

43. Premera lobbied to the legislature and other government officials to repeal the Rule, but never directly to Director Wing-Heier.[81]

44. Director Wing-Heier testified that she was concerned because Premera had experienced significant financial losses in the individual market in

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[76] Ex. 1021.
[77] *Id.*
[78] Ex. 1022.
[79] *Id.*
[80] Ex. 1032.
[81] Wing-Heier Testimony.

recent years, but that this was not a consideration in the Division's decision to repeal the Rule.[82]

45. The Division is responsible for reviewing insurance policy forms. In its review, the Division looks for compliance with state and federal regulations, NSA language, and reimbursement rates.[83] In addition, the Division monitors co-insurance percentages to ensure that health care insurers offering in-network services also offer an out-of-network option for that same service, as required by Alaska Statute 21.07.030.[84]

46. Individual market insurers submit rate filings to the Division annually, and small group market insurers submit their filings quarterly.[85] The rate filings include proposed average rate changes and the reasons for rate increases, such as medical inflation, increased utilization, risk pool experience, demographic shifts, and other factors that may contribute to rate increases in a given year.

47. The Division oversees the rate filing review process and contracts with actuaries to review the filings.[86] The Division ensures that insurance rate setting is not "excessive, inadequate, or unfairly discriminatory" under

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[82] *Id.*
[83] Bailey Testimony.
[84] *Id.*; AS 21.07.030(a) ("If a health care insurer offers a health care insurance policy that provides for coverage of medical care services only if the services are furnished through a network of health care providers that have entered into a contract with the health care insurer, the health care insurer shall also offer a non-network option to covered persons at initial enrollment.").
[85] Wing-Heier Testimony.
[86] Bailey Testimony.

Alaska Statute 21.39.010.[87] If something concerning arises in a rate filing, the Division will send an objection letter to the insurance company asking for necessary adjustments.[88] The Division has objected to proposed rates in past filings, both for rates that were too high and too low.[89]

48. Health care costs are reflected in premium rates. A number of factors may impact high costs in a given year, including medical inflation, demographic shifts, new legislation, technology, sicker populations, increased utilization, and federal changes.[90] In determining insurance premiums, insurance companies consider what consumers have paid in medical claims.[91]

49. Director Wing-Heier testified that the total cost of consumer health care services is the premium cost, plus balance billing, plus co-pay.[92] The Division considered premium costs and balance bills in its decision to repeal, but did not look into consumer co-payments.[93] Director Wing-Heier testified that co-payments are included in the rate filings, and that

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[87] *Id.*
[88] *Id.*
[89] *Id.*; Wing-Heier Testimony.
[90] Wing-Heier Testimony.
[91] *Id.*
[92] *Id.*
[93] *Id.*

the Division's review of co-payments is only in the context of the rate filings.

50. In the individual market, Premera's proposed average rate charge increased by 4.4% in 2022 with a 3.3% increase in medical inflation, and by 19.5% in 2023 with a 4.9% increase in medical inflation.[94] Moda's proposed average rate charge decreased by 1.6% in 2022, and increased by 12.1% in 2023.[95]

51. In the small group market, Premera's proposed average rate charge increased by 7.9% in 2022 with a 2.8% increase in medical inflation, and by 5.7% in 2023 with a 4.4% increase in medical inflation.[96] Moda's proposed average rate charge increased by 4.57% in 2022 and by 3.06% in 2023.[97]

52. On May 12, 2023, Commissioner Sande issued a press release indicating the Division's intent to move forward with the repeal.[98]

53. The Division adopted regulations repealing the Rule on June 20, 2023.[99] The regulations were filed by the Lieutenant Governor on July 17, 2023 and became effective January 1, 2024.[100]

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[94] Ex. 1055 at 1; Ex. 1056 at 2.
[95] Ex. 1006 at 2.
[96] Ex. 1064 at 1; Ex. 1065 at 1.
[97] Ex. 1006 at 1.
[98] Ex. 2004.
[99] Ex. 2005 at 4-8.
[100] *Id.* at 1.

Post-Repeal

54. Dr. John Morris is an anesthesiologist and the owner of Denali Anesthesia in Anchorage. Dr. Morris has been an in-network provider with Premera since at least 2016. Dr. Morris is contracted in-network at a lower rate than the 80th percentile and has not received a raise in reimbursement rates from Premera since 2018.[101]

55. Dr. Morris was unaware of the Rule until October 2022. Dr. Morris testified that the Rule's repeal eliminated his leverage to negotiate with insurance payers and put downward pressure on his ability to recruit and retain providers.[102] Dr. Morris has not hired an out-of-state provider in three years and has had difficulty hiring temporary or traveling physicians.[103]

56. On August 3, 2023, Dr. Morris met with Director Wing-Heier and other providers about the potential repeal.[104]

57. On August 21, 2023, Dr. Morris sent a letter to Director Wing-Heier on behalf of Plaintiffs criticizing the Division's reliance on Fair Health data and asking for a reexamination of the repeal.[105] Attached to the letter was a chart depicting an upward trend in premium costs for Alaska medical

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[101] Morris Testimony.
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] Ex. 1011.

practices and a downward trend in fees paid by Premera for a unit of health care service from 2018 to 2023.[106] The chart includes data shared by 13 in-network providers, representing over 100,000 patient encounters per year.[107] In his letter, Dr. Morris offered the Division an audit of each provider's source data and methodology.[108] Dr. Morris testified that the chart was based on a survey study that merits further investigation and was intended to prompt follow-up from the Division.[109]

58. The Governor's Deputy Chief of Staff requested the data from Dr. Morris's chart. Director Wing-Heier did not personally look into the information further.[110]

59. On September 11, 2023, Dr. Morris sent a follow-up letter to the Governor proposing six alternatives to repealing the Rule.[111]

60. The Division discussed Dr. Morris's letter with the Deputy Chief of Staff and ultimately decided it was not feasible to implement Dr. Morris's proposed alternatives.[112] For example, one of Dr. Morris's listed alternatives was to require providers to accept Medicare, Medicaid, Tricare or the VA, but the Division cannot impose such a requirement.[113]

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[106] Ex. 1054 at 1.
[107] *Id.* at 2.
[108] Ex. 1011 at 1.
[109] Morris Testimony.
[110] Wing-Heier Testimony.
[111] Ex. 1029 at 2; Morris Testimony.
[112] Wing-Heier Testimony.
[113] *Id.*

61. Dr. Morris's letter to Director Wing-Heier, the corresponding chart, and Dr. Morris's letter to the Governor were all submitted after the Division's June 20, 2023 decision to repeal the Rule.

62. CMS sets deadlines for the Division to submit final rate filings at the end of August or early September each year.[114] The rates must be posted prior to open enrollment, at which point the rates are locked in.[115] Director Wing-Heier testified that because of the CMS deadlines, it was not possible for the Division to reopen its June 20, 2023 repeal decision.[116]

63. Since the repeal, the Division has monitored insurance companies' reimbursement rates through reference-based pricing.[117] The Division requires insurers to reimburse providers at least 185% of what Medicare pays for out-of-network services.[118]

64. Insurance payers elect their own reimbursement rates which the Division reviews in annual or quarterly rate filings.[119] After the repeal, Premera declared it would reimburse providers at 125% of Medicare's fee schedule, which is about half of the 80th percentile.[120] The Division rejected Premera's proposal and required that it reimburse at least 185%

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[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*; Davis Testimony.
[118] Wing-Heier Testimony.
[119] *Id.*
[120] Davis Testimony.

of Medicare's fee schedule. The Division based this threshold on the rates set by other state plans—such as AlaskaCare and the University of Alaska Anchorage.[121]

65. Moda proposed an out-of-network reimbursement rate of 400% of Medicare for the small group market in 2024.[122]

66. In 2025, for both individual and small group markets, Premera proposed reimbursing out-of-network providers at 300% of Medicare for end-stage renal disease related claims and 185% of Medicare for all other out-of-network claims.[123]

67. The University of Alaska Anchorage transitioned from a percentile reimbursement mechanism to reference-based pricing in 2023, as did AlaskaCare a few years prior.[124] The Division consulted with the University of Alaska Anchorage and AlaskaCare on the impact to providers after the transition, and found no notable concern or exodus of providers from the market.[125]

68. The Division conducts an annual survey among medical providers. In 2024, approximately 1,000 providers reported they moved in-network.[126]

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[121] Wing-Heier Testimony.
[122] Davis Testimony.
[123] Ex. 1060 at 5; Ex. 1067 at 21.
[124] Wing-Heier Testimony.
[125] *Id.*
[126] *Id.*

69. After the repeal, the Division did not receive calls or complaints from consumers that providers had closed their doors. The Division did receive information that some providers have retired.[127]

70. Dr. Ilona Farr is a family physician in Alaska and has had an in-network contract with Premera since 1989. Dr. Farr was reimbursed by Premera at the 90th percentile in 2010, at the 80th percentile in 2012, and was paid 66% of her charges in 2022.[128] In June 2023, Dr. Farr received a notice of termination of her in-network contract with Premera, and now receives 17% of charges for certain CPT codes.[129] Dr. Farr testified that she is not being reimbursed for all CPT codes.[130] Dr. Farr testified that she has lost a third of her patients since the end of her contract with Premera, and the other two-thirds of patients are now paying out-of-pocket.[131]

71. In the individual market, Premera's proposed average rate change was 16.7% in 2024, with a 4.4% increase in medical inflation.[132] In 2025, Premera's proposed average rate change was 18.5%, with a 4.8% increase in medical inflation.[133] Premera's rate filings for the individual market indicate that the rate increase would have been 4.0% higher in 2024 and

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[127] *Id.*
[128] Farr Testimony.
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] Ex. 1007 at 1.
[133] Ex. 1060 at 2.

6.2% higher in 2025 if not for the repeal of the Rule.[134] Moda's individual rate filing was up by 15.72% in 2024 and by 19.63% in 2025.[135]

72. In the small group market, Premera's proposed average rate change was 5.2% in 2024, with a 5.3% increase in medical inflation.[136] Premera's proposed average rate change was 13.5% in 2025, with a 4.5% increase in medical inflation.[137] Premera's 2024 small group filing estimates a reduction in overall claims costs by about $2.7 million.[138] Premera's 2025 rate filing for the small group market indicates that the rate increase would have been 4.7% higher if not for the repeal of the Rule.[139] Moda's small group rate filing was up 17.7% in 2024, and 14.76% in 2025.[140]

73. Premera's 2025 rate filing attributes $19,375,990 to the "Removal of 80th Percentile."[141] Mr. Davis testified that this value represents the amount less that Premera anticipates paying in claims post-repeal and is a cost shifted to providers or patients.[142] There was no evidence that that amount was billed. Director Wing-Heier testified that the $19.4 million

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[134] *Id.*
[135] Ex. 1006 at 2.
[136] Ex. 1009 at 2.
[137] Ex. 1067 at 21.
[138] Ex. 1009 at 4.
[139] Ex. 1067 at 21.
[140] Ex. 1076 at 1; Ex. 1006 at 1.
[141] Ex. 1062.
[142] Davis Testimony.

figure represents the expected reduction of total overall claims.[143] Ms. Bailey testified that this amount in claims savings is ultimately a benefit to consumers.[144] The 2025 rate filing reflects that the rate increase was due to medical inflation, increased utilization, and demographic shift, but that the repeal of the Rule accounted for -6.2%.[145] Whether the repeal leads to a shift to services performed by in-network providers, or otherwise, Premera's rate filings reflect that the repeal does help decrease the percentage by which premium rates increase. Stated differently, the premium rates would have been higher in 2025 but for the repeal.

Public Records Request

74. Plaintiffs sent a public records request to the Division on September 13, 2023.[146]

75. On September 14, 2023, the Division confirmed receipt of the public records request.[147] On September 25, 2023, the Division sought a 10-day extension under 2 ACC 96.325(d).[148]

76. On September 28, 2023, the Division sent a letter notifying Plaintiffs that the public records request was a request for electronic services and

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[143] Wing-Heier Testimony.
[144] Bailey Testimony.
[145] Ex. 1060 at 2.
[146] Ex. 1090 at 1-2.
[147] *Id.* at 3.
[148] *Id.* at 4.

products. The letter indicated that the Division would forward a cost estimate to Plaintiffs and begin the search upon receipt of payment.[149]

77. The Division emailed the cost estimate to Plaintiffs on October 6, 2023 and included the payment mailing address for the Alaska Office of Information Technology (OIT).[150]

78. On October 10, 2023, Plaintiffs mailed a check for $70.06 to OIT at the address provided in the Division's October 6 email.[151]

79. On November 13, 2023, Plaintiffs emailed the Division to confirm their check was mailed.[152] On November 15, 2023, Ms. Bailey informed Plaintiffs that OIT did not have a record of receiving the check and requested a new check from Plaintiffs.[153]

80. On November 16, 2023, Plaintiffs sent a replacement check to OIT.[154] The Division confirmed receipt of the check on November 20, 2023.[155]

81. Plaintiffs filed their initial complaint against the Division on November 20, 2023.

82. On December 6, 2023, Plaintiffs emailed the Division for a status update on the requested documents.[156] The Division responded that the request

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[149] *Id.* at 5.
[150] *Id.* at 6.
[151] *Id.* at 7-8.
[152] *Id.* at 9.
[153] *Id.* at 11.
[154] *Id.* at 13-14.
[155] *Id.* at 16.
[156] *Id.* at 17.

had been assigned and was being worked on.[157] Plaintiffs requested another status update on December 18, 2023.[158] The Division responded that the records were being reviewed and expected it would take about 30 more days to complete.[159] Plaintiffs requested another status update on December 27, 2023, which was followed by an out-of-office reply from the Division.[160]

83. On January 16, 2024, the Division sent a letter informing Plaintiffs that the APRA no longer applies to the records request because litigation had commenced, and that reimbursement for the electronic records search would be mailed.[161]

CONCLUSIONS OF LAW

84. The Court has personal jurisdiction over the parties, and subject matter jurisdiction over the claims at issue in this case.

Claim 1: Administrative Procedure Act

85. In an action challenging a regulation, or the repeal of a regulation, courts consider whether "'the regulation is consistent with and reasonably

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[157] *Id.* at 18.
[158] *Id.* at 19.
[159] *Id.* at 20.
[160] *Id.* at 21-22.
[161] *Id.* at 24.

necessary to implement the statutes authorizing its adoption' and whether the regulation is 'reasonable and not arbitrary.'"[162]

86. "A regulation is consistent with a statute if it has a reasonable relation to statutory objectives."[163] "In making the consistency determination, the court exercises its independent judgment, unless the issue involves agency expertise or the determination of fundamental policy questions on subjects committed to an agency."[164] Where a regulation involves agency expertise or fundamental policy questions, the court "employ[s] a rational basis standard and will defer to the agency's determination so long as it is reasonable."[165]

87. Here, the parties agree that the Court applies the rational basis standard. Because repeal of the Rule involves agency expertise and fundamental policy questions, the Court applies the rational basis standard and defers to the Division's determination so long as it is reasonable.

88. "[W]hen an agency departs from a prior policy, it must give 'a reasoned explanation . . . for disregarding facts and circumstances that underlay or

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[162] *City of Soldotna v. State*, 556 P.3d 1158, 1164 (Alaska 2024) (quoting *O'Callaghan v. Rue*, 996 P.2d 88, 94 (Alaska 2000)); *see also Motor Vehicle Mffrs. Ass'n v. State Farm*, 463 U.S. 29, 42-43 (1983) (holding that an agency's decision to repeal a regulation is subject to an arbitrary and capricious standard of review); *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 806-807 (Alaska 1975) (holding that administrative agency may modify or repeal its regulations so long as the action is not unreasonable or arbitrary).
[163] *State v. Alyeska Pipeline Serv. Co.*, 723 P.2d 76, 78 (Alaska 1986).
[164] *O'Callaghan*, 996 P.2d at 94.
[165] *City of Soldotna*, 556 P.3d at 1164; *O'Callaghan*, 996 P.2d at 94.

were engendered by the prior policy'" and must "'display awareness that it *is* changing position.'"[166]

89. The Division explained from the outset of the public commenting process that it was considering repealing the Rule and provided clear reasons for doing so: (1) the increasing costs of health care, and (2) federal consumer protections under the NSA. There is no dispute that the Division complied with the Alaska Administrative Procedure Act's notice requirements by offering Notice of Proposed Changes to the Rule and the opportunity for public comment. The Court concludes that the Division properly displayed awareness that it was changing its position by repealing the Rule.

90. Title 21 governs insurance matters in Alaska.[167] The role of the Director is to enforce the provisions of Title 21 and to adopt reasonable regulations to effectuate Title 21.[168] The Alaska Supreme Court has described that the purpose of Title 21 "is to protect the Alaskan insurance consumer."[169]

91. The Division's decision to repeal the Rule was consistent with Title 21 and the protection of Alaskan health care consumers.

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[166] *Denali Citizens Council v. State, Dep't of Nat. Res.*, 318 P.3d 380, 387-388 (Alaska 2014) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009)).
[167] AS 21.03.010.
[168] AS 21.06.080; AS 21.06.090.
[169] *Northern Adjusters, Inc. v. Dep't of Rev.*, 627 P.2d 205, 207 (Alaska 1981).

92. The Division had the interests of insurance consumers forefront while making a policy decision about the broader wellbeing of the health insurance market. The Division reasonably determined that the Rule was causing health care costs to increase in Alaska, and took steps in an effort to reduce those costs.

93. In its decision-making process, the Division considered hundreds of competing public comments, and balanced competing stakeholder interests. The purpose of the repeal was to stabilize the insurance market and lower health care costs for consumers. The Division arrived at a solution that it believed would ensure the existence of a viable insurance market in Alaska.

94. The Division's position was that protections under the Rule were no longer necessary in light of new federal consumer protections under the NSA. The Division considered how out-of-network consumers would remain protected under the transparency clause of the NSA, consistent with Title 21. In response to Plaintiffs' argument that the repeal constrained consumer choice, the Division provided a reasoned response that consumers can continue to receive out-of-network benefits and the NSA allows consumers to make informed decisions and be active participants in their own health care. The Division also anticipated that

providers would move in-network after the repeal, which would benefit consumers by triggering NSA coverage.

95. The Court acknowledges that the NSA and the Rule are not mutually exclusive, and it is possible for both consumer protection mechanisms to exist at the same time. But the Division's position that the Rule is no longer necessary in light of the NSA, and that the NSA offers sufficient consumer protection against large balance billing, is a policy determination committed to the Division.

96. As set forth above, the Court does not substitute its judgment for that of the Division.[170] The Court finds that the repeal was consistent with Title 21 because it sought to protect consumers by stabilizing the insurance market. Further, it is clear that the Division made its decision with consumer protections in mind by considering the ways in which the NSA would continue to protect consumers against large balance billing.

97. The Division's repeal is presumed valid under AS 44.62.100, and the burden of proving otherwise is on the Plaintiffs.[171] An agency may modify or repeal its regulations so long as the action is reasonable and not arbitrary.[172] "This inquiry considers whether the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned

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[170] *See O'Callaghan*, 996 P.2d at 94.
[171] *Ellingson v. Lloyd*, 342 P.3d 825, 830 (Alaska 2014).
[172] *O'Callaghan*, 996 P.2d at 94.

decision making."[173] AS 44.62.210(a) requires the agency to consider "all factual, substantive, and other relevant matter presented to it before adopting, amending, or repealing a regulation."

98. Plaintiffs argue that the Division failed to take a hard enough look at whether the Rule was responsible for driving up health care costs in Alaska.

99. The Division considered cost data in its decision, specifically looking at premium rates and balance bills to assess the burden on consumers.[174] The Division relied on its agency expertise and ability to draw conclusions about health care costs that are reflected in premiums.

100. The Division considered studies that link increased health care costs in Alaska to the Rule. The Guettabi and Fair Health studies both show that health care costs had increased over the studied time periods while the Rule was in effect. The MarketScan studies indicate that the increased costs of health care in Alaska were higher than in comparison states that did not have an 80th Percentile Rule. These studies provided the Division with objectively ascertainable, fact-driven data to support its

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[173] *Id.* at 98 (internal quotations omitted); *see also Interior Alaska Airboat Ass'n v. State, Bd. of Game*, 18 P.3d 686, 693 (2001).
[174] Wing-Heier Testimony.

conclusion that the cost of health care had risen in Alaska, and that the Rule was playing a substantial factor in rising costs.[175]

101. The Court finds that by choosing the most frequently billed CPT codes and comparing costs in states with similar geographies and markets to Alaska, the Division took a close look at the salient problems. The link between health care costs and the Rule was embedded in the studies by nature of the Rule being in effect at the time of the study.

102. The Court finds that the Division relied on objective and fact-driven studies in combination with insurance rate filings, conversations with stakeholders, and its own agency expertise. The Division also explained that it did not commission follow up studies using more recent data because it had no reason to think that the market had changed in a meaningful way to warrant further expenditure of resources. Director Wing-Heier was aware that health care costs continued to rise in Alaska and testified that she had no reason to think more recent data would depict something different. The Court finds that the Division's reliance on these studies was neither unreasonable nor arbitrary.

103. An unintended consequence of the Rule was that it allowed providers to drive up rates and set their own floor, creating monopolies among high

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[175] *See Ellingson*, 342 P.3d at 832 (holding that the Board of Game failed to consider the Department's prior efforts to define the statutory term "feral," and instead created a definition of "feral" without "considering objectively ascertainable, fact-driven standards").

rate-setting providers.[176] This consequence combined with medical inflation, increased utilization, related legislation, and federal changes, all contributed to the overall increasing rates during the years leading up to the repeal.

104. The Division had limited tools available within its regulatory powers to address high health care costs. Given the Governor's directive and the Division's previous attempts to lower costs through its reinsurance program, repealing the Rule was a reasonable effort taken to help stabilize the insurance market.

105. Whether or not the Division knew premium rates would not immediately decrease after the repeal does not render the Division's decision unreasonable or arbitrary. The Division's goal was to stabilize the market and eventually reduce health care costs. The Division never expected to see an immediate reduction in rates.[177] Further, the fact that premium rates did not decrease in the wake of the repeal is not indicative of what the Division considered or knew during its decision-making process.

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[176] Davis Testimony.
[177] Wing-Heier Testimony.

106. Plaintiffs have not met their burden of proving that the Division failed to take a hard look at the salient problems or failed to engage in reasoned decision making.

107. The Alaska Supreme Court has held that an agency's decision is regarded as arbitrary if it fails to consider an important factor.[178] The agency must "take a close look at the problems it seeks to address and consider important policy factors, even if 'every possible factor may not have been debated.'"[179]

108. The Court concludes that Plaintiffs have not met their burden of proving that the Division's decision to repeal was unreasonable and arbitrary for failing to consider certain policy factors.

109. Plaintiffs argue that the Division should have considered more recent data. The Division explained that more recent data would not have meaningfully changed the overall trend of increasing costs in Alaska. Based on the rate filings along with the Division's knowledge and expertise of the insurance market and its trends, the Court finds that it was not unreasonable or arbitrary for the Division to rely on the older studies. Premiums were still going up whether or not the studies depicted data from more recent years. The Court does not find that failing to

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[178] *Ellingson,* 342 P.3d at 830.
[179] *Id.* (quoting *Gilbert v. State, Dep't of Fish & Game, Bd. of Fisheries*, 803 P.2d 391, 398 (Alaska 1990)).

consider more recent data in this context amounts to unreasonable or arbitrary decision-making.

110. Plaintiffs also assert that the Division should have considered more robust data in its decision to repeal. In support of this argument, Plaintiffs fault the Division for not considering the MGMA study and for using arbitrary CPT codes and comparison states in the Guettabi, Fair Health, and MarketScan studies. First, the Court notes that the MGMA study was not available until 2024, after the Division had made its decision to repeal the Rule. Second, while more information and data may have existed relating to the Rule's impact on health care costs in Alaska, the Division was not required to commission further studies or compare every CPT code in every state. The CPT codes and comparison states used in the studies were intentionally selected by the Division to serve as a representative sample. Simply because the Division could have used more codes or included other states in its analysis does not lead the Court to conclude that the Division failed to consider an important factor.

111. Plaintiffs have not met their burden of proof as to the argument that the Division failed to consider the impact to providers in its decision. Dr. Morris testified that the repeal would decrease the providers' leverage in their negotiations with insurers, and result in a loss of providers. But the

Division did consider all the comments from providers, including their predictions regarding the impact on them. The fact that the Division did not agree with the predictions that the repeal would have a far-reaching impact on providers does not mean that it did not consider the impact. At the time of trial, the Division had issued a request for proposal to study primary care physician pay.[180]

112. The Division did consider potential impacts of repeal on providers. The Division looked into how providers may have been impacted after UAA and AlaskaCare transitioned from percentile to reference-based pricing. Additionally, the Division anticipated that providers would move in-network with the repeal, which would benefit providers in terms of the certainty that comes with being contracted with insurers.

113. The Court does not find that the Division failed to consider medical inflation in its decision. The Division reviews quarterly and annual insurance rate filings and policy forms that include breakdowns of the various factors contributing to increased rates. Given the Division's review process and information available in the rate filings, the Division was not blind to the fact that there were other factors contributing to increasing rates. The Division acknowledged that medical inflation, among other factors, was a piece in the overall increase.

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[180] Wing-Heier Testimony.

114. Plaintiffs' argument that the Division failed to consider the effect of competition, or lack thereof, on premiums is unpersuasive. The parties agree that market competition has a downward effect on premiums. But the Division also faces a challenge maintaining a competitive insurance market in Alaska.[181] Director Wing-Heier testified that it is difficult to get an insurer to come to Alaska.[182] The Division's expertise encompasses an understanding of the effect of competition. The fact that the Division did not look at specific studies related to competition does not render the Division's decision unreasonable or arbitrary.

115. The Court is equally unpersuaded by Plaintiffs' argument that the Division failed to consider consumer co-payments. An agency is not required to look at every possible factor, and the Division did look at balance billing and premium costs in its examination of increased health care costs in Alaska. Moreover, the Division was aware of co-pays because they are in the rate filings.

116. An agency may choose to modify or re-open the proposed regulation or repeal for public comment based on new information.[183]

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[181] Wing-Heier Testimony.
[182] *Id.*
[183] *See Mechanical Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240, 243-244, 247-248 (Alaska 2004) (finding that agency's regulations adopting new building codes was reasonable and not arbitrary where agency developed new regulations over a two-year period, re-opened the public comment period, made additional changes to the proposed regulations, and delayed implementation by several months).

117. Dr. Morris's letter and chart were sent to the Division after the adoption of the repeal and before the repeal became effective, and the information therein was not available to the Division prior to its decision to repeal.

118. To the extent that Plaintiffs argue that the Division should have re-opened its decision and further explored the data presented in Dr. Morris's chart, the Division was not required to do so. There is no reason why the information was not provided to the Division during the comment period and before the repeal decision was made. It is the Court's understanding that the data depicted in the chart was sourced from in-network, contracted providers. That information did not offer the Division novel information regarding the repeal's impact on out-of-network providers or the Division's analysis of whether the repeal would help reduce health care costs.

119. The evidence at trial established that the Division did not make the repeal decision lightly. The Division had considered repeal in the years past, but chose other ways to regulate the industry. When the Division decided to repeal the Rule, the decision was not unreasonable or arbitrary.

Claim 2: Injunctive Relief

120. To obtain a preliminary injunction, a plaintiff must meet either the "balance of hardships" standard or the "probable success on the merits" standard.[184]

121. A permanent injunction requires the plaintiff to demonstrate actual, rather than probable, success on the merits of the case.[185]

122. Because the Court concludes that the Division's decision to repeal the Rule was not unreasonable or arbitrary, injunctive relief is not warranted.

Claim 3: Public Records Act

123. The Alaska Public Records Act provides that "public records of all public agencies are open to inspection by the public. . ." and "[t]he public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record."[186]

124. Under 2 AAC 96.325(a), an agency has until "not later than the 10th working day after the date the agency receives a request for public records" to "(1) furnish all requested records that are disclosable; and (2) advise the requester which of the requested records are nondisclosable."[187]

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[184] *Alsworth v. Seybert*, 495 P.3d 313, 319 (Alaska 2021).
[185] *Advanced Medical Resources, LLC v. Putnam*, 2017 WL 4712104 at *4 (Alaska 2017).
[186] AS 40.25.110; AS 40.25.115 (providing that "upon request and payment of a fee established . . . a public agency may provide electronic services and products involving public records to members of the public").
[187] 2 AAC 96.325(a).

125. Under 2 AAC 96.325(b), "[i]f the public agency decides that a public record is, in fact, a request for electronic services and products, the public agency shall advise the requester of its decision within 10 working days after receipt of a request and the reasons for this decision."[188]

126. Under 2 AAC 96.325(c), "[a]ny time that elapses between the time a requester is sent notice that processing the request will generate chargeable fees and the time the requester makes suitable arrangement for payment of those fees under 2 AAC 96.355 and 2 AAC 96.360 is excluded from the 10-working-day-period."

127. Under 2 AAC 96.360, "fees must be paid before the records are disclosed" and an agency "may require payment in advance of a search for a public record if the agency reasonably believes that the search will generate a fee under AS 40.25.110."

128. AS 40.25.122 provides that public records relevant to litigation involving a public agency are still subject to disclosure as public records. However, for a party to litigation or an attorney representing a party to litigation, "the records sought shall be disclosed in accordance with the rules of procedure applicable in a court or an administrative adjudication."[189] The APRA's litigation exception exempts records from

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[188] 2 AAC 96.325(b).
[189] AS 40.25.122.

disclosure under the APRA when the requestor is involved in litigation involving a public agency.[190]

129. Declaratory judgments are rendered to clarify and settle legal relations and should advance the "goals of 'terminat[ing] and afford[ing] relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'[191]

130. There was a misunderstanding between the parties as to what happened to the first check sent by the Plaintiffs. Neither party is at fault for the missing check. Because it is OIT's policy to begin records request searches upon receipt of payment, OIT never began an initial search.

131. OIT received the second check on November 20, 2023. Litigation in this case commenced that same day. The filing of the Complaint triggered the litigation exception, and the records search was paused.

132. The Court finds that the Division made a good faith effort to communicate with Plaintiffs about the missing check and to comply with the records request. The 10-day clock never starting ticking because OIT never received the first check and the Division properly invoked the litigation exception after receiving the second check. Accordingly, the

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[190] *See Basey v. State, Dep't of Pub. Safety, Div. of State Troopers, Bureau of Investigations,* 408 P.3d 1173, 1179-80 (Alaska 2017).
[191] *Sagoonick v. State*, 503 P.3d 777, 800 (Alaska 2022) (citing *Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1101 (Alaska 2014) and *Lowell v. Hayes*, 117 P.3d 745, 755 (Alaska 2005)).

Court concludes that the Division did not violate the APRA and a declaratory judgment is not warranted.

Conclusion

133. The Division of Insurance is the prevailing party and must file a proposed form of final judgment and any motion for attorney's fees and costs within 10 days.

Dated this 27th day of August 2025, at Anchorage, Alaska.

Yvonne Lamoureux
Superior Court Judge

I certify that on 8-27-25 a copy of the above was delivered to:

D. Shoup
J. Pickett
H. Lober

B. Cavanaugh, Judicial Assistant