



Pension & Health Benefits Committee

Agenda Item 4b

September 14, 2021

Item Name: Minimum Standards for Health Benefit Plans – Amendment of Regulations

Program: Health Benefits

Item Type: Action Consent

Recommendation

Approve the submission of the final rulemaking package revising proposed regulations that amend minimum standards for California Public Employees' Retirement System (CalPERS) health benefit plans, specifically risk adjustment, to the Office of Administrative Law (OAL).

Executive Summary

The proposed changes to California Code of Regulations (CCR) Sections 599.500 and 599.508 were initially published for public review on January 1, 2021. CalPERS amended the proposed regulation text (Attachment 1) in response to OAL feedback. The amendments provide further clarity to the proposed regulations.

Strategic Plan

This item supports CalPERS' High-Quality Affordable Health Care Strategic Goal.

Background

On November 18, 2020, the CalPERS Board approved the formal process to amend outdated risk adjustment regulatory language. At the time, the existing regulation limited CalPERS' ability to adopt its new risk mitigation strategy. The Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register (File Number Z-2020-1221-02), commencing a 45-day public comment period effective January 1, 2021, which formally closed on February 15, 2021.

CalPERS did not receive any requests for a formal hearing on the matter. After the initial public comment period, the CalPERS Board approved submission of the proposed changes to OAL at its March 17, 2021, Board Meeting. After submitting these changes, OAL provided feedback that it wanted CalPERS to make further changes to clarify the proposed regulation.

The Addendum to the Initial Statement of Reasons (Attachment 2) explains the current proposed changes along with further explanation of the necessity for these changes. The Revised Text of Proposed Regulatory Action by CalPERS (Attachment 1) reflects the proposed language changes.

Analysis

OAL's feedback regarding the initially proposed changes included suggestions to address necessity and clarity. To address necessity, OAL recommended that CalPERS describe the regulatory changes as substantive. CalPERS initially described these regulatory changes as non-substantive because existing regulations already provided the CalPERS Board the authority to risk adjust health plan premiums. While these changes do not impact CalPERS' authority to risk adjust, they do propose to amend regulatory requirements for health benefit plan risk adjustment processes. For this reason, CalPERS changed the description of the regulatory changes to substantive in nature.

OAL also suggested changes to address clarity. The initially proposed changes included an updated requirement for risk adjustment methodology selection that OAL determined to be too vague. To remedy this issue, CalPERS is reinserting language that CalPERS initially sought to delete, and the regulations will continue to require CalPERS to select methodologies that are similar to those used by the U.S. Department of Health and Human Services and other state and federal agencies.

Based on OAL feedback, CalPERS also decided to retain the notice requirement to health benefit plans. Under this requirement, CalPERS must provide its risk adjustment methodology to plans at least 90 days prior to the public announcement of the following year health benefit plan premiums.

The provision excluding certain plans from risk adjustment also required some clarification. Previously proposed changes included adding a provision that would permit the Board to exclude certain health benefit plans from having their premiums risk adjusted. Conceptually, CalPERS sought to have the flexibility to exclude Medicare plans as the federal Centers for Medicare and Medicaid Services (CMS) risk adjusts these plans. Current regulations exclude employee association health benefit plans from risk adjustment. For clarity, the updated proposed changes add Medicare plans to the types of plans that are not subject to risk adjustment.

And, finally, newly proposed language is included to clarify the provision that gives the Board the authority to phase-in a risk adjustment calculation. The language allows for a phase-in if the adjustment results in at least one individual plan premium increasing or decreasing by 10 percent. Although this situation should be rare in application, this option allows up to a 3-year phase-in term to help mitigate potentially excessive premium impacts that could result from implementing a new risk adjustment methodology. This rule is applicable only when implementing a new risk adjustment methodology.

The changes required CalPERS to hold an additional 15-day public comment period which concludes on September 3, 2021. The summary of the public comments will be included as an attachment to the agenda item following the conclusion of the public comment period. All of these changes to the text of the regulation are consistent with the risk mitigation strategy

adopted by the Board last November. In recommending them, CalPERS is not proposing changes to that policy.

Budget and Fiscal Impacts

There are no budget or fiscal impacts.

Benefits and Risks

Potential benefits associated with the adoption of this regulation package:

- Stabilize premiums and provide CalPERS the ability to offer a variety of plans to meet the needs of a diverse enrollee population.
- Maintain choice of plan types for employees by improving plan sustainability.
- Contain costs and encourage members to select the most cost-efficient and effective plans.
- Encourage CalPERS health plan providers to compete based on medical and administrative efficiency and quality of care rather than on their ability to select lower health risk.
- Allow cost differences across options to reflect differences in health plan efficiency.
- Delete obsolete regulatory provisions.

Potential risks associated with the adoption of this regulations package:

- Initial premium pricing changes may cause member disruption.

Attachments

Attachment 1 – Revised Text of Proposed Regulatory Action by CalPERS

Attachment 2 – Addendum to the Initial Statement of Reasons

Attachment 3 – Notice of Modifications to Text of Proposed Regulatory Action

Attachment 4 – Summary and Response to Public Comments

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