

## **INITIAL STATEMENT OF REASONS**

### **PROBLEM STATEMENT**

CalPERS benefit programs and administrative processes are subject to numerous regulatory requirements, several of which have been identified by team members as outdated, subject to confusion among stakeholders, or which otherwise represent an opportunity to realize efficiencies through their modification or clarification. In these cases, the recommended regulatory changes are appropriate for the continued administration and good governance of CalPERS.

CalPERS seeks to make changes to inaccurate code section references and other technical changes to bring the regulations into alignment with current law and practices. Currently, the Public Employees' Medical and Hospital Care Act (PEMHCA) regulations mention statutes and agencies that no longer exist; references antiquated terms and outdated provisions and practices; and has cross-references that are inaccurate.

### **BENEFITS**

Potential benefits associated with approval of this regulatory package are:

- Maintains consistency with business practice and statute
- Minimizes confusion among members, employers and CalPERS staff
- Addresses audit finding
- Streamlines and clarifies health program guidelines and operations for employers and members
- Eliminates outdated statutory requirements

### **PURPOSE**

The purpose of these proposed regulations is to make non-substantive technical amendments to California Code of Regulations (CCR) § 599.500 through § 599.516.

1. Section 599.500, subdivision (p): The purpose of this amendment is to re-letter two subdivisions cited in the definition of a "disabled child." This amendment is a non-substantive technical change.
2. Section 599.501, subdivision (b)(1)(B): The purpose of this amendment is to make non-substantive technical changes. In 1981, Government Code (GC) Section 18853.5 was renumbered to GC Section 19831 when the State of California created the Department of Personnel Administration. In addition, Harbors and Navigation Code Section 1705.5 was repealed in 1970. This amendment is necessary for accuracy by deleting outdated references.

3. Section 599.501, subdivision (b)(4): The purpose of this amendment is to delete outdated terminology that is no longer used to describe individuals with a disability. The term “handicapped” is no longer used to describe a person who is either blind, deaf, or disabled otherwise.
4. Section 599.501, subdivision (b)(8): The purpose of this amendment is to clarify that employees meeting the requirements of GC Section 22772(a)(2) are eligible for PEMHCA health benefits, in addition to the employees of a contracting agency who are members of the Public Employees’ Retirement System (PERS) or the State Teachers’ Retirement System (STRS). GC Section 22772(a)(2) indicates that an employee is someone employed by a contracting agency and participates in a publicly-funded retirement system provided by the contracting agency, or an officer or official of a contracting agency. In addition, GC Section 20485 specifies legislative intent that contracting agencies, in conjunction with recognized local employee organizations, develop alternative retirement plans that provide benefits under a defined contribution program. If a contracting agency makes a publicly-funded contribution to its employees’ retirement plans (e.g., a 401(k) or 457 plan), the agency and its employees are eligible for PEMHCA health benefits.
5. Section 599.501, subdivision (c): The purpose of this amendment is to delete a subdivision that gives the appearance that certain annuitants are ineligible for PEMHCA health benefits. Subdivision (c) states that an annuitant whose monthly retirement allowance is insufficient to pay the health plan premium withholdings under the lowest cost health plan is deemed ineligible for coverage. This provision was removed in 2004 with the development of the “Complementary Annuitant Premium” program under GC Section 22802. This program allows retired members to continue health coverage by paying to the Board the balance of the premium owed, plus administrative costs.
6. Section 599.501, subdivision (d): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
7. Section 599.501, subdivision (e): The purpose of this amendment is to delete an inaccurate subdivision that gives the appearance that certain annuitants are ineligible for PEMHCA health benefits. Current regulations continue to reflect, in subdivision (e), that annuitants who are not enrolled at the time of separation from employment are not eligible. GC Section 22831, added in 2004, specifies that an annuitant may, in addition to other reasons, enroll during any future open enrollment period, thus contradicting subdivision (e). In addition, GC Section 22838, added in 2013, permits an annuitant who reinstates from retirement, and upon his or her subsequent retirement, to elect to reenroll in a health benefit plan under subdivision (a) within 60 days after the second retirement or during

a future open enrollment period. Neither of these statutes condition eligibility for enrollment as being enrolled at the time of separation.

8. Section 599.501, subdivision (f): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivisions (c) and (e), it is necessary to re-letter the remaining subdivisions for accuracy.
9. Section 599.501, subdivision (g): The purpose of this amendment is to make a technical change. With the proposed deletion of subdivisions (c) and (e), it is necessary to re-letter the remaining subdivisions for accuracy.
10. Section 599.501, subdivision (g): The purpose of replacing the 60 day provision with a 90 day provision prior to the child's 26<sup>th</sup> birthday is to make the regulation align with existing enrollment practices, recent audit finding, and other state law. It also aligns the disabled child prior notification timeline with California Health and Safety Code section 1373(d)(2) and California Insurance Code section 10277 as health plans are required to send notification to the subscriber at least 90 days prior to the date the child attains the limiting age.
11. Section 599.501, subdivision (h): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivisions (c) and (e), it is necessary to re-letter the remaining subdivisions for accuracy.
12. Section 599.501, subdivision (i): The purpose of this amendment is to delete an outdated provision. Current regulations reflect, in subdivision (i), conditions under which a family member who is deemed ineligible for health coverage due to the underwriting standards of a health insurance carrier, is denied enrollment except during an open enrollment period. This provision is no longer valid. In 1998, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements became effective and changed employer enrollment practices and policies for employees, annuitants, and family members. These changes necessitated CalPERS' elimination of the Health Statement Enrollment under Section 599.502(c), and the certification practice under Section 599.502 (f)(1)(B) in which family members who were certified by the health plan that the enrollee was acceptable under the carrier's underwriting standards could enroll at any time. CalPERS replaced these requirements with the use of special enrollment and late enrollment period requirements specified in HIPAA. In addition, the Affordable Care Act (ACA), under Title 42, United States Code Sections 300gg-4 and 300gg-1, respectively, prohibits group health plans and issuers from discrimination based on health status (i.e., underwriting) and specifies that plans may only restrict enrollment to open enrollment periods, and special enrollment periods for qualifying events.
13. Section 599.502, subdivision (a): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of

subdivision 599.502(c) and 599.503(c), it is necessary to update all cross-references for accuracy.

14. Section 599.502, subdivision (c): The purpose of this amendment is to delete subdivision (c). This subdivision states that an eligible employee may enroll at any time he or she is employed without regard to the 60-day enrollment period described in subdivision (b). Subdivision (c) further states that an eligible annuitant may enroll, if at the time of enrollment, he or she presents a certification from the carrier of the plan that his or her enrollment is acceptable under the underwriting standards of the carrier. Neither of these provisions are accurate any longer.
15. Section 599.502, subdivision (d): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
16. Section 599.502, subdivision (e): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
17. Section 599.502, subdivision (f): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
18. Section 599.502, subdivision (f)(1)(D), (f)(9), and (f)(13): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions in Section 599.502 and update all cross-references to that section for accuracy.
19. Section 599.502, subdivision (g): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
20. Section 599.502, subdivision (h): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
21. Section 599.502, subdivision (i): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
22. Section 599.503, subdivision (c): The purpose of this amendment is to delete subdivision (c). The regulation refers to a certification of

- acceptability and uses the first day of the month following receipt of this certification as the effective date for enrollment, re-enrollment, or change of enrollment. In 1998, HIPAA requirements became effective and changed the enrollment practices and policies for employees, annuitants, and their family members. The HIPAA requirements changed CalPERS' practice of requiring a certification of acceptability by the health carrier prior to enrollment, if outside of the open enrollment period.
23. Section 599.503, subdivision (d): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
  24. Section 599.503, subdivision (e): The purpose of this amendment is to make non-substantive technical changes. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy. In addition, with the proposed deletion of 599.502 (c), it is necessary to correct the cross-reference in 599.503(e)(3).
  25. Section 599.503, subdivision (f): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
  26. Section 599.503, subdivision (g): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
  27. Section 599.503, subdivision (h): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
  28. Section 599.503, subdivision (i): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of subdivision (c), it is necessary to re-letter the remaining subdivisions for accuracy.
  29. Section 599.506, subdivision (c): The purpose of this amendment is to make two non-substantive technical changes. With the proposed deletion of Section 599.502 subdivision (c), it is necessary to re-letter the remaining subdivisions in Section 599.502 and update all cross-references to that section for accuracy.
  30. Section 599.516, subdivision (h): The purpose of this amendment is to make a non-substantive technical change. With the proposed deletion of Section 599.502 subdivision (c), it is necessary to re-letter the remaining subdivisions in Section 599.502 and update all cross-references to that section for accuracy.

## **NECESSITY**

All amendments are non-substantive, technical changes. Amendments are necessary to:

- Maintain accuracy by deleting references to code sections no longer in existence
- Conform language to current practices
- Improve clarity and concision
- Update and replace outdated terms
- Re-letter the remaining subdivisions and cross-references for accuracy and consistency

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

CalPERS relied upon the 2019 edition of the California Public Employees' Retirement Law (PERL) as a basis for these regulations. There are no other technical, theoretical, and empirical studies, reports, or documents or other material relied upon for these proposed regulations.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

As a result of the implementation of these proposed regulations, CalPERS does not anticipate an increase in workload or cost for the State. This does however improve service, streamline operations to gain efficiencies, improve productivity, and reduce complexity without an economic impact. In accordance with GC section 11346.3, subdivision (b), CalPERS has made the following assessments regarding the proposed regulation:

### **Creation or Elimination of Jobs within the State of California**

The proposed regulatory action will not create or eliminate jobs within California. The proposed regulations will make changes to inaccurate code section references, out of date and other technical changes to bring the regulations into alignment with current law and practices.

### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

The proposed regulatory action will not create new businesses or eliminate existing businesses within California. The proposed regulations will make changes to inaccurate code section references, out of date and other technical changes to bring the regulations into alignment with current law and practices.

### **Expansion of Businesses within the State of California**

The proposed regulatory action will not affect the expansion of businesses currently doing business within California. The proposed regulations will make changes to inaccurate code section references, out of date and other technical changes to bring the regulations into alignment with current law and practices.

**Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The proposed regulatory action will not affect worker safety or the state's environment. The proposed regulations will make changes to inaccurate code section references, out of date and other technical changes to bring the regulations into alignment with current law and practices.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendment will not have a significant statewide adverse economic impact directly affecting business, including the ability of businesses in California to compete with businesses in other states. The proposed regulations will only make changes to inaccurate code section references, out of date and other technical changes to bring the regulations into alignment with current law and practices.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

There are no reasonable alternatives to the regulation and subsequently no reasons for CalPERS rejecting those alternatives.

**DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

None