# Pension & Health Benefits Committee

**California Public Employees' Retirement System**

## Agenda Item 11b

May 15, 2012

**ITEM NAME:** Proposed Regulations: Options for Medicare Supplement Plans

**PROGRAM:** Health Benefits

**ITEM TYPE:** Action

**RECOMMENDATION**

Approve recommendation to adopt the attached proposed emergency regulations to provide the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) flexibility to offer Medicare supplemental health plans from the same or different carriers that provide basic coverage.

**EXECUTIVE SUMMARY**

Staff recommends the Board adopt the attached proposed emergency regulations to provide the Board flexibility to determine benefit options for CalPERS Medicare eligible retirees to improve outcomes and reduce costs. This change will provide flexibility to help CalPERS reduce premium costs by leveraging opportunities to be part of a larger pool of enrollees and by reducing administrative costs associated with maintaining a supplemental equivalent for each basic plan option. To demonstrate the potential for savings, a pilot project for out-of-state retirees is being considered for 2013 as a proof of concept. At full implementation, this solution is estimated to save anywhere from $18 million to $70 million ($9 million to $40 million to the State General Fund) in employer contributions for State members per year. The proposed regulatory amendments would allow the Board to implement optimal programs for Medicare eligible members and is consistent with the Board's statutory authority.

**BACKGROUND**

The Health Benefits Purchasing Review (HBPR) project was undertaken in March 2011, to develop three to five year strategies and initiatives to ensure CalPERS can maintain program sustainability to provide quality affordable health care. At the January 24, 2012, Board Offsite, and again at the March Pension and Health Benefits Committee Meeting, staff presented, and the Board supported three strategic bundles and initiatives related to influencing health care delivery, improving health outcomes, and delivering sustainable programs. Flexibility in providing Medicare supplemental plan options that reduce costs supports the initiatives related to encouraging competition through procurements to deliver sustainable programs.

**ANALYSIS**

Flexibility in the administration of the Medicare plans would allow the Board to offer Medicare eligible retirees more diverse plan options that best meet their needs. It would also improve outcomes and reduce administrative costs by allowing retirees to be part of a larger pool of enrollees. Presently, the Public Employees' Medical and Hospital Care Act (PEMHCA) regulations imply that CalPERS contracted health plans must provide both a basic and supplemental plan by carrier. This is inconsistent with statutory intent pursuant to Government Code (GC) § 22860, which provides flexibility to the Board in implementing programs for Medicare members.

Currently, PEMHCA regulations restrict the Board's ability to provide Medicare plan options outside those provided by carriers under the basic plans. The Board is considering whether to implement this concept on a limited pilot basis in 2013. To demonstrate the potential for savings, a pilot demonstration project for out-of-state retirees as a proof of concept in 2013 is being considered. At full implementation, this solution is estimated to save anywhere from $18 million to $70 million ($9 million to $40 million in General Fund) in employer contributions for State members per year. This request is an emergency because without this regulatory change, CalPERS would be precluded from implementing this change.

Current State Statutes

GC § 22796, subdivision (a)(2)**,** states that the Board, pursuant to the Administrative Procedure Act, shall adopt all necessary rules and regulations to carry out the provisions of PEMHCA.

GC § 22850, subdivision (a), permits the Board authority to enter into contracts with carriers offering health benefit plans or with entities offering services relating to the administration of health benefit plans. GC § 22793 states that the Board must, in conformity with PEMHCA, approve health benefit plans and may contract with carriers offering health benefit plans. GC § 22850.5 (enacted in 2011) requires the Board, in carrying out its responsibilities pursuant to GC § 22850, to implement measures to achieve ongoing cost savings beginning in the 2012-13 fiscal year.

GC § 22860 provides broad authority for the Board to integrate benefits provided by a health benefits plan with the benefits provided by federal or state plans for health care services for the aged in which there is federal or state financial participation. This section also provides the Board authority to adopt rules and regulations necessary for implementation, including enrolling employees and annuitants eligible for benefits provided by a federal or state plan for the aged in separate plans.

GC § 22844, subdivision (a), originally enacted in 1984 (as former GC § 22819), also provides the Board authority to coordinate CalPERS health benefits with the federal Medicare program to achieve both member and employer savings. This statute prohibits employees, annuitants, and family members "who become" eligible to enroll

in Parts A and B of Medicare from enrolling in a basic health plan. Furthermore, this statute permits employees, annuitants, and family members enrolled in Parts A and B of Medicare to enroll in a Medicare health plan. Moreover, GC § 22864, subdivision (a), specifies that premiums charged for enrollment in a health plan must reasonably reflect the cost of the benefits provided.

Current State Regulations

The California Code of Regulations (CCR) Title 2, § 599.501, subdivision (a), permits eligible employees, annuitants, or family members not enrolled in both Parts A and B of Medicare, to enroll themselves or their dependents in a Board contracted basic plan. However, employees, annuitants, or family members enrolled in Parts A and B of Medicare must enroll in a Medicare supplement plan provided by the same carrier.

Proposed State Regulations

The proposed regulations in Attachment 1 would amend Title 2 CCR § 599.500, subdivision (s), § 599.500, subdivision (t), § 599.500, subdivision (u), § 599.500, subdivision (v), § 599.501, subdivision (a), § 599.502, subdivisions (f)(6)(E), and (g)(4). The proposed regulations would also add to CCR § 599.500, subdivision (w), § 599.502, subdivision (g)(5), and § 599.508, subdivision (a)(3). The proposed regulatory amendments would provide the Board flexibility to offer one or more Medicare supplemental plans by the same or different carriers that provide basic coverage. This change is consistent with statutory intent per GC § 22860, and would allow the Board to offer one or more supplemental plans regardless of carrier(s) even under combination family enrollments.

Amendment to Title 2 CCR § 599.500, Subdivision (s)

CCR § 599.500, subdivision (s) defines “health benefits plan” or “plan” in conformance with GC § 22793, § 22850 and § 22853. The amendment to this subdivision would clarify that the definition of a “health benefit(s) plan” is the same as a health benefit plan and it aligns this subdivision with GC § 22777. In addition, this subdivision clarifies that a health benefit(s) plan includes basic or supplemental plans.

Amendment to Title 2 CCR § 599.500, Subdivision (t)

Staff recommends amending CCR § 599.500, subdivision (t) to define a “basic plan” as a health plan providing benefits for employees, annuitants, and family members who are not enrolled in a Medicare supplemental plan.

Amendment to Title 2 CCR § 599.500, Subdivisions (t)-(v)

These subdivisions require technical amendments to renumber current § 599.500, subdivisions (t) through (v) to § 599.500, subdivisions (u) through (w), respectively. The content remains unchanged.

Amendment to Title 2 CCR § 599.501, Subdivision (a)
CCR §, 599.501, subdivision (a) currently requires employees, annuitants, or family members enrolled in Parts A and B of Medicare to enroll in a Medicare supplemental plan provided by the same carrier as family members enrolled in a basic plan. Amendments to this CCR subdivision remove the requirement that the Medicare supplemental plans be provided by the same carrier providing coverage for family members enrolled in a basic plan. In addition, CCR § 599.501, subdivision (a) is reworded for clarification.

Amendment to Title 2 CCR § 599.502, Subdivisions (f)(6)(E)
CCR § 599.502, subdivision (f)(6)(E) allows an employee or annuitant enrolled in a supplemental plan who moves out of the United States to change their enrollment to a basic plan provided by the carrier of a supplemental plan. The amendment would allow an employee or annuitant who is enrolled in a supplemental plan that moves out of the United States to change their enrollment to a basic plan with any carrier that provides coverage outside the United States.

Amendment to Title 2 CCR § 599.502, Subdivision (g)(4)
CCR § 599.502, subdivision (g)(4) states that employees and annuitants may not enroll in more than one plan and defines “one plan” as a combination of basic or supplemental plans. This subdivision is amended by adding quotation marks, which clarify that “one plan” means basic or supplemental coverage.

Addition of Proposed Title 2 CCR § 599.502, Subdivision (g)(5)
CCR § 599.502, subdivision (g)(5) is created as a technical amendment by separating a portion of current CCR § 599.502, subdivision (g)(4). This portion of the current CCR § 599.502, subdivision (g)(4) states that when an employee or annuitant submits more than one enrollment form, the latter form is used for the enrollment. This technical amendment would separate this enrollment requirement from the definition of one plan.

Amendment to Title 2 CCR § 599.508, Subdivisions (a)(3)
CCR § 599.508, subdivision (a)(3) requires health benefits plans to provide coverage for enrolled employees, annuitants, and family members in order to be approved or adopted by the Board. Staff proposes amending this subdivision to require health plans to enroll employees, annuitants, and covered family members only in plans in which they are eligible to enroll.

**BENEFITS/RISKS**
Currently, CalPERS achieves member and employer savings by moving members from a basic plan to a Medicare supplement plan. The initiatives around encouraging competition also pertain to provision of benefits under supplemental plans. If CalPERS is provided additional flexibility to offer health plans under more flexible plan designs, it can:

- Seek administrators with a larger pool that can leverage their size to get better prices;
- Reduce administrative costs associated with offering many small plans with low enrollment due to carrier requirements;
- Extend the ability to offer more innovative and differentiated plan offerings that best meet Medicare enrollees' needs; and
- Provide Medicare plan options to out-of-state members at a lower cost.

Potential negative impacts to providing more flexible plan designs may include:

- Impacts to My|CalPERS may include system changes required to accommodate different plan options.

**ATTACHMENTS**
Options for Medicare Supplement Plans Draft Regulations

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