



## **Agenda Item 9b**

February 20, 2013

**ITEM NAME:** Health Premium Risk Adjustment – Adoption of Regulations

**PROGRAM:** Health Benefits

**ITEM TYPE:** Action

### **RECOMMENDATION**

Approve staff's recommendation to adopt proposed regulations permitting the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) to implement risk adjustment procedures in order to adjust health plan payments in relation to risk adjustment and implement risk adjustment for 2014 rate negotiations.

### **EXECUTIVE SUMMARY**

Staff is recommending the CalPERS Board adopt the proposed regulations authorizing the Board to implement risk adjustment procedures across plans. Risk adjustment is an actuarial tool used to calibrate payments to health plans based on the relative health of members. Risk adjustment has proven to be effective in many programs including Medicare Advantage and Medicare prescription drug programs, Medicaid programs, University of California, health plans, and other payers.

CalPERS research indicates that investing in more active management of chronic conditions will improve member health. A plan with effective programs to manage high-risk enrollees would attract more ailing members. Implementing risk adjustment would help CalPERS compensate health care plans more fairly for effective programs that treat these members.

### **STRATEGIC PLAN**

This item supports CalPERS Strategic Goal A: Improve long-term health benefit sustainability by implementing new approaches and expanding efforts already proven to reduce health care costs and improve health outcomes.

### **BACKGROUND**

In March 2012, staff obtained Board approval to develop legislative options for two strategic bundles to improve health outcomes and deliver sustainable programs. Staff worked with Assembly Member Furutani, following the Board's direction, and Assembly Bill 2142, Chapter 445, Statutes of 2012 was signed into law on September 22, 2012. This bill amended Government Code (GC) §22850 by adding a new paragraph (3) to subdivision (f). This provision grants the Board the authority

to implement and administer risk adjustment procedures consistent with GC § 22864, which grants the Board authority, at its sole discretion, to develop procedures for risk adjustment of premiums across health care plans.

CalPERS staff submitted the Board-approved regulations package to the Office of Administrative Law (OAL) on November 6, 2012. A Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register 2012, No. Z-2012-1106-03 on November 16, 2012. CalPERS also posted the regulations package on its website on November 16, 2012.

At the request of the OAL, minor technical changes were made to the original regulation text posted to the CalPERS website on November 16, 2012. The changes include the numbering of California Code of Regulations (CCR) §599.508 and the addition of the authority and reference citations for CCR §599.500 and §599.508. The changes also included a clarification that CalPERS would be measuring a plan's geographic and risk scores of employees, annuitants, and family members for re-calculation purposes. The revised version of the regulation text was not re-posted on the CalPERS website because the changes were nonsubstantive. Between November 20, 2012, and November 27, 2012, the OAL also requested minor technical changes to the Initial Statement of Reasons (ISOR) to further clarify the necessity of the proposed regulations, and a Revised ISOR was submitted to the OAL on November 27, 2012.

#### Public Comment Period

The 45-day written comment period for the proposed regulatory action began on November 26, 2012, and ended on December 31, 2012. CalPERS received two written comments: one from the California Professional Firefighters and one from the California School Employees Association (CSEA). The California Professional Firefighters requested clarification of the definitions and components of Risk Adjustment, recommended instructive analyses for the Board, and suggested public dialogue about impacts. The CSEA expressed concerns of how risk adjustment will be implemented and whether or not it will achieve its intended results. The CSEA also requested that the proposed regulations add an annual reporting process with appropriate analysis and assessments. The comments received from both the California Professional Firefighters and the CSEA did not result in changes to the proposed regulations. A Revised ISOR was added to the rulemaking file on January 9, 2013. The 15-day written comment period for the re-notice began on January 9, 2013, and ended on January 23, 2013. CalPERS received one written comment from the California Correctional Peace Officers Association (CCPOA). The CCPOA inquired if the proposed regulation would apply to association plans. CalPERS staff amended the proposed regulations to clarify that the proposed regulations shall not apply to a Board-approved employee association health benefit plan. The second 15-day written comment period for the Notice of Modifications to Text of Proposed

Regulation began on January 29, 2013, and ended on February 13, 2013. The notice was limited to written comments regarding the modifications to the text.

#### Public Hearing

Pursuant to GC § 11346.8, subdivision (a), CalPERS provided notice in the regulations package that any interested person could submit a written request for a public hearing, to the CalPERS Regulations Coordinator, no later than 15 days prior to the close of the written comment period, or by December 31, 2012. CalPERS did not receive any requests for a public hearing; therefore, one was not scheduled.

#### Next Steps

Should the Board adopt the proposed regulations, the CalPERS Regulations Coordinator will forward the final rulemaking file to OAL for review and approval. If OAL approves the proposed regulations, they will be forwarded to the Secretary of State (SOS) for filing and publication in the CCR. Traditionally, the regulations become effective 30 calendar days after filing with SOS. CalPERS staff, however, plan to request that the regulations become effective immediately upon filing with the SOS.

### **BENEFITS/RISKS**

Potential benefits associated with the adoption of this regulations package:

- Stabilize premiums and provide CalPERS the ability to offer a variety of plans to meet the needs of a diverse population.
- Maintain choice of plan types for employees by improving plan sustainability.
- Contain costs as it encourages members to select the most cost-efficient and effective plans.
- Encourage CalPERS health plan providers to compete on the basis of 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 plan design, networks, and health plan efficiency.

Potential risks associated with the adoption of this regulations package:

- Require new workload on staff to implement risk adjustment.
- Change in plan pricing may cause initial confusion for members.
- Change in plan pricing could have an unanticipated impact on employer contributions depending on bargaining agreements.

**ATTACHMENT**

Risk Adjustment for Healthcare Premiums Proposed Regulations

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DOUG P. McKEEVER, Chief  
Health Policy Research Division

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ANN BOYNTON  
Deputy Executive Officer  
Benefit Programs Policy and Planning