



Agenda Item 6

August 19, 2014

ITEM NAME: Final Proposed Regulations: Coverage – Member Health Appeals Process

PROGRAM: Health Benefits

ITEM TYPE: Action

RECOMMENDATION

Approve staff's recommendation to adopt proposed regulations to clarify the current California Public Employees' Retirement System (CalPERS) member appeals process when they are dissatisfied with any action or failure to act in connection with their or a family member's health coverage.

EXECUTIVE SUMMARY

Staff recommends the CalPERS Board of Administration (Board) adopt the proposed regulations that clarify the current CalPERS member appeals process for health coverage. Specifically, these regulations will require members to exhaust all available appeals processes prior to appealing to the Board. The Public Employees' Medical and Hospital Care Act (PEMHCA) allows CalPERS members who are dissatisfied with any action or failure to act in connection with their health benefits coverage or that of a family member, the right to appeal to the Board and an opportunity for a fair hearing. Many of the disputes that members have with their coverage revolve around questions of medical necessity. By exhausting all available appeals processes prior to appealing to the Board, members may receive the outcome they are seeking thus obviating the need to appeal to the Board.

STRATEGIC PLAN

The adoption of the proposed regulations supports CalPERS Strategic Goal C: Engage in State and national policy development to enhance the long-term sustainability and effectiveness of our programs.

BACKGROUND

In April 2014, staff obtained Board approval to proceed with draft regulations to clarify the current CalPERS member appeals process for health coverage. The regulations require members to exhaust all available appeals processes prior to appealing to the Board. Currently, PEMHCA allows CalPERS members, who are dissatisfied with any action or failure to act in connection with their health benefits coverage or that of a family member, the right to appeal to the Board and an opportunity for a fair hearing. Prior to appealing to the Board, PEMHCA does not require CalPERS members to exhaust any appeals processes provided by the health plans or any state agency that

may regulate the health plan in which members and their dependents are enrolled. The health plans' Evidence of Coverage (EOCs), however, do require members to participate and exhaust the plans' internal appeal process before appealing to the Board. The EOCs further apprise members of their appeal rights, including the right to appeal to the Board, but there is no requirement for CalPERS members to exhaust any other available appeals processes before appealing to the Board. In addition, depending on the plan, the EOCs may inform members that they also have the right to submit the dispute to binding arbitration or file a civil action in a court of competent jurisdiction. If members select binding arbitration or file a civil action in a court of competent jurisdiction, the EOCs inform members that they are precluded from appealing to the Board.

The current process used by CalPERS is challenging for the unit charged with processing and oversight of health appeals, and places the Board's fiduciary decision at risk of being overturned by an Independent Review Organization (IRO) or State agency. If members were required to exhaust these processes before appealing to the Board, it would greatly improve the management of these appeals. The proposed regulations have been through the required public comment period and there were no comments.

CalPERS staff submitted the Board-approved regulations package to the Office of Administrative Law (OAL) on April 29, 2014. A Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register 2014, Notice File Number Z2014-0420-01, on May 9, 2014. CalPERS also posted the regulations package on its website on May 9, 2014.

Public Comment Period

The 45-day written comment period for the proposed regulatory action began on May 9, 2014, and ended at 5:00 p.m. on June 23, 2014. CalPERS did not receive any written comments.

Public Hearing

Pursuant to Government Code § 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 Regulation Coordinator, no later than 15 days prior to the close of the written comment period, or by June 8, 2014. 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 Regulation Coordinator will forward the final rulemaking file to OAL for review and approval. If OAL approves the regulations, the rulemaking file will be forwarded to the Secretary of State (SOS) for filing and publication in the California Code of Regulations. Staff

will request that the regulations become effective immediately upon filing with the SOS.

BUDGET AND FISCAL IMPACTS

The Member Health Appeals Process regulations will standardize staff procedures across plans and reduce administrative complexity. We do not forecast a reduction of staffing as a result of this simplification.

BENEFITS

The potential benefits of the proposed regulations are:

- A standardized appeals process for all CalPERS members.
- The elimination of possible confusion regarding steps to follow within the existing process.
- Affirmation of the CalPERS Board's fiduciary authority to render the final decision regarding health coverage.

RISKS

The potential risks of the proposed regulations if not adopted by the Board are:

- Continued member confusion regarding the health appeals process.
- The CalPERS Board's fiduciary authority regarding health plan appeals will remain at risk of being overturned by an IRO or other state agency.

ATTACHMENT

Coverage: Member Health Appeals Process Regulations

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