

## NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (the Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

### I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend section 599.518, "Coverage: Member Health Appeals Process" under Article 1 of subchapter 3, Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR). By proposing this amended regulation in this Article, CalPERS seeks to remove ambiguity from the current 30-day timeframe for a member to request an Administrative Review (AR), allow an additional 30 days to request an AR upon showing of good cause, make similar subdivisions more consistent and complementary and improve member service.

### II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **June 28, 2019** and closing on **August 12, 2019**. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; E-mail at [Regulation\\_coordinator@calpers.ca.gov](mailto:Regulation_coordinator@calpers.ca.gov) or mailed to the following address:

Anthony Martin, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702  
Sacramento, CA 94229-2702  
Phone: (916) 795-9347

### III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

#### **IV. ACCESS TO HEARING ROOM**

The hearing room will be accessible to persons with mobility impairment, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

#### **V. AUTHORITY AND REFERENCE**

The Board has the authority to take regulatory action under Government Code (G.C.) sections 22794 and 22796.

Reference citation: G.C. section 22796 and 22848

#### **VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The California Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code (GC) § 599.518, states a request for AR must be filed with the unit charged with the processing and oversight of health appeals within thirty (30) days of the date the member receives a decision from an appeals process. Members requesting an administrative hearing (AH) must submit the request within 30 days of the date of the CalPERS AR. Upon satisfactory showing of good cause, CalPERS may grant additional time to file a request for an AH, not to exceed 30 days.

Currently, the regulation for an AR does not provide a clear definitive point in time to begin the 30-day timeframe. The AH regulation's process and the health plans' Evidence of Coverages state the 30-day timeframe starts from the date of the determination letters. The current process is challenging for the unit charged with processing and oversight of health appeals. CalPERS must contact the member to determine when they received the health plan's denial. This is not efficient for CalPERS nor the member. The current AR regulation does not permit CalPERS to grant additional time to request an AR if the member could not submit a timely request due to an extenuating circumstance. The processes within the CalPERS Board (e.g. ARs and AHs) are not consistent. There are circumstances outside the member's control that prevent the request to CalPERS within the timeframe. In those cases, CalPERS cannot accept the request for an AR due to the strict 30-day filing requirement under the current regulation.

This amendment would remove ambiguity from the current 30- day timeframe for a member to request an AR, allow an additional 30 days to request an AR upon showing of good cause, and make similar subdivisions more consistent and complementary and improve member service. This improves CalPERS' processes by creating flexibility and enhances service to members.

CalPERS has evaluated and determined that the proposed regulations are not inconsistent, nor incompatible with existing State regulations. There are no other comparable existing State regulations pursuant to GC § 11346.5, subdivision (a), paragraphs (3)(D).

There is no existing, comparable federal regulation or statute.

#### ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The proposed regulatory action will remove ambiguity from the current 30- day timeframe for a member to request an AR and allow an additional 30 days to request an AR upon showing of good cause. This will also make similar subdivisions more consistent and complementary and improve member service when accepting members' AR requests.

#### EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

CalPERS has evaluated and determined that the proposed regulation is not inconsistent, nor incompatible with existing State regulations. There are no other comparable existing State regulations pursuant to GC Section 11346.5, subdivision (a), paragraphs (3)(D).

#### PRENOTICE CONSULTATION WITH THE PUBLIC

The proposed amendment contains technical changes needed to clarify the language in the Public Employees' Medical and Hospital Care Act (PEMHCA) regarding the Member Health Appeals Process. Therefore, no pre-notice consultation was done with the public.

#### **VII. EFFECT ON SMALL BUSINESS**

The proposed regulatory action does not affect small business because it applies only to CalPERS members.

#### **VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose any mandates on local agencies and school districts.

- B. COSTS OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action will not result in any additional costs or savings to any State agency.
- C. COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action will not result in any costs on any local agency or school district.
- D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose any nondiscretionary costs or savings on local agencies.
- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action will not result in additional costs or savings in federal funding to the State.
- F. SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT: The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”
- H. RESULTS OF THE ECONOMIC IMPACT ANALYSIS: The proposed regulatory action: (1) will not create or eliminate jobs within California; (2) will not create new businesses or eliminate existing businesses within California; (3) will not affect the expansion of businesses currently doing business within California; and (4) will not benefit the health and welfare of California residents (except to the extent that they are CalPERS members), worker safety, or the State’s environment.

The proposed amended regulation will provide an opportunity for CalPERS to accept AR requests upon showing of good cause and, the AR and AH processes will be clearer and consistent for the more than 1.4 million active and retired state, local government, and school employees, and their family members.

- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect on housing costs.
- J. COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630: There are no costs to any local agency or school

district, which must be reimbursed in accordance with G.C. sections 17500 through 17630.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with G.C. section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned public hearing or during the written comment period.

## **IX. CONTACT PERSON**

Please direct inquiries concerning the proposed regulatory action to:

Anthony Martin, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702 Sacramento,  
CA 94229-2702  
Phone: (916) 795-9347

The backup contact for these inquiries is:

Hoang Tran, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942702 Sacramento,  
CA 94229-2702  
Phone: (916) 795-2595

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reason, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Anthony Martin, Regulation Coordinator, at the address provided.

## **X. AVAILABILITY OF THE INITIAL STATEMENT OF REASON AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The entire rulemaking file is available for public inspection by contacting the

Regulation Coordinator at the address shown in Section II. To date, the file consists of this notice, the Initial Statement of Reasons (ISOR) and the proposed text of the regulations. A copy of the proposed text and the ISOR is available at no charge by written request to the CalPERS Regulation Coordinator, at the address and phone number listed in Section II. The Final Statement of Reasons can be obtained once it has been prepared.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at [www.calpers.ca.gov](http://www.calpers.ca.gov).

#### **XI. AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The Board may, on its own motion or at the recommendation of any interested person, amend the proposed text of the regulation after the public comment period ends.

If the Board amends its regulatory action, a comparison of the original proposed text and the amendments will be prepared for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulations. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed of the results of this regulatory action.

#### **XII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the address shown in Section II.