

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
NOTICE OF PROPOSED RULEMAKING

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

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to add § 599.518 to Title 2 of the California Code of Regulations (CCR), entitled "Coverage - Appeals." The proposed regulations clarify the health coverage appeals process, specifically requiring members to exhaust all available appeal processes prior to appealing to the CalPERS Board pursuant to Government Code (GC) § 22848.

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 May 9, 2014 and closing at 5:00 p.m. June 23, 2014. 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; via 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) 795-3038

III. PUBLIC HEARING

Pursuant to GC § 11346.8, the Board has not scheduled a public hearing on this matter. However, if any interested person, or his or her duly authorized representative, submits in writing to the CalPERS Regulation Coordinator, a request for a public hearing at least 15 days prior to the close of the written comment period, June 8, 2014, a public hearing shall be scheduled before the CalPERS Pension & Health Benefits Committee. 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 impairments, 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 authority to take regulatory action under GC § 22794 and GC § 22796.

Reference citation: GC § 22848

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

The Public Employees' Medical and Hospital Care Act (PEMHCA) allows California Public Employees' Retirement System (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 CalPERS Board of Administration (Board) and an opportunity for a fair hearing. PEMHCA, however, does not require CalPERS members to exhaust any appeal processes provided by the health plans or any state agency that may regulate the health plan in which members and their dependents are enrolled. These appeal processes include the Patient Protection Affordable Care Act's (ACA) External Review (ER) process for members enrolled in CalPERS Exclusive Provider Organization (EPO) and Preferred Provider Organization (PPO) health plans, the Department of Managed Health Care's (DMHC) independent medical review (IMR) process for members enrolled in CalPERS Health Maintenance Organization (HMO) health plans, and DMHC's complaint process for members enrolled in CalPERS HMO health plans for matters not eligible for an IMR.

Since CalPERS members are not required to exhaust the aforementioned appeals processes, it is challenging for the CalPERS unit charged with managing appeals. One of the challenges the unit encounters is identifying the various entities that have either reviewed or issued decisions regarding coverage. The regulations would provide a standardized appeals process for CalPERS members, eliminate confusion within the appeals process, and reduce the risk that the CalPERS Board's decision(s) will be overturned by an independent review organization (IRO) or another state agency; therefore, ensuring that the final determination regarding health coverage remains with the CalPERS Board.

This rulemaking action clarifies that all available appeal options must be exhausted prior to appealing to the CalPERS Board pursuant to GC § 22848, thereby improving the management of appeals to the CalPERS Board and affirming its fiduciary authority in rendering the final decision regarding health coverage.

### Consistency Evaluation

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).

### Anticipated Benefits

CalPERS believes that the adoption of this regulation will benefit the health and welfare of California residents by ensuring program integrity and sustainability of the CalPERS health benefits programs which covers more than 1.3 million active and retired state, local government, and school employees, and their family members. There is no existing, comparable federal regulation or statute.

## PRENOTICE CONSULTATION WITH THE PUBLIC

The proposed regulations contain 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 the California Public Employees' Retirement Law.

## VIII. DISCLOSURES REGARDING THE PROPOSED RULEMAKING ACTION

*The Board has made the following initial determinations:*

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: This regulation package will not impose any mandates on local agencies and school districts.
- B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action will not result in any cost or savings to any State agency.
- C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impose 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. COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE: There are no costs or savings in federal funding to the state.
- F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of businesses in California 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 will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) affect worker safety or the state's environment.

CalPERS believes the adoption of this regulation benefits the health and welfare of California residents by ensuring program integrity and sustainability of the CalPERS health benefits programs which covers more than 1.3 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. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC § 17500 THROUGH § 17630: There are no costs to any local agency or school district which must be reimbursed in accordance with GC § 17500 through § 17630.

## IX. CONSIDERATION OF ALTERNATIVES

In accordance with GC § 113466.5 (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 for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at a requested hearing or during the written comment period.

X. CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Maria Recendez, BPPP Legislative Coordinator  
California Public Employees' Retirement System  
P.O. Box 720724  
Sacramento, CA 94229-0724  
Telephone: (916) 795-9576  
Fax: (916) 795-4680  
E-mail: [Maria.Recendez@calpers.ca.gov](mailto:Maria.Recendez@calpers.ca.gov)

The backup contact person for these inquiries is:

Anita Jones, Analyst  
California Public Employees' Retirement System  
P.O. Box 720724  
Sacramento, CA 94229-0724  
Telephone: (916) 795-0997  
E-mail: [Anita.Jones@calpers.ca.gov](mailto:Anita.Jones@calpers.ca.gov)

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Maria Recendez at the above address.

XI. AVAILABILITY OF STATEMENT OF REASONS, 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 text of the proposed 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).

XII. 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 regulations 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 regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept notified of the results of the regulatory action.

### XIII. AVAILABILILTY 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.