

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

Proposed Amendment to amend Article 1 to Subchapter 3 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR)

Minimum Standards for Health Benefit Plans: Risk Adjustment

This Addendum to the Initial Statement of Reasons explains the purpose of the changes to the proposed regulations that are being made available after the 45-day comment period conducted from January 1, 2021 through February 15, 2021, and during the 15-day comment period conducted from August 19, 2021 to September 3, 2021.

PURPOSE

The initial proposed regulation changed a subset of procedures CalPERS utilizes to risk adjust health benefit plan premiums. Under current regulations, after CalPERS establishes a risk adjusted health benefit plan premium, it is required to use a back-end reconciliation process where health benefit plan premium dollars are transferred among health benefit plans to account for any changes in the health risk scores of individuals enrolled in the plans over a health benefit plan year. Government Code Section 22864 gives CalPERS the authority to risk adjust health benefit plan premiums. Government Code Section 22850 further requires that risk adjustment procedures implemented by the CalPERS Board must be based on rules and regulations adopted by the Board. The initial proposed regulation:

- Deleted the back-end premium reconciliation process;
- Amended the risk adjustment definition;
- Required the risk assessment method selected by CalPERS to be consistent with industry best practices;
- Deleted a requirement that CalPERS provide health benefit plans its risk adjustment methodology at least 90 days prior to the public announcement of the following year health benefit plan premiums.
- Permitted the CalPERS Board to exclude certain health benefit plans from having their premiums risk adjusted;
- Permitted the CalPERS Board to phase-in a risk adjustment calculation to all or specific health benefit plans over a period as determined by the Board; and
- Deleted an obsolete monetary reserve requirement for health benefit plans.

The revised proposed regulation makes the following changes:

- Deletes the requirement that the risk assessment method selected by CalPERS be consistent with industry best practices and reinserts the original regulatory language that the risk adjustment methodology selected by CalPERS be consistent with industry best practices and similar to risk adjustment methodologies used by the U.S. Department of Health and Human Services and other state and federal agencies.
- Reinserts the original regulatory language requiring CalPERS to provide health benefit plans its risk adjustment methodology at least 90 days prior to the public announcement of the following year health benefit plan premiums.
- Deletes the provision permitting the Board to exclude certain health benefit plans from having their premiums risk adjusted;

- Clarifies and adds criteria to the provision permitting the Board to phase-in a risk adjustment calculation to all or specific health benefit plans over a period as determined by the Board; and
- Specifies that risk adjustment does not apply to CalPERS Medicare health benefit plans.

CLARIFICATION

When CalPERS initially proposed these regulatory amendments, it thought they were non-substantive, since existing law already permits the CalPERS Board to implement a risk adjustment program. These proposed changes do not impact CalPERS authority to risk adjust but they do, however, propose to amend regulatory requirements for the processes used for health benefit plan risk adjustment. For this reason, the proposed regulatory changes are substantive in nature.

NECESSITY

Section 599.500, subdivision (x):

Amending this subdivision was necessary to update the definition of risk adjustment to reflect current actuarial science.

Section 599.508, subdivision (a)(8):

Amending this paragraph initially was necessary to change a requirement for a health benefits plan to participate in risk adjustment procedures as outlined in subparagraphs (A) – (E) and instead participate in a risk adjustment methodology approved by CalPERS. This change was necessary because a methodology provides CalPERS the ability to incorporate evolving industry best practices to assess health risk, whereas a procedure is static. As part of this addendum, the amendment to this paragraph is necessary since it would be more logical to add the criteria for selecting a risk adjustment methodology along with the requirement that health benefit plans must participate in the risk adjustment methodology approved by CalPERS.

Section 599.508, subdivision (a)(8)(A):

Amending this subparagraph initially was necessary to delete a requirement that CalPERS selected risk adjustment methodology must be similar to the one used by the U.S. Department of Health and Human Services and other state and federal agencies. This subparagraph also deleted a notice requirement to health benefit plans. As part of this addendum, the amendment to this subparagraph is necessary because CalPERS has determined that the deleted criteria for selecting a risk adjustment methodology is essential but moved this requirement to paragraph (8). The term “risk assessment method” has been changed to “risk adjustment methodology” in paragraph (8) for consistency. CalPERS has also decided to retain the notice requirement to health benefit plans. CalPERS originally deleted this provision because health plans are notified of a risk adjustment methodology, which does not include a back-end premium reconciliation process, more than 90 days prior to the Board approving the following year’s health benefit plan premiums. Upon further consideration, CalPERS thinks this requirement should be retained for clarity.

Section 599.508, subdivision (a)(8)(B):

Amending this subparagraph initially was necessary to delete part of the procedures requiring CalPERS to undergo a back-end reconciliation process to transfer premium dollars among health benefit plans to account for any changes in the health risk scores of individuals enrolled in the plans over a health benefit plan year. This is an outdated process that does not permit the

CalPERS Board to effectively mitigate health risk in setting CalPERS health benefit plan premiums. Furthermore, a new provision was added to this paragraph to permit the CalPERS Board to exclude certain health benefit plans from having their premiums risk adjusted. As part of this addendum, the amendment to this paragraph is necessary to delete the initially proposed language because CalPERS has determined that it will exclude only Medicare health benefit plans from risk adjustment because the federal Centers for Medicare and Medicaid Services (CMS) risk adjusts these plans. This exclusion has been expressly stated in subparagraph (D). Therefore, the more general exclusion that was initially proposed is not necessary.

Section 599.508, subdivision (a)(8)(C):

Amending this subparagraph initially was necessary to delete part of the procedures requiring CalPERS to undergo a back-end reconciliation process to transfer premium dollars among health benefit plans to account for any changes in the health risk scores of individuals enrolled in the plans over a health benefit plan year. This is an outdated process that does not permit the CalPERS Board to effectively mitigate health risk in setting CalPERS health benefit plan premiums. Furthermore, a new provision was added to this paragraph to permit the CalPERS Board to phase-in a risk adjustment calculation to all or specific health benefit plans over a period as determined by the Board. As part of this addendum, the amendment to this paragraph is necessary to specify the number of years the CalPERS Board can phase-in health benefit plan premium adjustments when it implements a risk adjustment methodology. Three years was chosen to minimize the risk that potential future premium increases could be combined with a phase-in, which could create financial challenges for CalPERS members and their employers to absorb these increases. The amendment also specifies the circumstance under which the CalPERS Board can phase-in premium adjustments. CalPERS chose a ten percent premium increase or decrease in one individual plan as it aligns with a notice CalPERS currently provides to members when their health plan's premium will increase by ten percent or more for the following year. This subparagraph has been renumbered to subdivision (a)(8)(B).

Section 599.508, subdivision (a)(8)(D):

Amending this subparagraph initially was necessary to delete part of the procedures requiring CalPERS to undergo a back-end reconciliation process to transfer premium dollars among health benefit plans to account for any changes in the health risk scores of individuals enrolled in the plans over a health benefit plan year. This is an outdated process that does not permit the CalPERS Board to effectively mitigate health risk in setting CalPERS health benefit plan premiums. This deletion resulted in subparagraph (D) having no language and therefore necessitating the language in subparagraph (E) to be moved to subparagraph (D). As part of this addendum, the amendment to this paragraph is necessary to exclude Medicare health benefit plans from risk adjustment because the federal Centers for Medicare and Medicaid Services (CMS) risk adjusts these plans. This subparagraph has been renumbered to subdivision (a)(8)(C).

Section 599.508, subdivision (a)(8)(E):

Deleting this subparagraph was necessary for re-lettering accuracy. This subparagraph's existing language stating that the provisions of this paragraph do not apply to CalPERS Board-approved employee association health benefit plans has been moved to subdivision (a)(8)(C).

Section 599.508, subdivision (a)(9):

Deleting this paragraph was necessary to remove a monetary reserve requirement for CalPERS health benefit plans. This requirement was adopted in 1975. Since then, the regulatory requirements for health benefit plans reserves is more extensive than this provision. Therefore, this provision is obsolete.

Section 599.508, subdivision (a)(10):

Deleting this subparagraph was necessary for re-lettering accuracy.