SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC NOTICE PERIOD OF AUGUST 19, 2021 THROUGH SEPTEMBER 3, 2021.

CalPERS received two public comments regarding the amended proposed regulations during the 15-day comment period which commenced on August 19, 2021, and closed September 3, 2021. The following is a summary of the comments and responses:

COMMENT NO. 1: Mr. Jelincic, in his capacity as Director of Health Benefits for the Retired Public Employees' Association of California (RPEA) commented that CalPERS incorrectly used the terms *methodology* and *methods* and suggested CalPERS review and correct the regulation.

The commentor stated that proposed regulation changes to Title 2, California Code of Regulations (2 CCR), section 599.500, subdivision (x) focus on expected insurance company outlays, not on medical conditions.

The commentor argued that pursuant to 2 CCR, section 599.508, subdivision (a)(8), the analytical framework, or methodology, should not be subject to annual changes unless there is a significant change in either statistical analysis or a significant change in medical science and believes 90 days is not enough time for the public to comment on the adequacy and impact of the chosen framework.

The commenter also asserted that CalPERS has chosen a risk adjustment methodology that considers insurance company outlays and is therefore inconsistent with risk adjustment methodologies consistent with industry best practices and similar to those used by the United States Department of Health and Human Services. He claims that CalPERS chosen methodology protects insurance companies as it encourages increased medical costs by subsidizing plans with high costs while penalizing plans with low costs and higher cost controls.

The commentor mentioned that CalPERS is removing language changes to 2 CCR, section 599.508, subdivision (a)(8)(C) that were initially proposed. He believes CalPERS should not limit the Board's authority to exclude specific plans.

The Commentor also expressed:

- it is CalPERS stated intention to eventually combine the preferred provider organizations and the health maintenance organizations into one risk pool even though they are two very different products;
- that the last time CalPERS risk adjusted health benefit plan premiums it established that the fee for service model was more cost efficient than the HMO model, which has been almost universally rejected by medical researchers and the academic community; and
- CalPERS chosen risk adjustment methodology will further intensify the focus on protecting insurance companies from both adverse selection and adverse vendor negotiations. Consequently, members that purchase from cost effective vendors, even at the cost of narrower networks, should not be asked to subsidize those who chose otherwise for whatever reason.

RESPONSE NO. 1:

Response to comment that CalPERS incorrectly used the terms methodology and methods:

CalPERS believes the usage of the terms “methodology” and “method” are appropriate in the proposed regulations. There are various risk adjustment methodologies that the CalPERS Board should be able to consider before choosing a specific method or model. In some instances, these terms already exist in regulations and are not being proposed to be modified. The commenter declined to provide specific examples. In reviewing the application of each term, we believe they are appropriate in their relative usage.

Response to comment that 2 CCR section 599.500, subdivision (x) focuses on expected insurance company outlays and not on medical conditions:

The commenter does not identify specific issues with the proposed language changes. Proposed language changes intend to update the definition of “risk adjustment” to adhere to industry standards. CalPERS extracted this precise definition from an Actuarial Standards of Practice Board publication. This update is critical to reflect current best practices.

Response to comment that the analytical framework, or methodology, chosen by CalPERS in accordance with 2 CCR section 599.508, subdivision (a)(8) should not be subject to annual changes and should be reviewed when there is a significant change in either statistical analysis or a significant change in medical science:

CalPERS disagrees with this statement since it would limit CalPERS' ability to adopt the most current risk adjustment methodologies. Consequently, CalPERS does not recommend changing the language in this section.

Response to comment that providing CalPERS chosen analytical framework, or methodology, to the public at least 90 days before public announcement of premiums for the next plan year, as required under 2 CCR section 599.508, subdivision (a)(8), is not enough time for the public to comment on the adequacy and impact of the chosen framework:

CalPERS disagrees with this concern, and commentor has not suggested an alternative time window. Moreover, this requirement is currently contained in existing regulations. Consequently, CalPERS does not recommend changing the language in this section.

Response to comment that the risk adjustment methodology chosen by CalPERS is inconsistent with industry best practices and similar to those used by the United States Department of Health and Human Services:

This comment is not directed at CalPERS proposed action or to the procedures followed by CalPERS in proposing or adopting the action and is therefore not relevant to the proposed regulation change.

Response to comment about removing the proposed language in 2 CCR section, 599.508, subdivision (a)(8)(C) that would have given the Board flexibility to include and exclude health plans:

Mr. Jelincic mentions that removing this initially proposed language should not limit the Board's authority to exclude specific plans. CalPERS determined that the specific language to exclude unidentified plans was not prudent for the application of risk adjustment. Therefore, CalPERS instead is proposing to be very specific about which plans can be excluded from risk adjustment. The specific plan types are now in the amended proposed language.

Response to comment that it is CalPERS stated intention to eventually combine the preferred provider organizations and the health maintenance organizations into one risk pool even though they are two very different products:

This comment is not directed at CalPERS proposed action or to the procedures followed by CalPERS in proposing or adopting the action and is therefore not relevant to the proposed regulation change.

Response to comment that the last time CalPERS risk adjusted health benefit plan premiums it established that the fee for service model was more cost efficient than the HMO model, which has been almost universally rejected by medical researchers and the academic community:

This comment is not directed at CalPERS proposed action or to the procedures followed by CalPERS in proposing or adopting the action and is therefore not relevant to the proposed regulation change.

Response to comment that CalPERS chosen risk adjustment methodology will further intensify the focus on protecting insurance companies from both adverse selection and adverse vendor negotiations. Consequently, members that purchase from cost effective vendors, even at the cost of narrower networks, should not be asked to subsidize those who chose otherwise for whatever reason:

This comment is not directed at CalPERS proposed action or to the procedures followed by CalPERS in proposing or adopting the action and is therefore not relevant to the proposed regulation change.

COMMENT NO. 2: Mr. Jelincic, as an individual, commented on proposed amendments to 2 CCR section 599.500, subdivision (x). He asserts that the change to the definition of “risk adjustment” results in an adjustment from health risk considerations to an adjustment for financial considerations, and that this change protects the insurance companies, not from unhealthy populations, but from bad provider rate negotiations. He also claims that the term “risk assessment” will no longer have any role in “risk adjustment’ due to the proposed changes. He further contends that changing the definition of “risk adjustment” is not a non-substantive change. Finally, Mr. Jelincic states that a policy that rewards carriers for high medical costs unrelated to risk characteristics of the insured population is a policy that will lead to ever increasing medical reimbursement rates, which is good for providers and bad for purchasers.

RESPONSE NO. 2:

Response to comment that there is a change from adjustment for health risk considerations to an adjustment for financial considerations, and that this change protects insurance companies:

CalPERS disagrees with this comment. Proposed language changes update the definition of “risk adjustment” to adhere to industry standards. CalPERS

extracted this precise definition from an Actuarial Standards of Practice Board publication. This update is critical to reflect current best practices.

Response to comment that the term "risk assessment" will no longer have any role in "risk adjustment" due to the proposed changes:

CalPERS disagrees with this comment. The term "risk assessment" is used in the regulatory provisions governing risk adjustment, specifically 2 CCR section 599.508, subdivision (a)(8)(A).

Response to comment that changing the definition of "risk adjustment" is not a non-substantive change:

CalPERS agrees with this comment. CalPERS clarified in this current 15-day comment period that the proposed changes in this action are substantive in nature.

Response to comment that a policy that rewards carriers for high medical costs unrelated to risk characteristics of the insured population is a policy that will lead to ever increasing medical reimbursement rates, which is good for providers and bad for purchasers:

This comment is not directed at CalPERS proposed action or to the procedures followed by CalPERS in proposing or adopting the action and is therefore not relevant to the proposed regulation change.

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August 20, 2021

Andrew White, Regulation Coordinator
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Re: Revised Text of Proposed Regulatory Action by CalPERS
Amend §§ 599.500 and 599.508
Title 2 of the California Code of Regulations (CCR

A general comment on the regulations. They reflect a bureaucratic need to use to use fancy words when simple words would work better and provide greater clarity.

"Methodology" is a theoretical framework to analyze and support the choice of methods. "Methods" are a specific approach. The proposed regulation uses both words interchangeably, inconsistently and not always correctly. Rather than go through and edit the proposed changes, confident that the edits will be rejected anyway, this is a request that CalPERS reviews the regulation and make the necessary correction.

Proposed Amendment to CCR 599.500 subdivision (x)

This proposed change goes directly to the heart of the problem with this regulation. It focuses on expected insurance company outlays and not on medical conditions.

Proposed Amendment to CCR 599.508 subdivision (a) (8)

The theoretical framework for analysis should not be subject to annual change. The framework should be reviewed when there is a significant change in either statistical analysis or a significant change in medical science. Providing a new theoretical framework, a mere 90 days before premiums are announced, is not helpful. The method used should be announced so that the public has a chance to comment on the adequacy and impact of the method chosen.

The proposed regulation requires "a risk adjustment methodology that is consistent with industry best practices and similar to those used by the United States Department of

Health and Human Services." When the federal government looks at medical risk adjustment it looks at demographic variable's e.g., age, sex and geography, and medical variables e.g., smoking, health status, chronic health conditions diagnostic codes, etc. Yet the method CalPERS has chosen to consider are insurance company outlays. The CalPERS method assume that the patients of a provider that charges $400 for a service are twice as sickly as the patients of a provider that charges $200 for the same service and four times as sickly are the patients of a provider that charges $100.

While this method (not methodology) protects insurance companies it encourages increased medical costs by subsidizing plans with high costs while penalizing plans with low costs and higher cost controls.

Proposed Amendment to CCR 599.508 subdivision (a) (8) (C)

CalPERS had originally proposed to add:

> (C) For health benefits plans subject to a risk adjustment, the Board may apply a risk adjustment calculation to all health benefit plans or specific health benefit plans over a period as determined by the Board.

The system is now proposing to drop this language. It should not limit the Board's flexibility to include and exclude specific plans.

It is CalPERS stated intention to eventually combine the preferred provider organizations and the health maintenance organizations into one risk pool. This is despite the fact that they are two very different products.

The last time CalPERS tried to do this it established that the fee-for-service model was more cost efficient and provided greater cost control than the HMO model. While the California Medical Association may support this conclusion it has been almost universally rejected by medical researchers and the academic community.

Given the model CalPERS has chosen to adopt, this would further intensify the focus on protecting the insurance companies from both adverse selection and adverse vendor negotiations. Members who purchase from cost effective vendors, even at the cost of narrower networks, should not be asked to subsidize those who chose otherwise for whatever reason.

Submitted,

JJ Jelincic
Director of Health Benefits

JJ Jelincic

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September 1, 2021

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Re: Revised Text of Proposed Regulatory Action by CalPERS
Amend §§ 599.500 and 599.508
Title 2 of the California Code of Regulations (CCR

In addition to the comments, I submitted as Director of Health Benefits on behalf of the Retired Public Employees' Association I would like to submit this statement individually.

Proposed Amendment to CCR 599.500, subdivision (x)

The proposal is to delete:

> (x) "Risk adjustment" means an actuarial tool used to calibrate premiums paid to health benefits plans or carriers based on **geographical differences in the cost of health care** and the **relative differences** in the **health risk characteristics of employees, annuitants, and family members enrolled in each plan**. Risk adjustment establishes premiums, in part, by assuming an equal distribution of health risk among health benefits plans in order to avoid penalizing employees, annuitants, and family members for enrolling in a health benefits plan with higher than average health risk characteristics.

And replace it with:

> (x) "Risk Adjustment" means the process by which the relative risk factors are assigned to individuals or groups based on **expected resource use** and by which those factors are taken into consideration and applied.

While leaving in place:

> (y) "Risk assessment" means an objective determination of whether an individual employee, annuitant, or family member or group of employees, annuitants, and family members represents a health risk that is reasonably close to the population average and, if not, of quantifying the relative deviation from the average.
> (z) "Risk Adjusted Premium," means the actuarially calculated premium utilizing risk adjustment.

Notice the shift from adjustments for health risk considerations to an adjustment for financial considerations. The change is designed to protect the insurance companies, not from unhealthy populations, but from bad provider rate negotiations.

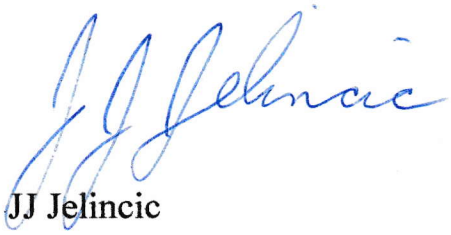
Note also that while CCR 599.500 (y) will still exit, it no longer has any meaning since the "risk assessment" no longer has a role in the "risk adjustment".

This a terrible idea. It violates the public interest; it is bad public policy and is one that certainly should be discussed by the Board before adoption not simply treated as a "non-substantive technical change".

A policy that rewards carriers for high medical costs unrelated to risk characteristics of the insured population is a policy that will lead to ever increasing medical reimbursement rates. Good for providers; bad for purchasers.

I encourage the Office of Administrative Law to either reject the changes or at a minimum direct that the California Public Retirement System Board of Administration to reconsider and have an informed discussion of the implications of this change before resubmitting the proposal.

Submitted,



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