

## **FINAL STATEMENT OF REASONS**

### **Proposed Amendment to Amend Section 599.500 of Article 1 of Subchapter 3 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR).**

#### **Definition of Parent-Child Relationship**

#### **UPDATE OF INITIAL STATEMENT OF REASONS**

Changes were made to the text of the proposed regulations to implement clear enrollment eligibility criteria and required primary and secondary supporting documentation needed to establish a Parent-Child Relationship (PCR) for California Public Employees' Retirement System (CalPERS) health plan subscribers.

The Initial Statement of Reasons has been updated with an Addendum, which provides a clarification that the proposed regulatory changes are substantive in nature and explains the purpose and necessity of the amendments to the proposed regulation text that were made available after the 45-day comment period conducted from June 3, 2022 to July 18, 2022, and during the 15-day comment period conducted from November 7, 2022 to November 22, 2022. The Addendum to the Initial Statement of Reasons was posted on the CalPERS website and attached to the 15-day Notice of Modifications to Text of Proposed Regulation, which was emailed to CalPERS' employers and mailed to interested parties.

The changes to the proposed regulation text are as follows:

- Amended language in section 599.500(o), paragraph (1) to correct the use of the term "dependent" in this paragraph.
- Amended language in section 599.500(o), subparagraph (1)(C) to clarify the school or college record documentation required to certify financial dependency, add "other verifiable documents showing common residency" as one of the primary PCR documents, adjust the listing order of the required primary supporting PCR documentation, and add the word "Current" to 2. and 3. to clarify that the documents must be a current child's driver license or state identification and a current rental or lease agreement.
- Amended language in section 599.500(o), subparagraphs (1)(D) to clarify the vehicle registration documentation required to certify financial dependency and placed this requirement in a newly added 4.
- Added language to section 599.500(o), subparagraph (1)(E) to include an exception that the documents listed in subparagraph (1)(C) 1. through 4. may be older than 60 calendar days from the date of signature of the Affidavit of Parent-Child Relationship.

#### **SUMMARY OF PROPOSED REGULATION**

The Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code (GC) sections 22750-22944 allows CalPERS to purchase and manage health benefit plans for eligible State of California and contracting agency employees and annuitants. PEMHCA allows specified eligible family members to enroll in CalPERS health benefit plans. PEMCHA defines "family member" to include a natural, adopted, or stepchild, and a child for whom a subscriber assumes a parent-child relationship (PCR). GC section 22775 of PEMHCA allows the CalPERS

Board of Administration to prescribe age limits and “other conditions and limitations pertaining to children.”

The proposed regulatory amendments specify the required primary and secondary supporting documentation required to certify that a child is financially dependent on the subscriber and clarifies that the supporting documentation must contain the PCR dependent’s name and may not be older than sixty (60) calendar days from the date of signature of the Affidavit of Parent-Child Relationship for most documentation. The amendments also provide guidance for individuals who are not required to file an income tax return. Lastly, the Affidavit of Parent-Child Relationship (HBD-40) form, which is currently incorporated by reference in regulation 599.500, subdivision o, is removed and various provisions currently set forth within the form will be included in the body of the regulation.

## **SUMMARY OF REGULATORY EVENTS**

A Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register, File Number Z-2022-0524-02, on June 3, 2022. The 45-day comment period commenced on June 3, 2022, and closed July 18, 2022.

CalPERS received two public comments within the 45-day comment period addressed separately below: Emails from Ms. Denae Harris from Shasta County and from Ms. Carmondy Breaux-Burns from the Metropolitan Water District of Southern California.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL PUBLIC NOTICE PERIOD OF JUNE 3, 2022 THROUGH JULY 18, 2022**

### COMMENT NO. 1:

Denae Harris, in her capacity as an Agency Staff Services Analyst II, submits the following comments on behalf of Shasta County Department of Support Services.

Commentor understands the need to update the regulation for clarity for both the subscriber and CalPERS, however, they have expressed the following concerns:

- Acceptable documentation listed in subsections C and D are by and large applicable to children who are school age and above.
- Employees and annuitants defined in subsection F that have a Parent-Child Relationship (PCR) with a child who is not in school may not be able to provide three or more supporting documents, particularly documents that would meet the requirement of subsection E (not being older than 60 calendar days).
- Employees and annuitants who have a newly established PCR with a child who is not in school may not be able to provide the minimum supporting documents in subsections C and D due to conflicting time constraints of the special enrollment period and the obtainment of valid documentation.
- Subsection E states supporting documents may not be older than 60 calendar days, however, at least five of the eight acceptable document options are already likely to be outside of the 60 days due to the nature of the document type. (i.e., legal judgements, driver’s license/identification, rental/lease agreements, tuition or vehicle registration, medical/dental bills). Anyone enrolling outside of the initial guardianship would be

required to obtain a newly stamped copy of the guardianship paperwork which may not always be possible.

The commentor felt the added specificity in the proposed regulation was overly narrowing, specifically in relation to newly acquired dependents in a PCR, children who are not of school age, and employees and annuitants not required to file taxes.

The commentor argued that the previous language allowed for discretionary flexibility on a case-by-case basis and the revised revisions do not allow for special circumstances, exceptions, or grace periods, which are needed during these real-life parent child relationships.

Commentor agrees that changes are needed to clarify what documents are acceptable but feels the list of acceptable documents needs to be expanded upon. They request subsection E be removed from the proposed revisions and an additional provision be added to allow for exceptions.

#### RESPONSE NO. 1:

*Response to several comments expressing concerns with employees and annuitants with children who are not school age being able to provide the minimum supporting documentation required of subsection C and D, and in compliance with the requirement outlined in subsection E (not older than 60 days).*

For children who are not yet school age, school records may also include preschool and day care records showing the employee or annuitant as having legal parental status or guardianship over the child. In addition, other verifiable documentation showing common residency is acceptable, such as medical bills or proof of medical and dental insurance. Secondary supporting documentation may also include:

- Day care or preschool payments
- Bank statement, credit card statement or receipts that indicate the member paid for ongoing supplies for the child like diapers, formula, clothes, school lunches, etc.
- Proof of payment by the member for the child's activities like sports, music lessons, swimming lessons, etc.

CalPERS agrees that the proposed language in subparagraph E needs to be updated and has included an exception to the 60-calendar day requirement for the following: legal judgements, court documents, child's driver's license or state identification, or vehicle registrations. All other supporting documentation may not be older than 60 calendar days, from the date of signature of the Affidavit of Parent-Child Relationship.

*Response to Subsection E stating supporting documents may not be older than 60 calendar days, and at least five of the eight acceptable document options are already likely to be outside of the 60 days due to the nature of the document type.*

As indicated above, CalPERS agrees that the proposed language needs to be amended and has include an exception to the 60-calendar day requirement, requesting only the most current documents for the following: legal judgements, court documents, child's driver's license or state identification, or vehicle registrations. All other supporting documentation may not be older than 60 calendar days, from the date of signature of the Affidavit of Parent-Child Relationship.

*Response to comment stating the proposed revisions was overly narrowing, specifically for newly acquired dependents in a PCR, children who are not of school age, and employees and annuitants not required to file taxes.*

CalPERS disagrees with this comment. The intent of the proposed regulatory amendments is to remove the current ambiguity when determining PCR dependent eligibility by implementing clear enrollment eligibility criteria for CalPERS health plan subscribers. This lack of clarity has led to confusion amongst impacted subscribers and the inability for CalPERS and/or employer's to properly assess an individual's financial dependency upon the subscriber and ultimately determine PCR eligibility.

*Response to comment that the previous language allowed for flexibility on a case-by-case basis and the revised revisions do not allow for special circumstances, exceptions, or grace periods, which are needed during these real-life parent child relationships.*

CalPERS disagrees with this comment. Any exceptions or grace periods previously allowed when certifying a parent-child relationship is not in compliance with the requirements contained in 599.500(o) and would not be appropriate.

*Response to comment requesting subsection E be removed from the proposed revisions and an additional provision be added to allow for exceptions.*

CalPERS disagrees with removing subparagraph E and with the request to add an additional provision to allow for exceptions. Subparagraph E is necessary in certifying a child is financially dependent upon the employee or annuitant for more than fifty percent (50%) of their support. In addition, employees and annuitants certifying a dependent in a PCR must comply with the requirements outlined in CCR 599.500(o) in order to be eligible for CalPERS Health Benefits. In the instance where an employee or annuitant is unable to comply with the requirements and certify financial responsibility for the dependent child within the required timeframe, they may request enrollment during a subsequent qualifying event such as open enrollment or as a late enrollment request, providing them additional time to obtain the required documentation. For this reason, additional exception language is not necessary.

However, CalPERS agrees that the proposed language needs to be amended to clarify specific documentation must be current but does not need to be issued within the last 60 days. As indicated above, CalPERS has included an exception to the 60-calendar day requirement, requesting the most current documents for the following: legal judgements, court documents, child's driver's license or state identification, or vehicle registrations. All other supporting documentation may not be older than 60 calendar days, from the date of signature of the Affidavit of Parent-Child Relationship.

COMMENT NO. 2:

Carmony Breaux-Burns, in her capacity as the HR Benefits Manager, submits the following comments on behalf of the Metropolitan Water District of Southern California.

The commentor mentions that the Health Program Guide section of "Ineligible family members" indicates that children of former spouse or state-registered Domestic Partners may only remain enrolled as a dependent on CalPERS health benefits when the child is certified as a PCR. Commentor agrees with this requirement. Commentor further mentions that under the section "Required Documentation," for stepchildren and domestic partner children a current spouse or

domestic partnership is a requirement for a stepchild or domestic partner child. While the section “*Marital Status or Registered Domestic Partnership*” references divorce or termination of domestic partner relationships as a requirement to remove a stepchild or domestic partner child, it does not provide direction on what occurs upon the death of a spouse or domestic partner.

Commentor also indicated they have received conflicting information from CalPERS regarding a 21-year-old stepchild of a deceased spouse. They were initially informed that the employee must certify their deceased spouse’s child as a PCR for continued coverage. Having agreed with the initial guidance, they had their employee complete the Affidavit of Parent-Child Relationship (HB40) and provide documentation. After the employee contacted CalPERS, they were later informed that the stepchild of a deceased spouse or domestic partner may remain on the employer’s sponsored health coverage to age 26 without a change in relationship from stepchild to PCR, or any other documentation to confirm that the employee has retained any type of parental role/relationship or financial responsibility of their former (deceased) spouse’s or domestic partner’s child.

Commentor recommends that the subscriber be provided one year from date of death of their spouse or domestic partner to certify the child or children of the deceased spouse or domestic partner as a PCR, then commence the annual certification thereafter. Commentor supports a review of the regulations to improve administering PCR dependents and the required documentation to ensure clarity for all parties. However, they ask that we review and consider their recommendation to help ensure employees and retirees remain in the parental role or retain financial responsibility for children of deceased spouse or domestic partners for which they elect to retain as dependents on their elected health plans, especially when premiums are paid by the employers (public agencies), and in either situation (divorce or death), the employee or retiree can re-marry.

#### RESPONSE NO. 2:

*In response to the comment that indicates the Health Program Guide does not provide direction on the impacts to stepchildren and domestic partner children upon the death of the spouse or registered domestic partner.*

CalPERS agrees that the Health Program Guide, State Health Benefits Guide and Public Agency and Schools Health Benefits Guide should be updated to provide a more detailed explanation about existing eligibility standards for stepchildren and domestic partner children upon the death of the spouse or registered domestic partner.

*In response to the conflicting information received regarding eligibility requirements for the 21-year-old stepchild of a deceased spouse.*

CalPERS has contacted the employer to confirm the appropriate enrollment of the stepchild on the survivor’s account as a dependent and addressed the training opportunities.

*In response to the suggestion to be provided one year from date of death of their spouse or domestic partner to certify the child or children of the deceased spouse or domestic partner as a PCR.*

The recommendation is not necessary as existing law provides that stepchildren and domestic partner children remain eligible for CalPERS health benefits as a dependent and may remain

enrolled on the subscriber's account until they turn 26, or until the subscriber remarries or registers a new domestic partnership. CalPERS will clarify this in future guidance to employers.

#### ADDITIONAL FEEDBACK

In addition to the two public comments, we received non substantive verbal feedback prior to the public comment period identifying the need to make grammatical changes to subparagraph (1).

#### RESPONSE NO. 3:

CalPERS agrees with these suggestions and has updated the proposed regulation accordingly.

CalPERS held an additional 15-day comment period from November 7, 2022, through November 22, 2022. CalPERS received two comments within this period addressed separately below: Emails from Ms. Caritia Hughes from the Los Angeles Community College District and from Ms. Denae Harris from Shasta County.

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC NOTICE PERIOD OF NOVEMBER 7, 2022 THROUGH NOVEMBER 22, 2022**

#### COMMENT NO. 1:

Caritia Hughes, in her capacity as a Health Benefits Officer, comments on behalf of the Los Angeles Community College District.

The commentor expressed concerns with allowing documentation that is older than 60 calendar days as indicated in subparagraph (E) (i.e., Legal Guardian, Court Order, etc.).

- Commentor believes this provides employees the ability to submit documentation that is several years old with no evidence of recent status such as claiming a child on their tax forms.
- This will make it difficult for the employing office to verify the recent status of the Parent-Child Relationship (PCR), particularly with those over the age of 19 who are not required to provide documentation in the form of tax dependent status.

#### RESPONSE NO. 1:

*Response to comments stating permitting documentation that is older than 60 days as indicated in subparagraph (E) allows employees to 1) submit documentation that may be several years old, without requiring evidence of recent status of a PCR, such as claiming a child on their tax forms, and 2) does not allow for the determination of recent status of PCR for older children (age of 19 and over).*

The regulation outlines the requirements to substantiate the child's current financial dependence on the employee or annuitant.

For children aged 18 and under, CalPERS requires a copy of the first page of the employee or annuitant's federal or State income tax return from the previous tax year listing the child as a tax dependent. In lieu of a tax return, for a time not to exceed one tax filing year, and only during the child's initial enrollment as a PCR, the employee or annuitant may submit other documents that substantiate the child's financial dependence upon the employee or annuitant

as set forth in subparagraphs (C) and (D).

Similarly, for children aged 19 and over, employees and annuitants can submit a copy of the first page of an employee or annuitant's federal or State income tax return from the previous tax year listing the child as a tax dependent or documents that substantiates the child is financially dependent upon them as described in subparagraphs (C) and (D).

Subparagraph (C) and (D) outlines the requirements to provide primary and secondary documentation. Subparagraph (C) requires a minimum of one primary document and subparagraph (D) requires a combination of two or more secondary supporting documents.

In the instances where a tax return is not available or required, the regulation would require secondary supporting documentation, such as tuition payments, credit card statements, medical bills. These documents must be current and within 60 calendar days from the date of signature of the Affidavit of Parent-Child Relationship and would provide the employing office the ability to validate the recentness of the PCR.

COMMENT NO. 2:

Denae Harris, in her capacity as a Personnel Analyst, submits the following comments on behalf of the Shasta County Department of Support Services.

The commentor indicates they were pleased CalPERS made some adjustments to the proposed language during the previous comment period.

The commentor reiterates their concerns with the acceptable documents listed in (C) and (D), indicating it would be difficult for members to attain if their PCR dependent is not school age, particularly if the PCR is in a newly established relationship or if the member is not required to file taxes as indicated in subparagraph (F).

Commentor agreed the revisions have loosened some of the time restrictions for a few documents, however, there were no revisions that relieved some of the overly restrictive requirements for newly established PCR's who are not school age and employees or annuitants that are not required to file taxes.

Additionally, the commentor still felt there is a need to add language which would allow for exceptions, grace periods, or consideration of special circumstances on a case-by-case basis.

RESPONSE NO. 2:

*In response to the comment that indicates acceptable documents listed in subparagraphs (C) and (D) would be difficult for members to attain if their PCR dependent is not school age particularly if the PCR is a newly established relationship or if the member is not required to file taxes as indicated in (F).*

CalPERS does not agree that additional modifications to the regulatory language is necessary. In the instance where a tax return is not available or required, subparagraph (C) and (D) outlines various alternative primary and secondary documentation that is acceptable. This opens many opportunities to provide evidence of the child's financial dependence on the member.

- Subparagraph (C) requires a minimum of one primary document, which includes legal

judgements or court documents, school or day care records, and other verifiable documentation showing common residency. The provision does not limit these documents to school age children and should be accessible for a newly established parent-child relationship.

- Subparagraph (D) requires a combination of two or more secondary supporting documents. This includes credit card statements, joint bank account statements, medical and dental bills along with proof of payment, day care or preschool payments, and proof of payment by the employee or annuitant for the child's activities like sports, music lessons, swimming lessons, etc.

*In response to the comment that indicates a need to add language which would allow for exceptions, grace periods, or consideration of special circumstances on a case-by-case basis.*

CalPERS does not agree that additional modifications to the regulatory language are necessary, as CalPERS already has regulatory authority to consider extenuating circumstances on a case-by-case basis as provided in California Code of Regulation 599.502 subparagraph (g).

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT PUBLIC HEARING**

While CalPERS allowed interested parties to request a public hearing from June 3, 2022 through July 18, 2022 no such requests were made, and therefore a hearing was not scheduled.

## **REASONS FOR REJECTING ANY PROPOSED ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

The proposed regulation will not impact small businesses because they apply only to CalPERS and State and contracting agency employers with regard to determining and administering parent-child relationships.

## **ALTERNATIVES DETERMINATION**

CalPERS has determined that no alternative it considered, identified, or was brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. These amendments were determined to be the most transparent and clear approach to providing clarity to employees, annuitants, and employers when determining eligibility for a PCR.

The Board approved the proposed regulations at its March 16, 2022 Board meeting and adopted these regulations at its March 15, 2023 Board meeting. The adoption of the regulations is necessary to ensure compliance with PEMHCA and clarify eligibility requirements to PCR dependents.

## **LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.