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Distribution:

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**TO: HEALTH BENEFIT OFFICERS AND ASSISTANTS OF THE  
STATE, CALIFORNIA STATE UNIVERSITY AND  
CONTRACTING PUBLIC AGENCIES**

**SUBJECT: HEALTH BENEFIT OFFICER GUIDANCE ON NEW LAWS  
FOR 2002**

This Circular Letter contains information to assist you in implementing new laws that became effective on January 1, 2002.

### **New Laws Affecting State Agencies and Contracting Public Agencies**

#### **Assembly Bill 25, Chapter 893, Statutes 2001**

This bill amended Government Code section 22871.2 of the Public Employees' Medical and Hospital Care Act (PEMHCA) administered by CalPERS. It also amended the definition of a "domestic partnership" in Family Code section 297. CalPERS is required by law section 22869 to use the definition in Family Code section 297 for purposes of determining eligibility of domestic partners for health benefits under PEMHCA. Previously, Family Code section 297 required opposite sex partners both to be over age 62. AB 25 amended the law so now only one partner must be over age 62.

AB 25 also amended section 22871.2 regarding survivor benefits of domestic partners. Previously, section 22871.2 did not permit domestic partners to continue to be eligible for health benefits after the covered employee or annuitant died. AB 25 amended section 22871.2 to permit continued eligibility for coverage of a domestic partner who is a recipient of a retirement allowance as a surviving beneficiary of the deceased employee or annuitant.

Previously, section 22871.2 did not provide for continued eligibility for coverage of children of the domestic partner after the employee or annuitant died. AB 25 also amended section 22871.2 to permit continued health coverage for a child of the domestic partner if the domestic partner is eligible for that continued coverage. The child of the domestic partner will be eligible only when:

1. The child is enrolled in a health benefits plan as a family member at the time the covered employee or annuitant dies; and

2. The child's parent (i.e., domestic partner of CalPERS member) is a recipient of a retirement allowance as a surviving beneficiary of the deceased employee or annuitant.

*If the child of the domestic partner is not enrolled at the time the employee or annuitant dies, the child of the domestic partner may not be enrolled after the employee or annuitant dies.*

The surviving domestic partner may not enroll *new or additional* family members in a health plan after the death of the employee or annuitant.

**Guidelines to follow:**

1. A domestic partner shall *not* be considered a family member or eligible for health coverage unless he or she is receiving a retirement allowance as a surviving beneficiary of the deceased employee or annuitant. All domestic partners that were receiving a retirement allowance as a surviving beneficiary on January 1, 2002, became eligible on January 1, 2002, for continued coverage regardless of when the employee or annuitant died. (The amendment is not retroactive.) These domestic partners may enroll immediately after the death of the employee or annuitant.
2. Children of domestic partners may have continued eligibility if they were enrolled as family members at the time of the employee's or annuitant's death.
3. Section 22871.2 does not require the state to cover domestic partners. Only State Bargaining Units and other non-represented employees covered under Article 9, section 22873, are automatically required to implement the new provisions of 22871.2.
4. Section 22871.2 does not require public agencies to cover domestic partners. Only those employers that are *currently contracting* under Article 9, section 22873, are automatically required to implement the new provisions of 22871.2. *A new resolution is not required for this section to be applied.*

**Assembly Bill 215, Chapter 775, Statutes 2001**

This bill grants PEMHCA health benefits to the uninsured surviving spouse of a peace officer or firefighter who dies as a result of a job-related illness or injury. The uninsured surviving dependents are eligible until the age of 23 or marriage. Provisions of this bill do not apply to coverage for domestic partners. The state will contribute toward premiums based on the 100/90 formula.

For purposes of section 22821.2, "surviving spouse" means a husband or wife who was married to the deceased firefighter or peace officer on the deceased's date of death and for a continuous period of at least one year prior to the date of death. "Uninsured" means that the surviving spouse is *not enrolled* in an employer-sponsored health plan under which the employer contribution covers 100 percent of the cost of health care premiums.

**Guidelines to follow:**

1. The employer of a deceased firefighter/peace officer with dependants who may be eligible under this section shall notify CalPERS within 10 days of the employee's death.
2. Procedures CalPERS will use, including documentation the employer and/or applicant must submit to CalPERS to show that the death was job-related, are being developed.
3. Disputes about whether the death was job-related will go to the Workers' Compensation Appeals Board (WCAB). When there is a dispute in the determination of industrial causation, CalPERS will not enroll family members in a health plan until WCAB makes its determination.
4. Upon receipt of the employer notice, HBSD shall promptly determine if family members meet PEMHCA enrollment eligibility criteria and forward the materials necessary for enrollment application to the eligible uninsured spouse or family member.
5. Employers must verify and certify spouse eligibility: spouse married to deceased one year prior to and at the time of the employee's death; spouse may not have any employer-sponsored insurance that covers 100 percent of the premium.
6. By deeming the uninsured survivors state annuitants, the state is the sponsoring employer for enrollment purposes. CalPERS will provide the State Controller a list of enrollees by health plan. The state will pay a contribution toward premiums based on the 100/90 formula (section 22825.1). The State Controller will pay the state share of the health premium directly to the health plan.
7. When a survivor chooses a plan with a premium that exceeds the amount of the state contribution, the survivor is responsible for paying the balance directly to the health plan.
8. There is no requirement for CalPERS to locate individuals or to notify individuals that they may be eligible for benefits. The employer is solely responsible to notify CalPERS that individuals may be eligible for benefits.
9. The employer need not contract with CalPERS for retirement or health benefit coverage.
10. A paper process will be used for initial enrollment until the enrollment can be automated.

#### **New Law Affecting Contracting Public Agencies Only**

#### **Senate Bill 202, Chapter 798, Statutes 2001**

This bill repealed section 22825.5 and replaced it with new requirements. There no longer is a provision in section 22825.5 that requires contracting local agencies to base the employer contribution solely on the 100/90 formula. An employer can choose to provide a contribution that is greater than the amount calculated from the 100/90

formula.

The employer's contribution may not be less than the 100/90 formula and not more than 100 percent of the total premium.

The amendment also provides that if an employee works 20 years for the same employer, the employer must pay 100 percent of the employer's share of premium, even if the employee did not retire within 120 days of separation from the employer. Previously, if an employee eligible to retire from an employer did not retire within 120 days, but took a job with another employer, the employee lost the full contribution for retiree health benefits from the first employer.

Now, the employee will be able to receive the fully vested employer contribution provided that the employer's contribution is greater than, and made in lieu of, any contribution payable to the annuitant by any other employer participating in PEMHCA.

The amendment also clarifies that employees who retire for disability are to be treated as fully vested annuitants entitled to the full employer health benefit contribution.

**Guidelines to follow:**

1. Employers *currently contracting* for section 22825.5 *must* file a new resolution to continue coverage under the new section since significant law change has occurred. The provisions of section 22825.5 apply only to employees hired after the effective date of the resolution. (See item 6 below.)
2. Employers are required to inform the CalPERS Health Benefit Services Division (HBSD) of the employer contribution payable for active and retired employees by resolution.
3. Employers *not currently contracting* for section 22825.5 *may elect* to provide coverage under the new section. Two employer resolutions are required to do so. These are:
  - a. The first resolution must show the employer pre-retirement health contribution for active employees and the employer post-retirement health contribution for current retirees not covered by section 22825.5.
  - b. The second resolution must show the employer pre-retirement health contribution for active employees and the employer post-retirement health contribution for retired employees hired after the employer adopts section 22825.5.
4. For retirees and active employees, the employer's contribution may be the amount calculated using the 100/90 formula up to 100 percent of the total premium. The 100/90 formula is described in the section as follows:

"an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans that have the largest number of

enrollments during the fiscal year to which the formula applied."

5. Employers and active employees in bargaining units must agree by MOU to adopt section 22825.5. Non-represented employees can be covered by the vesting schedule provided by section 22825.5, but the employer must inform HBSD that an MOU is not in place via an attachment to the resolution.
6. Once each year the employer *may* allow *any* employee hired before the employer elected section 22825.5 the opportunity to *individually* elect to be subject to the provisions of section 22825.5. The employer is required to inform HBSD of all employees making this election and must obtain a signed election from the employee. HBSD has yet to establish the annual election period to adopt section 22825.5.

We hope you find this information helpful. Questions regarding the new laws should be directed to the CalPERS Customer Contact Center at 1-800-352-2238.

Tom Fischer, Chief  
Health Benefit Services Division