

December 15, 2022

Chairs, Joint Standing Committee on Labor and Housing  
100 State House Station  
Augusta, ME 04333-0100


Re: Long-Term Disability Insurance

Dear Committee Chairs:

I am pleased to submit the enclosed report of the working group on Long-Term Disability Insurance, which is required by Public Law 2021, c. 277.

We look forward to assisting the Committee in its review of this report.

Sincerely,



Dr. Rebecca M. Wyke  
Chief Executive Officer

Enclosure



# Long-Term Disability Insurance IMPLEMENTATION PLAN

Public Law 2021, c. 277, Sec. 43

November 2022

Prepared by the Maine Public Employees Retirement System



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## Introduction

The Maine Public Employees Retirement System (MainePERS) is an incorporated public instrumentality of the state governed by a Board of Trustees pursuant to Maine law. Since 1942, MainePERS has joined with public employers to help their employees prepare for retirement. The System's active contributing members include teachers, state, county, and municipal employees, legislators, judges, and others. Upon retirement, our members receive monthly benefits from their respective defined benefit plans. The System also administers disability retirement, group life insurance, survivor services, and a tax-deferred retirement savings program known as MaineSTART. Management of these programs includes financial and investment administration, recordkeeping of members' work and compensation data, and administration of retirement and related services.

MainePERS' Disability Retirement covers permanent disabilities that result in a member being unable to perform the essential functions of the member's employment position with reasonable accommodation. Disability Retirement benefits replace either 59%, 60% or 66.67% of income, depending on the plan under which an employee has coverage. A long-term disability insurance (LTDI) program would assist in addressing income protection gaps for members who do not, or do not yet, qualify for Disability Retirement benefits, and offer members more robust protection from the financial losses associated with long-term disability. The program is designed to be fully insured through a carrier that would partner with MainePERS in implementing the new program.

MainePERS has approximately 43,500 active members currently employed by a participating employer that will not reach service retirement age by July 1, 2023. The LTDI claims incidence rate associated with the program design and specifications proposed in this report is estimated to be 2 to 3 per 1,000 covered employees, after removing the claims incidence rate associated with MainePERS' Disability Retirement experience (approximately 1 per 1,000). This translates into an estimated 90 to 130 LTDI claims per year. LTDI claim durations vary significantly depending on the cause of disability. Less severe claims (such as injuries or musculoskeletal conditions that can be treated) often terminate within the first 24 months because recovery rates are relatively high during this initial period and many LTDI claims fall within this category. Claims that last beyond 24 months are often due to severe conditions (such as multiple sclerosis or respiratory conditions) with lower recovery rates and can persist a long time. On average, LTDI claims typically last for 4 to 5 years, but with a wide variation in duration on specific claims.<sup>1</sup>

There are approximately 600 employers that participate in MainePERS. A table of the MainePERS member distribution by employment category appears below<sup>2</sup>. The largest employer is the State of Maine, comprising approximately 10,500 employees that will not reach service retirement age by July 1, 2023 and who do not currently have employer sponsored LTDI benefits. Other participating employers may offer LTDI, but many do not.

<b>Employment Category</b>	<b>Assumed Eligible Employees</b>
State Public Safety	903
State All Others	9,543
Education	23,948
PLD Public Safety	393
PLD All Others	8,670
<b>Total</b>	<b>43,457</b>

Both AFSCME and MSEA-SEIU offer their members access to an employee paid short-term disability insurance (STDI) benefit. The Maine Municipal Health Trust offers employees of member employers access to an employee paid self-insured Income Protection Plan (STDI) and a fully-insured LTDI Plan. The Maine School Management Association Group Insurance Trust offers their member employers access to a long-term disability insurance program that can be either employer or employee paid and currently enrolls 61 participating member districts and 2,128 participants.

In September 2019, MainePERS issued a Request for Proposal (RFP) to select an insurance carrier for an LTDI plan and three finalists were selected from among the bidders. The intent at the time was to afford MainePERS participating employers the opportunity to offer LTDI insurance to members. However, the carrier selection process was interrupted by the COVID-19 pandemic. In 2021, the 130<sup>th</sup> Legislature, through Public Law, c. 277, Sec. 43, revived this process and called for MainePERS “to develop an implementation plan for providing mandatory long-term disability insurance coverage to retirement system members through their employers”. MainePERS contracted with Milliman to work with the three finalists from the 2019 RFP process to refresh their quotes.

### **Program Objectives**

The goal of the new LTDI program is to provide participating employers with readily available and affordable group disability insurance coverage options for their employees who are MainePERS members. To that end, the proposed program includes plan options which employers will be able to evaluate, allowing them to select the most appealing option in terms of coverage and cost. The primary objectives of the LTDI program are as follow:

1. Bridging the income replacement gap for employees who are unable to work due to a long-term disability, but who do not, or do not yet, qualify for disability retirement.

2. Providing insurance coverage for disabilities that are not permanent and/or result in a partial reduction in work hours and wages.
3. Coordinating disability insurance coverage with existing employee benefit programs to avoid complexity, over-insurance, and excessive cost.
4. Providing options that are affordable to the employers, to maximize the number of employees who have access to coverage.
5. Including benefit buy-up options to increase benefits, which can be paid for by employers or employees.
6. Encouraging return to work and rehabilitation for LTDI recipients.
7. Providing a positive and helpful experience to employees and employers throughout the LTDI claim process.
8. Developing clear and effective communications about the LTDI program that use existing approaches and terminology where possible.
9. Partnering with an insurance carrier who can perform the whole LTDI process, and coordinate with MainePERS at the point when a disability may become permanent.
10. Keeping the existing MainePERS Disability Retirement benefit in place.

### **Disability Working Group**

The 130<sup>th</sup> Legislature passed Public Law 2021, c. 277, An Act to Improve the Disability Retirement Program of the Maine Public Employees Retirement System. Section 43 of the legislation calls for the development of an implementation plan for providing mandatory long-term disability insurance coverage to retirement system members through their employers. Section 44 of the legislation calls for a report on the experience of the system and its members after the implementation of changes to the Disability Retirement Program included in the Act. The full text of these two Sections appears below. The report required under Section 44 of the legislation is separate from this report.

MainePERS convened a stakeholder group, including representatives of participant employers and employee groups, to develop an implementation plan for mandatory long-term disability insurance coverage and to provide feedback on the experience of members under the new disability retirement program. All known stakeholder groups representing participant employers and employees were invited to participate. The stakeholder group, known as the Disability Working Group, was given the following charge:

The Disability Working Group is charged with advising MainePERS on the development of an LTDI implementation plan, accompanying legislation and report to the joint standing committee of jurisdiction by January 3, 2023. The Working Group is also charged with providing feedback to MainePERS on the experience of members under the new disability retirement program for MainePERS' report to the joint standing committee of jurisdiction due by January 31, 2023.

The working group met in the fall of 2022 and held eight meetings. All agendas and meeting materials can be found on the MainePERS website at <https://www.maineopers.org/disability-working-group/>. Through these meetings, members of the working group provided perspective and review of the implementation plan for mandatory long-term disability insurance coverage, accompanying legislation and this report. Their participation was valuable in assessing the plan design and impact on members and employers. A list of the questions and issues raised during the development of the plan appears along with responses in Appendix C in this report.

The stakeholder groups represented by individual members of the working group have not taken positions on the implementation plan design or legislation included in this report and reserve the right to discuss this further before taking a final position. The working group members encourage additional legislative discussions.

### **Membership**

Rick Cailler, Professional Fire Fighters of Maine  
Kate Dufour, Maine Municipal Association  
Paul Gaspar, Maine Association of Police  
Sylvia Hebert, AFSCME Council 93  
William Laubenstein, Maine Association of Retirees  
Jeff McCabe, Maine Service Employees Association  
Heather Perreault, Maine Department of Administrative and Financial Services  
Craig Poulin, Maine State Troopers Association  
Deb Roberts, Maine School Management Association  
Mark Roberts, Maine State Law Enforcement Association  
Mary Anne Turowski, Governor's Office  
Nate Williams, Maine Education Association  
Rebecca Wyke, MainePERS (chair)

### **MainePERS Staff**

Michael Colleran  
Chip Gavin  
Kathy Morin  
Mara McGowen

## **Public Law 2021, c. 277**

**Sec. 43. Implementation plan for mandatory long-term disability insurance.** The Maine Public Employees Retirement System shall convene a stakeholder group, including representatives of participant employers and employee groups, to develop an implementation plan for providing mandatory long-term disability insurance coverage to retirement system members through their employers. The Maine Public Employees Retirement System shall submit an implementation plan, including any recommended legislation, to the joint standing committee of the Legislature having jurisdiction over retirement matters no later than January 3, 2023. The joint standing committee of the Legislature having jurisdiction over retirement matters may report out a bill to the 131<sup>st</sup> Legislature on matters related to the report.

**Sec. 44. Report on disability retirement.** The Maine Public Employees Retirement System shall report to the joint standing committee of the Legislature having jurisdiction over retirement matters, no later than January 31, 2023, on the experience of the system and its members after the implementation of this Act. The joint standing committee of the Legislature having jurisdiction over retirement matters may report out a bill to the 131<sup>st</sup> Legislature on matters related to the report.

## **Program Design**

The MainePERS LTDI program will be coordinated with the existing Disability Retirement program benefit. The insurance carrier will serve as the single point of contact for initiation of all LTDI benefits. The carrier will be responsible for all decisions on the LTDI benefits and keep MainePERS informed on the status of such decisions. The carrier will be the claim fiduciary on the fully insured LTDI benefit.

Information collected by the carrier in the context of its LTDI administration will be available to and shared with MainePERS should an application for Disability Retirement be pursued subsequent to a member's interactions with or coverage by the carrier. MainePERS will retain claim fiduciary responsibilities on the Disability Retirement benefit.

In instances when the carrier believes a claimant's condition may be appropriate for consideration under the MainePERS Disability Retirement program, the carrier will collaborate with MainePERS to evaluate the claimant's condition.

From an income replacement perspective, the maximum LTDI benefit percent exactly matches the Disability Retirement benefit percent, so if an employee qualifies for the Disability Retirement benefit, the LTDI benefit would be offset by the disability retirement benefit (subject to the \$100 minimum monthly benefit). Also, the maximum LTDI benefit period reflects an employee's normal retirement age, meaning that LTDI benefits will terminate once the payee qualifies for a Service Retirement benefit without an early retirement reduction.



## Program Design Specifications

The RFP outlined initial program design specifications, which were modified through discussion with the Disability Working Group. The proposed program design specifications appear below, however, working group members differ in their support for some of these specifications. The respective employee and employer group statements appear following this section of the report.

- A. Participating MainePERS employers must offer the program to all employees who are MainePERS members<sup>3</sup>
  - a. Employer may offer the MainePERS LTDI Program, or
  - b. Employer may offer an LTDI program through another provider
- B. Benefit percent is 59%, 60%, or 66.67% of compensation, depending on the disability retirement benefit in the employee's plan<sup>4</sup>
- C. Variable core maximum monthly benefit, from \$0 to \$8000 in thousand dollar increments
- D. Core maximum monthly benefit determined and paid for by employer, may be bargained
- E. Employees may opt-out of the program if core maximum monthly benefit is \$0
- F. Employees may elect the core maximum monthly benefit elected by the employer or buy-up for a maximum monthly benefit of \$8,000.
- G. Employee premiums to be paid through payroll deduction, post-tax so that the portion of the benefit contributed by the employee is not taxable
- H. Eligibility
  - a. Unable to perform material and substantial duties of employee's own occupation in first two years
  - b. Unable to perform material and substantial duties of any gainful occupation after two years
- I. No waiting period for employees actively at work
- J. Employee must apply for Social Security disability if covered by Social Security
- K. Elimination period is the later of 180 days of disability or the date the member exhausts short term disability days
- L. An employee may apply before elimination period ends
- M. Employee receives service credit while on LTDI for the MainePERS LTDI Program
- N. Benefit payments continue if employee's employment is terminated
- O. Work Incentive Benefit
  - a. Benefit is not reduced for return-to-work (RTW) earnings for the first 12 months unless the sum of RTW earnings and the benefit exceeds 100% of pre-disability earnings
  - b. After 12 months, the benefit will be offset according to a proportionate loss formula in which the deduction to the benefit is proportionate to the employee's RTW earnings ratio
- P. Benefit Offsets
  - a. MainePERS disability or service retirement, Social Security awards, workers' compensation, sick pay, and other benefits paid by employer\*

- Q. Disabilities due to mental illness and/or drug and alcohol abuse are limited to a lifetime maximum of 24 monthly benefit payments
- R. Survivor benefit equal to three times the gross monthly benefit amount payable if employee received at least 12 monthly benefit payments prior to the date of death
- S. Benefit ends when employee is no longer eligible for coverage under the plan, qualifies for a disability retirement benefit, or qualifies for an unreduced service retirement benefit
- T. A retroactive disability retirement benefit will be offset by any LTDI benefit paid for the same benefit period

*\*Note: MainePERS intends to negotiate with carrier to exclude a benefit offset for STD or LTDI coverage paid for by the employee*

### **Employee Groups' Statement on Program Design Specifications**

The unified representatives of the labor group participating in the MainePERS LTDI working group continues to be grounded, both in the intent, and the language in the directive(s) from the Maine Legislature. The matter before the working group to address:

- The currently onerous and lengthy process endured by MainePERS individual members in their application process to secure disability retirement benefits.
- Recognize and address the significant and adverse impact the current system has on the health, welfare and livelihood of the individual MPERS member in their pursuit of disability coverage. and;
- With the possibility of only a negligible improvement in the length of the currently outlined and systemic application process, the need for an interim, long-term coverage product to allow those in the process who have no access to alternative coverage or income to live sustainably during their application process.

We believe it is the intention of our elected officials that MPERS and/or employers develop and provide a minimum effective amount LTDI coverage to accomplish these directives. Through the evolving discussions of the working group as a whole, we have seen a bit of a departure from these tenets. As such, we cannot agree that fielding a LTDI coverage that offers a “zero-dollar” minimum benefit, in and of itself, is not a benefit, nor does it satisfy the intended purposes of our legislative directive.

There is no more an enormously impactful and stressful situation than a disabling illness or injury; especially those grounded in the behavioral, such as Post Traumatic Stress Disease. These are magnified tenfold by the uncertainties of future quality of life and financial stability. They can have a cascading and cumulative effect on the affected employee and their family

It is important to alleviate some of this by having a safety net that is truly representative of the current financial landscape by providing a substantial minimum base benefit that accurately reflects the affected individual's income rather than a gross average. To accomplish this, we advocate for an employer paid base coverage that is equal to 59% of the individual member's current compensation as is done in other disability products such as those offered by Maine Municipal Association.

We do advocate for the implementation of options to address current efforts by employers by supporting the tentative "substantially similar or better" language with which to allow employer/employee choice through bargaining if it is currently provided. If those opportunities do not exist, then this group can address a minimum benefit to ensure the health and safety of those experiencing loss of work, income, and mental/physical health issues

We continue to support implementing an employer provided/funded coverage option that serves to support members experiencing the inability to work as they attempt to cover expenses while navigating the long road of disability application review.

### **Employer Groups' Respective Statements on Program Design Specifications**

Maine School Management Association asserts the benefits offered to employees of school districts is a local decision and that school districts should not be mandated to offer a specific benefit, one that would require negotiations if it were implemented. They also note that the MSMA Group Insurance Trust has offered a fully-insured group long-term disability insurance plan to its participating school districts for over thirty years.

Maine Municipal Association asserts the benefits offered to employees of municipalities are a local decision and that municipalities should not be mandated to offer a specific benefit. The Maine Municipal Employees Health Trust offers both a self-insured Income Protection Plan and a fully-insured Long Term Disability Plan, so that municipalities may select the disability benefits that best meet the needs of their employees.

State of Maine government, as Maine's second largest employer, understands and empathizes that long-term disability coverage is a need for some employees. The state interprets that this coverage must be offered, but that the employer is not obligated to contribute. The state also clarifies that non-leave benefits for state employees are not bargained. As is the case with any benefit, the state must consider the need, cost and impact to the entirety of its employee group, as well as administrative, implementation and oversight efforts. The state would seek to balance any Long Term Disability Income program with other programs as well as the current and future funding requirements of its existing comprehensive benefit package.

## Notes

<sup>1</sup> Milliman, response to questions posed by MainePERS on behalf of the Disability Working Group on October 27, 2022. Estimated number of employees that would qualify for LTDI annually and average length of benefit?

*The typical claim incidence rate for LTDI coverage that features a 180-day EP is approximately 3 to 4 claims per 1,000 covered members per year, which includes permanent and total disabilities as well as less severe disabilities. Based on historical MainePERS disability retirement experience (which represents permanent and total disabilities only), the average claim annual incidence rate is approximately 1 claim per 1,000 covered employees. Based on these high-level approximations, the estimated annual claim incidence rate for employees that would qualify for LTDI annually (excluding permanent and total disabilities that would be eligible for disability retirement benefits) is roughly 2 to 3 per 1,000 covered employees.*

*LTDI claim durations vary significantly depending on the cause of disability. For example, claims related to less severe conditions (such as injuries or musculoskeletal conditions that can be treated) often terminate within the first 24 months because recovery rates are relatively high during this initial period. Generally speaking, many LTDI claims fall into this category. Claims that last beyond 24 months are often due to severe conditions (such as MS or respiratory conditions) and have much lower recovery rates. These claims can persist a very long time. On average, LTDI claims typically last for 4 to 5 years, but with a wide variation on specific claims.*

<sup>2</sup>The member numbers in this report are those provided to bidders in the RFP process. They represent active members as of FY2021 who would not reach normal retirement age prior to July 1, 2023. Actual numbers of active members below normal retirement age as of that date are currently projected to be approximately 4% higher.

<sup>3</sup>Participating MainePERS employers must also offer the program to employees who choose not to become members but participate in the defined contribution plan pursuant to Title 5, section 18801, sub-section 1.

<sup>4</sup>The benefit available to the employee without a buy-up is the lesser of the core maximum monthly benefit and 59% (60% or 66.67% where applicable) of compensation. For example, an employee in a 59% plan with a core maximum monthly benefit of \$2,000 and annual compensation of \$50,000 will have an LTDI benefit of \$2,000 since 59% of compensation at \$2,458.33 per month exceeds the core maximum monthly benefit amount.

## Appendices

- A. DRAFT Legislation
- B. Estimated Premiums
- C. Disability Working Group Questions & Issues
- D. Disability Retirement Application Process and Time Variables

**An Act to Make Long-Term Disability Insurance Coverage Available to Public Employees**

**VERSION 1 – NO MANDATED EMPLOYER-PAID CORE BENEFIT**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA § 18101, as enacted by PL 2017, c. 378, §1 is amended to read as follows:**

The board ~~may~~shall offer long-term disability insurance coverage to members through their employer and may contract with one or more insurance companies to provide this coverage. Employers shall provide the long-term disability insurance coverage to their employees who are members or provide substantially equivalent coverage obtained from another source.

**1. Premiums.** All premiums and any other amounts due to an insurance company or other 3rd party in connection with coverage offered by the board under this subchapter must be borne as follows:~~by the covered person, the covered person's employer or both the covered person and the covered person's employer.~~

A. The employer shall elect a maximum monthly benefit, which may be zero, and pay any premiums and other amounts for that maximum monthly benefit amount; and

B. The member may elect to have the maximum monthly benefit amount that has been elected by the employer or pay any remaining premiums and other amounts for a maximum monthly benefit of \$8,000.

**1-A. Benefits.** Subject to the applicable maximum monthly benefit amount, a minimum monthly benefit amount of \$100, and offsets and other typical long-term disability policy provisions, the coverage offered by the board under this subchapter must replace:

A. For members who would receive a disability retirement benefit equal to 59% of the member's average final compensation if qualified for disability retirement benefits, 59% of the covered member's income from the employer providing the coverage; or

B. For members who would receive a disability retirement benefit equal to 66 2/3% of the member's average final compensation if qualified for disability retirement benefits, 66 2/3% of the covered member's income from the employer providing the coverage.

**2. Rules.** The board may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

**Sec. 2. 5 MRSA § 18701, as enacted by PL 2017, c. 378, §1 is amended to read as follows:**

The board ~~may~~shall offer long-term disability insurance coverage to members and employees who choose not to become members but participate in the defined contribution plan pursuant to section 18801, subsection 1 through their employer and may contract with one or more insurance companies to provide this coverage. Employers shall provide

## An Act to Make Long-Term Disability Insurance Coverage Available to Public Employees

the long-term disability insurance coverage to their employees who are members or participants in the defined contribution plan pursuant to section 18801, subsection 1 or provide substantially equivalent coverage obtained from another source.

**1. Premiums.** All premiums and any other amounts due to an insurance company or other 3rd party in connection with coverage offered by the board under this subchapter must be borne as follows:~~by the covered person, the covered person's employer or both the covered person and the covered person's employer.~~

A. The employer shall elect a maximum monthly benefit, which may be zero, and pay any premiums and other amounts for that maximum monthly benefit amount; and

B. The member or participant may elect to have the maximum monthly benefit amount that has been elected by the employer or pay any remaining premiums and other amounts for a maximum monthly benefit of \$8,000.

**1-A. Benefits.** Subject to the applicable maximum monthly benefit amount, a minimum monthly benefit amount of \$100, and offsets and other typical long-term disability policy provisions, the coverage offered by the board under this subchapter must replace:

A. For members who would receive a disability retirement benefit equal to 59% of the member's average final compensation if qualified for disability retirement benefits, 59% of the member's income from the employer providing the coverage;

B. For participants who would receive a disability retirement benefit equal to 60% of the member's annual compensation if qualified for disability retirement benefits, 60% of the participant's income from the employer providing the coverage; or

C. For members who would receive a disability retirement benefit equal to 66 2/3% of the member's average final compensation if qualified for disability retirement benefits, 66 2/3% of the member's income from the employer providing the coverage.

**2. Rules.** The board may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

### SUMMARY

This bill requires the Maine Public Employees Retirement System to offer long-term disability insurance coverage and requires employers to provide members of the System and certain employees who participate in the System's defined contribution plan with the coverage or substantially equivalent coverage obtained from another source.

**An Act to Make Long-Term Disability Insurance Coverage Available to Public Employees**

**VERSION 2 – MANDATED EMPLOYER-PAID BENEFIT**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA § 18101, as enacted by PL 2017, c. 378, §1 is amended to read:**

The board ~~may~~shall offer long-term disability insurance coverage to members through their employer and may contract with one or more insurance companies to provide this coverage. Employers shall provide the long-term disability insurance coverage to their employees who are members or provide substantially equivalent coverage obtained from another source.

**1. Premiums.** All premiums and any other amounts due to an insurance company or other 3rd party in connection with coverage offered by the board under this subchapter must be borne by ~~the covered person, the covered person's employer or both the covered person and the covered person's employer.~~

**1-A. Benefits.** Subject to a maximum monthly benefit amount of \$8,000, a minimum monthly benefit amount of \$100, and offsets and other typical long-term disability policy provisions, the coverage offered by the board under this subchapter must replace:

A. For members who would receive a disability retirement benefit equal to 59% of the member's average final compensation if qualified for disability retirement benefits, 59% of the covered member's income from the employer providing the coverage; or

B. For members who would receive a disability retirement benefit equal to 66 2/3% of the member's average final compensation if qualified for disability retirement benefits, 66 2/3% of the covered member's income from the employer providing the coverage.

**2. Rules.** The board may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

**Sec. 2. 5 MRSA § 18701, as enacted by PL 2017, c. 378, §1 is amended to read as follows:**

The board ~~may~~shall offer long-term disability insurance coverage to members and employees who choose not to become members but participate in the defined contribution plan pursuant to section 18801, subsection 1 through their employer and may contract with one or more insurance companies to provide this coverage. Employers shall provide the long-term disability insurance coverage to their employees who are members or participants in the defined contribution plan pursuant to section 18801, subsection 1 or provide substantially equivalent coverage obtained from another source.

**1. Premiums.** All premiums and any other amounts due to an insurance company or other 3rd party in connection with coverage offered by the board under this subchapter must be borne by ~~the covered person, the covered person's employer or both the covered person and the covered person's employer.~~

**An Act to Make Long-Term Disability Insurance Coverage Available to Public Employees**

**1-A. Benefits.** Subject to a maximum monthly benefit amount of \$8,000, a minimum monthly benefit amount of \$100, and offsets and other typical long-term disability policy provisions, the coverage offered by the board under this subchapter must replace:

A. For members who would receive a disability retirement benefit equal to 59% of the member's or participant's average final compensation if qualified for disability retirement benefits, 59% of the member's income from the employer providing the coverage;

B. For participants who would receive a disability retirement benefit equal to 60% of the member's annual compensation if qualified for disability retirement benefits, 60% of the participant's income from the employer providing the coverage; or

C. For members who would receive a disability retirement benefit equal to 66 2/3% of the member's average final compensation if qualified for disability retirement benefits, 66 2/3% of the member's income from the employer providing the coverage.

**2. Rules.** The board may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

SUMMARY

This bill requires the Maine Public Employees Retirement System to offer long-term disability insurance coverage and requires employers to provide the coverage at employer expense to members of the System and certain employees who participate in the System's defined contribution plan with the coverage or provide substantially equivalent coverage obtained from another source.



**Variable Core Maximum Monthly Benefit – Estimated Premiums Per Covered Employee**

**APPENDIX B**

Core Maximum Benefit Amount: \$1,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$61	\$35	\$25	\$61	\$35	\$30
2	\$76	\$79	\$61	\$43	\$62	\$65
3	\$29	\$40	\$17	\$24	\$46	\$28

Core Maximum Benefit Amount: \$2,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$117	\$67	\$44	\$118	\$64	\$55
2	\$146	\$150	\$109	\$83	\$113	\$119
3	\$57	\$76	430	\$46	\$83	\$51

Core Maximum Benefit Amount: \$3,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$162	\$88	\$57	\$165	\$81	\$71
2	\$202	\$198	\$139	\$116	\$144	\$154
3	\$79	\$100	\$38	\$64	\$106	\$66

Core Maximum Benefit Amount: \$4,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$186	\$96	\$62	\$188	\$88	\$78
2	\$232	\$217	\$152	\$132	\$156	\$168
3	\$90	\$110	\$42	\$73	\$115	\$73

Core Maximum Benefit Amount \$5,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$193	\$99	\$63	\$193	\$90	\$80
2	\$241	\$223	\$155	\$136	\$159	\$172
3	\$94	\$113	\$43	\$75	\$118	\$74

Core Maximum Benefit Amount \$6,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$195	\$99	\$63	\$193	\$91	\$81
2	\$244	\$224	\$156	\$136	\$161	\$173
3	\$95	\$114	\$43	\$75	\$119	\$75

Core Maximum Benefit Amount \$7,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$196	\$100	\$63	\$193	\$91	\$81
2	\$245	\$225	\$156	\$136	\$161	\$174
3	\$95	\$114	\$43	\$75	\$119	\$75

Core Maximum Benefit Amount \$8,000

Company	State Public Safety	State All Others	Education	PLD Public Safety	PLD All Others	Total
1	\$196	\$100	\$63	\$193	\$91	\$81
2	\$245	\$225	\$156	\$136	\$161	\$174
3	\$95	\$114	\$43	\$75	\$119	\$75

## Disability Working Group – Questions & Issues List 9/28/22

### Questions from 9/15 Meeting

1. Will members receive service credit while on LTDI? *Yes.*
2. Will premiums be paid through payroll deduction? *Yes.*
  - a. Do other groups currently have payroll deduction for STDI/LTDI? *To be determined. Likely yes.*
3. What is the form of any legislation required to implement? *To be determined.*
4. What population is involved? *All MainePERS members.*
  - a. How many members who apply for disability retirement are determined ineligible? *For determinations made 2021-22, approximately 9% of applications do not result in disability retirement benefits. Prior periods had higher denial rates (e.g., 2019-20 approx. 25%).*
  - b. How long does it take to reach a determination on disability retirement? *Approval approximately nine months; denial approximately one year. Prior to process changes to give applicants more opportunity to submit information, the average times were approximately three and five months, respectively.*
5. Would there be coordination of LTDI with other disability insurance? *To be determined. Likely yes.*
6. Would employers be required to participate? *To be determined.*
7. Will employers be permitted to choose which LTDI plan they adopt? *To be determined.*
8. Would employees who had declined optional MainePERS membership be required to participate in LTDI? *No.*
9. If local employers are required to fund this, would it be an unfunded mandate? *To be determined.*
10. What would the costs be per employee? *To be provided.*
11. What changes were made to the disability program by the recent law? *The new law made the following changes:*
  - *Replaces “impossible to perform the duties of the member’s employment position” standard with “unable to perform the essential functions of the member’s employment position with reasonable accommodation”;*
  - *Calls on MainePERS to create a form to be completed by the member’s provider addressing eligibility requirements;*
  - *Eliminates the Medical Board and provides for a medical review service provider;*

- *Requires an Independent Medical Examination before an application can be denied on medical grounds unless the requirement is waived;*
- *Requires primary consideration of medical opinions in the record and whether the opinions are supported by sound medical evidence and consistent with other medical evidence;*
- *Specifies that Hearing Officers are independent contractors;*
- *Gives an appellant a role in selecting the Hearing Officer;*
- *Provides for de novo court review; and*
- *Allows attorney's fees of up to \$12,000 for a successful appellant.*

12. Will there be a return of premium for any benefit not used? *No.*  
 a. If not, is this a quasi-tax? *No.*

13. Is there a qualifying impairment list? *To be determined.*

Mark Roberts, Maine State Law Enforcement Association

14. If there is mandatory participation and premium payment from State employees, much like MainePers retirement, will there be a return of premium for any benefit not used? If not, does the required contribution become a quasi-tax? *See number 12 above.*
15. Is there an available qualifying impairment list? Are there known exclusions (work related injury, mental health injury, etc.)? *See number 13 above.*

Rick Callier, Professional Fire Fighters of Maine

16. What is the expected time frame for qualification can people apply in advance or must they wait for the elimination period to pass prior to application? *They can apply in advance.*
17. If the employee is terminated during the disability period, what happens? *The benefit payments continue.*
18. Will disability time be counted as service credit time if the employee does not reach normal retirement? *See answer to number 1 above.*  
 a. If so, who pays the contribution? *It is built into the contribution rates the same as service credit during disability retirement is.*
19. Will there be a Coordination of benefits for employees' sick leave? *To be determined.*
20. MMEHT income protection is a common employee purchased item, would there income guidelines that would be used if an employee buys his own private coverage, MMEHT/AFLAC etc? *To be determined.*

21. Will these payments be reported as income? *Benefits are taxable to the extent that they are employer funded; any employee-funded portion will be not taxable.*
22. MEPERS disability requires social security disability application, will long term disability have the same requirement? *Yes.*
23. If an employee eventually qualifies for retirement under the existing MainePERS disability benefit programs, how would the prior disability payments that had been made apply? *To be determined.*
24. It appears that the Insurance Company determines qualifications for the program, will there be an effort to insure their requirements are based upon the same criteria of MEPERS with the exception of permanency, i.e not able to work in the present job capacity prior to disability application? *The requirements are similar – the first two years are own occupation; after two years it is any gainful occupation.*
25. Will the exception period be based on last day at work or nonpayment status, or will reduce work time suffice toward the exception period? *To be determined.*
26. Waiting Period Coverage begins the date the member becomes an eligible employee, will this be for new employees, or are all members considered for the waiting period? *There is no waiting period for employees actively at work.*

Deb Roberts, Maine School Management Association

Questions/Comments regarding mandatory LTD insurance from a small group of Superintendents surveyed:

27. The majority of Superintendents surveyed are NOT in favor of a mandatory LTD insurance program for their MEPERS Teacher member employees
28. School employees already have generous sick leave benefit accumulations in their collective bargaining agreements
29. The majority of Superintendents surveyed already offer a voluntary employee paid LTD insurance program for their employees
30. All benefits including LTD insurance are negotiated along with other benefits in exchange for other priorities
31. Why does it take so long for a MEPERS disability retirement to be processed? *An explanation of the process will be provided.*

32. Would substitute teachers and coaches who are Teacher members of MEPERS be covered under this mandatory LTD program? *Yes.*
33. Would the 180-day elimination period run concurrently with the employee's own personal sick leave or kick in after the employee runs out of their own sick leave? *To be determined.*

Heather Perreault, State of Maine Department of Administrative & Financial Services

34. Maximum LTD benefit period reflects employee's normal service retirement date
- How does this work for MEPERS plans that do not have a normal service retirement date, just required # years of service? *To be determined.*
  - What happens for employees whose # years of service result in lower retirement benefit than what they were receiving as LTD benefit? *To be determined.*
  - Do employees continue to earn years of service while receiving LTD benefit? *See answer to number 1 above.*
  - Is employer required to hold an employee's position for them while they are receiving LTD benefits? *No.*
  - How would a LTD benefit coordination impact pending Workers' Compensation claims? *To be determined.*
35. How will LTD and disability retirement benefits be coordinated, especially if employee is on LTD and separates from service but didn't apply for disability retirement prior to separation? *To be determined.*
36. Employer alternatives
- \$8,000 is a large benefit – at 66.67% of salary, that covers 2/3 salary for someone making \$144k/year
  - Need an option that allows the employer to select a core benefit amount greater than \$1,000
    - Option 2 allows employer to select how much they pay for but obligates the employee to paying the full balance for \$8k benefit – could be a hardship for some employees to pay for
    - Option 3 core benefit of \$1k puts majority of cost on employee for a decent amount of coverage – could be a hardship for some employees to pay for
37. Definition of disability – after 24 months switches from own occupation to any occupation – is there any benefit once it switches to any occupation, to make up the difference between new earnings and former own occupation earnings? *The benefit amount remains the same.*
38. How many people are we trying to solve an insurance gap problem for? Would it make more sense cost-wise to try a self-funded or pay-as-you-go program rather than paying premiums on all employees? *To be determined.*
- Could incorporate independent claims review similar to new disability retirement process

William Laubenstein, Maine Association of Retirees

39. The role, if any, MainePERS will have if the State implements long term disability insurance program. *MainePERS would contract with the LTDI insurance carrier. Any other role is to be determined.*

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## MEMORANDUM

**Date:** October 5, 2022  
**To:** Disability Working Group  
**From:** Mara McGowen, Supplemental Benefits Division Manager  
**Re:** Disability Retirement Application Process and Time Variables

This memo is meant to provide a brief overview of the current application process as most recently updated by law in October 2021 for Disability Retirement and to outline the variables that can influence the time elapsed between an application being filed and a decision being rendered.

### **Executive Summary:**

- The process of applying for disability retirement and reaching a determination on an application currently requires approximately 9 to 12 months, sometimes longer, depending on the particulars of a case.
- The length of time required generally is associated with providing an applicant every opportunity under the law to provide information that will help result in an accurate assessment of their eligibility for benefits.
- In practice, this has resulted in more approvals and fewer denials. For the applications resolved in 2021-2022, MainePERS approved more than 90 percent of all applications.
- Some typical factors that can lengthen the process include: compilation of medical and employer records; review by the medical review service provider (i.e., UMASS); independent medical examination; and, applicant-requested extensions.
- Each of these and other steps are further detailed below.

### **Disability Application Process:**

*Intake* – When a member calls MainePERS to inquire about application for Disability Retirement, a Disability Specialist is assigned to process an intake. During the intake, members are provided, in detail, with the eligibility requirements of the program, an understanding of the application process, and next steps to be taken. These conversations typically require approximately an hour. They provide an initial opportunity for an applicant to describe their situation and often the hardships they are facing. It is also at this point that applicants or potential applicants are provided with a health care provider form, newly required by law, which describes the requirements for eligibility and which MainePERS considers in making the determination.

*Receipt of Application* – Upon completion of the intake, application materials are sent to the member at their request. Application materials are not available unless an intake is completed. MainePERS has found that the intake process reduces frustration for members due to the proactive education surrounding program eligibility requirements. It also assists members in deciding if or when the right time to apply is and informs them about important impacts on benefits such as life or health insurance if an unpaid leave or termination occurs.

*New Application Interview* – Once a complete application has been received, a Specialist will speak with the applicant. This is another opportunity for the Specialist to outline expectations for the applicant. This interview is also used to gather information regarding the applicant's most recent position, the difficulties they are facing, ask questions regarding the application itself, etc.

*Compilation of Records* – In addition to the medical records MainePERS needs to compile, specialists and support staff are also requesting documentation from employers, worker's compensation, staff responsible for processing ADA accommodations and any other sources deemed necessary through the application and interview process.

*Employer Interview* – This is an important step in the application process. Specialists schedule interviews to discuss any difficulties the applicant was having performing job functions, any accommodations provided, further explanation of job duties, etc. This often involves speaking with more than one individual (i.e., direct supervisor, Human Resources personnel, ADA personnel, etc.).

*Pre-Medical Review* – After receipt of all initial medical documentation and completion of employer interviews, the Specialist calls the applicant to review the medical records received and to determine if the information the applicant intends to submit is complete. This is an opportunity for an applicant to identify important missing information prior to reaching any conclusions about eligibility.

*Submission to Medical Review Service Provider* – MainePERS' independent contractor as stipulated by law (currently contracted with UMASS) provides medical opinions regarding the applicable diagnoses, limitations caused by the applicant's diagnoses and whether or not any limitations are expected to be permanent.

*Observation* – Upon receipt and review of the report from the medical review service provider, the assigned Specialist will speak with the applicant regarding the findings. A letter outlining the detail of this conversation, as well as a copy of the report from the medical review service provider/UMASS, is provided to the applicant.

*Record Supplementation* – Following the observation, the applicant often will choose to supplement the documentation previously provided to MainePERS. Examples of supplementation include undergoing suggested treatment, consulting with treating physicians regarding the observation and UMASS report or seeing a new medical provider. Additional medical records are often compiled at this phase.

*2<sup>nd</sup> Review by Medical Review Service Provider* – Once the applicant is satisfied with the content of their record, the record is sent to UMASS for a second review.

*Independent Medical Examination (IME)* – Each applicant has the opportunity to have an IME scheduled prior to a denial being issued on medical grounds. The medical professionals who perform IMEs are procured by an outside contractor or are themselves independent contractors. The applicant must agree that the professional suggested is acceptable to them prior to scheduling. Applicants may choose to waive the right to an IME.

*Decision Issued* – Several levels of internal review are performed prior to a decision being rendered.

*Hold* – At any point in the process above, an applicant may request that their application be placed on hold for 30, 60 or 90 days. Multiple holds may be requested.



*The process above is outlined to convey the typical applicant's experience. Please note, some steps may be omitted or repeated depending on the circumstances. For example, an applicant in the end stages of a terminal cancer may cause a Specialist to work directly with the applicant's Oncologist in order to expedite the application and permit an application to be granted without review by the medical review service provider.*

### **Variables that Impact Application Processing Time:**

*Compilation of Medical Records* – Compiling medical records can be a lengthy process. Many Maine providers request MainePERS wait 30 days prior to checking the status of requests, while out of state facilities and national medical record compilation services request 60 days. Once received, staff often discover treating physicians not previously disclosed during the application process, which then requires additional record requests. It also is not uncommon for partial records to be received requiring follow up and likely a second request to obtain the needed information.

*Employer Response Times* – Response times from employers vary. It is not uncommon for an Employer Report to take several months to be received and then additional time to schedule an Employer Interview and HR follow up.

*Record Supplementation* – Applicants are permitted to supplement their record at any time. While this is encouraged when the applicant believes it necessary, it lengthens the process.

*Seeking Further Treatment* – Some applicants apply while still in treatment and/or before they have exhausted all treatment options. Since permanency is an eligibility requirement, further treatment can be required in order to determine an applicant's prognosis.

*Holds* – An applicant, at any time, may request their case be placed on hold for 30, 60 or 90 days. Applicants can request multiple holds.

*Independent Medical Examinations (IMEs)* – Sometimes the contracted vendor has difficulty procuring the appropriate medical professional to provide this service. Since an applicant must agree to the medical professional, the pool of available candidates can be further limited if the applicant chooses to deny professionals. Once a medical professional agreeable to both parties is located, there is often further time required actually to secure an appointment. Conducting an IME may add six months to the application processing time as a result.

*Medical Review Provider Reports* – The medical review provider (currently UMASS) contractually has 30 days to review a case and render an opinion each time the file is sent to them for review. If it is necessary for staff to ask clarifying questions about the content of the report, coordination can take several weeks after the 30 day deadline has passed.

*Time required to process an application often is voluntarily extended by the member at their discretion. In order for each applicant to be confident in the documentation submitted for consideration, MainePERS provides as much opportunity as possible for a complete record to be compiled. Whether the decision is to approve or deny the application, specialists are dedicated to ensuring the record is as complete as possible in order for the appropriate determination to be made.*