



PERAC HITS THE ROAD

2022 BOARD ADMINISTRATOR TRAINING

# Beneficiaries on a Half Shell

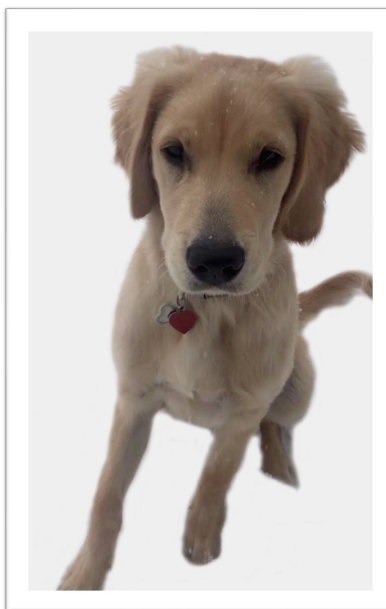


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PERAC Board Administrator Training

Danvers  
November 15, 2022



**Dublin Corrigan Chose  
Sunday, July 10, 2022  
as the Day He Would  
Eat the Newspaper!**



## What We Will Cover Today:

- Not concerning Beneficiaries:
  - A word about local options
  - The Much-Requested Venn Diagram
- A Brief Summary of two of Chapter 32's Beneficiary Provisions
- Ten Most Recent Beneficiary Questions Received by Phone or Email
  - Names, retirement boards, some facts changed to protect the innocent.
  - All references to sections of the statute, unless otherwise noted, are to Chapter 32.
- The All-Important Conclusion Slide

### NOTES:



## Local Options

- Retirement boards should notify PERAC whenever they accept any local option.
- This notification should be in writing, addressed to the Executive Director.
- We strive to keep our local option webpages accurate and up to date.

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## Increasing the COLA Base

- Retirement boards must inform PERAC when they increase their COLA Bases.
- They are required to submit information from both the retirement board and the city/town/advisory committee showing that a vote was held and approved by both parties.
- The information submitted should state what the new COLA Base will be and when it becomes effective.

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### NOTES:

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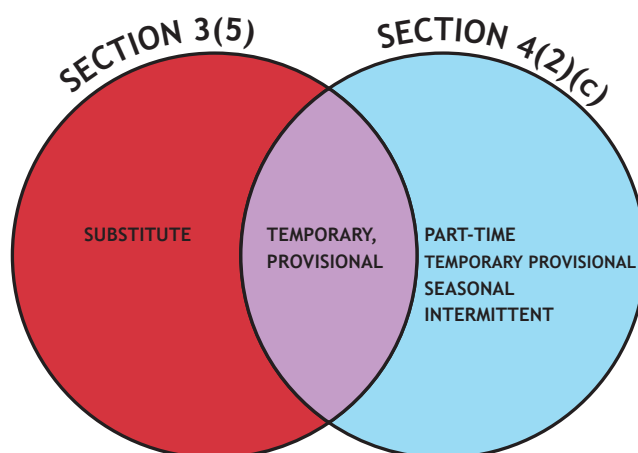
## Yearly COLA Increases

- Retirement boards should also be notifying PERAC about their COLA yearly increases (usually, 3%).
- We send out a memo every year in January asking boards to notify PERAC even if they choose not to issue a COLA for that year.
- Boards need to vote to accept a COLA before July 1st of any year if they want it to become effective for July 1st (new FY).

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## Venn Diagram of Interplay Between Sections 3(5) and 4(2)(c)



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### NOTES:





## Two of Chapter 32's Key Beneficiary Provisions

### Section 11

#### Chapter 32's "Gatekeeper"

- Provides for disbursement of annuity account
- Also prohibits disbursement of annuity account
- Allows boards varying levels of flexibility in determining proper beneficiary or beneficiaries.

### Section 12

#### Describes How Allowances are Paid

- Option A
- Option B
- Option C
- **Option D:** If certain circumstances are met, a lifetime allowance will be payable to a certain, named beneficiary if a member dies prior to retirement.

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## Section 11

- *11(1) Return of Accumulated Total Deductions to Members*
- *11(2) Amounts Due to Beneficiaries of Deceased Members*
  - 11(2)(b) – Death of an Option B retiree
  - 11(2)(c) – Death of a member who has not yet retired

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### NOTES:

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## Section 11: Forms

- There are forms available for both the 11(2)(b) and 11(2)(c) scenarios, and everyone should have a Section 11(2)(c) form on file:
  - *Beneficiary Selection Form for Refund of Accumulated Deductions (If Member Dies Before Retirement)*
  - <https://www.mass.gov/doc/beneficiary-selection-form/download>

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## Section 12

- 12(1) *Election of Option*, includes Spousal Acknowledgement
- 12(2) *Terms of Options*
- 12(2)(a) *Life Annuity* - No beneficiary
- 12(2)(b) *Cash Refund Annuity* - Any person or entity may be beneficiary, or co-beneficiaries. If any amounts remain in a retiree's account upon their death, they are paid out in a lump sum to the beneficiary or beneficiaries of record.

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### NOTES:



## Section 12 (Continued)

- 12(2)(c) *Joint and Last Survivor Allowance* - One named beneficiary from a list in the statute receives a lifetime benefit upon the member's death following retirement.
- 12(2)(d) *Member Survivor Allowance* - One named beneficiary from a list in the statute receives a lifetime benefit upon the member's death prior to retirement. (Also provides for a spousal minimum allowance.).
- <https://www.mass.gov/doc/beneficiary-selection-form-option-d-form/download>



## Section 12 (Continued)

Section 12(2)(c)	Section 12(2)(d)
<ul style="list-style-type: none"> <li>○ "Option C"</li> <li>○ Eligible beneficiaries are spouse, former spouse who has not remarried, child, father, mother, sister or brother of the member.</li> <li>○ Only paid out upon the death of an Option C retiree.</li> <li>○ Extremely limited benefit to a child of a member and the spouse, if the spouse dies while receiving an Option C allowance.</li> </ul>	<ul style="list-style-type: none"> <li>○ "Option D"</li> <li>○ Eligible beneficiaries are spouse, former spouse who has not remarried, child, father, mother, sister or brother of the member.</li> <li>○ Only paid out if a member dies prior to retirement, and only if certain conditions are met.</li> <li>○ One third 1/3<sup>rd</sup> more (approximately) than payable under Option C.</li> <li>○ Dependent allowances for children of member available via Section 12B.</li> </ul>

### NOTES:

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## Two Sides of the Same Coin

### Section 11(2)(c)

- Member dies prior to retirement.
- Will annuity account be paid out?
- If so, to whom?
- Payout of annuity account prevents an allowance being paid under Section 12.
- Death = Time of Stress.
- Forms on file can help families and retirement board better navigate this trying time.

### Section 12(2)(d)

- Member dies prior to retirement.
- Is someone entitled to a lifetime retirement allowance?
- An allowance being paid out under Section 12 prevents the payout of the annuity account.
- Loss of a loved one not the greatest time to work out any ambiguities which may exist.
- Forms on file make everything easier.



## 10 Most Recent Beneficiary Questions

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| ○ Election of Option D               | ○ Remarried Firefighter with DRO |
| ○ Pay out of Annuity Account         | ○ Beneficiary Predeceases Member |
| ○ Special Needs Trust as Beneficiary | ○ Option D Minimum Allowance     |
| ○ COLAs on Dependent Allowances      | ○ Long-Lived Retiree             |
| ○ Appropriate Option C Beneficiaries | ○ Remarriage Penalty             |

### NOTES:





## Question 1: Election of Option D

- Alice and Harry have lived together for 32 happy years, but they never married.
- Harry, a public employee, gets a dire health diagnosis, and may not have long to live.
- Seeking to protect Alice's right to a pension, Alice and Harry marry, and proudly mail their newly minted marriage certificate to the retirement board offices.
- Is Alice eligible for Harry's Option D benefit? (They have been married less than a month.)

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## Answer to Question 1: Election of Option D

- It depends.
- If Harry *nominates* Alice as his Option D beneficiary prior to his passing, she will be eligible for the benefit.
- If Harry fails to nominate her, she will not be eligible for the benefit.

**Distinguish:** Selection v. Election

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### NOTES:

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## Option D Beneficiaries: Selected or Elected

- A member designates an Option D beneficiary on a prescribed form.
- Only one beneficiary may be named, and only a spouse, child, former spouse who has not remarried, mother, father, brother or sister is eligible for designation.

### OR

- An eligible spouse makes the election after the member's death.

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## For a Spouse to be Eligible to Make the Election:

- The member must have completed at least two years of creditable service.
- The member and spouse must have been married for at least one year.
- The member and spouse must have been living together at the time of the member's death.
- If they were not living together at the time of the member's death, the board must find that they were living apart for justifiable cause, other than desertion or moral turpitude on the part of the applying spouse.

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### NOTES:



## Question 2: Payout of Annuity Account

- Terence and Sophia are married for many years.
- Terence is a firefighter, who retires for superannuation, picks Option C, and designates Sophia as his Option C beneficiary.
- Less than 5 years following his superannuation retirement, Terence is diagnosed with cancer and sadly dies of the disease.
- Sophia is awarded a Section 9 benefit pursuant to the Cancer Presumption of Section 94B.
- Is Sophia entitled to the return of Terence's annuity account?

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## Answer to Question 2: Payout of Annuity Account

- No, Sophia is not entitled to a return of the annuity account.
- If a member dies as a retiree, having picked Option A or Option C, there is no payout of the accumulated deductions if a Section 9 scenario is later awakened. (Sections 11(2)(b) & 12(2)(b)).
- Section 9(2) calls for the Annuity Savings Fund's distribution, but a retiree's accumulated total deductions are housed in the Annuity Reserve Fund.

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### NOTES:

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## When Is An Annuity Account Distributed?

- When a member not yet retired so requests. (Sections 10(4) and 11(1))
- When a member dies prior to retirement and no allowance is to be paid to a survivor. (Section 11(2)(c))
- When a member in service dies "as a result of, and while in the performance of," his duties. (Section 9(2))
- When any retiree dies having picked Option B. (Sections 11(2)(b) and 12(2)(b))

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## When is an Annuity Account NOT Distributed?

- A member is in arrears in child support payments.
- A member owes an obligation to an employer under an employee benefit plan.
- The member is survived by a minor child.
- The member nominated a Section 12(2)(d) beneficiary.

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### NOTES:





## Question 3: Special Needs Trust as Beneficiary\*\*

- Becky, a member of the system, has a son named Nathan.
- Nathan is 26 years old, and severely disabled. He receives benefits from the Federal government in the form of Supplemental Security Income ("SSI").
- Becky is about to retire and wants to establish a Special Needs Trust for Nathan and name the trust as her Option C beneficiary.
- Is this permissible?

\*\*Frequently Asked Question

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## Answer to Question 3: Special Needs Trust as Beneficiary

- No, a special needs trust may not be named as either an Option C or Option D beneficiary.
- The Option C or Option D beneficiary is limited to one person from a small list set out in the statute at Section 12(2)(c).
- It would be fine to name the trust an Option B beneficiary.
- Nathan himself, as Becky's child, could be named the Option C or Option D beneficiary but this could imperil his SSI benefits.

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### NOTES:

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## The Option C Beneficiary

- A member may only designate one Option C beneficiary.
- The beneficiary may be the spouse, parent, former spouse who has not remarried, sibling or child.
- Eligibility of the beneficiary is determined at the time of option selection.

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## Question 4: COLAs on Dependent Allowances\*\*

- Section 12B of Chapter 32 provides for a dependent allowance in the amount of \$120 per month for the first child, and \$90 per month for each additional eligible child.
  - Do these allowances remain at \$120/\$90 per month or are these allowances subject to COLA increases?

\*\*Frequently Asked Question

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### NOTES:



## Answer to Question 4: COLAs on Dependent Allowances

- The dependent allowances described at Section 12B are subject to the COLA.
- The COLAs are to be applied separately to the 12(2)(d) benefit and the 12B dependent allowances.
- If the member would receive the maximum COLA for the 12(2)(d) benefit, he or she would still receive the COLA on the 12B benefit.
- Please see Section 103(g).
- Please see PERAC Memo No. 21 of 1998.

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## Question 5: Appropriate Option C Beneficiaries? \*\*

- Quinton is a member of a retirement system, who grew up in big, blended family. He and his brother Clyde were only 4 and 5 years old when their father passed away. Their mother, Maureen, later married Richard, and Maureen and Richard had two children together, Olive and Iris.
- Richard tragically dies, and Maureen remarries Maurice, who brings into the family his son Jake. Maureen never adopts Jake, but the entire blended family is a cohesive, loving family unit. They do everything together!
- Quinton is about to retire and wants to know if he can pick either Iris or Jake, the two “siblings” to whom he is the closest, as his Option C beneficiary. He also is considering naming Maurice, to whom he has also forged a deep bond.
- Can Quinton name either Iris, Jake or Maurice as his Option C beneficiary?

\*\*Frequently Asked Question

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### NOTES:

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## Answer to Question 5: Appropriate Option C Beneficiaries

Relationship	Appropriate Option C Beneficiary?
○ Step-parent (Maurice)	NO
○ Step-child	NO
○ Step-sibling (Jake)	NO
○ Half-sibling (Iris)	YES
○ Adopted sibling	YES

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## Question 6: Remarried Firefighter with a DRO

- Peter is a retired firefighter. He is a disability retiree, under the Heart Law. He retired in 2018.
- Peter's first wife was Jen, and they have a DRO on file with the Retirement Board. Peter named Jen as his Option C beneficiary under the terms of the DRO. When he retired, he was already married to his second wife, Claudia. When Peter signed his option selection form naming Jen as his Option C beneficiary, Claudia signed the form acknowledging the same.
- Now four years after his retirement, Peter comes to the office and wants to change his Option C beneficiary from Jen to Claudia.
- Peter also wants assurances that, even if he can't change beneficiaries, Claudia will get everything if he dies of the cause for which he retired, and Jen will get nothing.
- Can he change his Option C beneficiary?
- Can we give him those assurances?

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### NOTES:





## Answer to Question 6: Remarried Firefighter With a DRO

- No, and no.
- On April 13, 2016, Governor Charles D. Baker signed Chapter 77 of the Acts of 2016 “An Act further regulating survivors’ pension benefits and qualified domestic relations orders” into law.
- By its terms, Chapter 77 applies to “benefits first granted on or after July 1, 2016.”
- Pursuant to Chapter 77 of the Acts of 2016, if Peter dies as a result of the condition for which he retired, Jen would still receive the amount of the Option C benefit. Claudia would then receive the difference between the Option C benefit and the Section 9 benefit, if any. (Should Jen predecease Claudia, Claudia would “pop-up” to the full Section 9 benefit.)
- If Peter passes away as a result of an illness or injury unrelated to the condition for which he retired, Jen would get the Option C benefit, and Claudia would not be eligible for any benefit going forward.
- See PERAC Memorandum No. 16 of 2016.

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## An Option May Not Be Changed Following Retirement

- Section 12(1) provides that a retirement option must be selected prior to a member’s effective date of retirement.
- There is no mechanism under Chapter 32 that would allow a retiree to change either his option, or his Option C beneficiary, after retirement.

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### NOTES:

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## Question 7: Beneficiary Predeceases Member

- Druscilla dies as an active member of the system. When the board administrator checks her beneficiary form, it is discovered that Druscilla nominated her husband George as the person who would receive the return of her annuity account. No other beneficiary is listed. Sadly, George died two years before Druscilla.
- Druscilla's grown sons are now insisting the annuity account be divided between the two of them as next of kin. They are being quite persistent.
- Druscilla had 30 years of service and, consequently, more than \$300 in her account. She has no Option D form on file, and no minor children.
- May the sons be given the money?

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## Answer to Question 7: Beneficiary Predeceases Member

- The refund of an annuity account prompted by a death happening prior to retirement is covered by Section 11(2)(c).
- That subsection provides that if there is no beneficiary of record living at the time of the member's death, and if the amount in the account exceeds \$300, payment must be made "to the legal representatives of such member."
- In this case, the annuity account has to go to the member's estate and not directly to the members' two sons.

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### NOTES:



## Bonus Question *Related* to Question 7: Death of an Option B Retiree

- The answer to Question 7 would be different if Druscilla had already retired and picked Option B.
- Pursuant to Section 11(2)(b), the retirement board is given more latitude in disbursing the funds if there is no beneficiary listed, or no beneficiary living.
- The retirement board may pay the money to “the person or persons appearing in the judgment of the board to be entitled thereto...”

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## Another Bonus Question *Related* to Question 7: Option C Beneficiary Dies Before the Retiree.

- Prior to the pandemic, when we would hit the road with a beneficiary presentation, one question always inevitably arose.
- We don’t know why this kept coming up, but we are asking and answering it now anyway (because that’s the kind of dynamic presentation this is.)
- The Question: What is the effective date of the “Option C Pop-up”?

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### NOTES:

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## Option C Pop-up Effective Date

- If you pick Option C and your beneficiary predeceases you, your benefit “pops up” to an Option A benefit.
- What is the effective date of the allowances which are available for “pop-up”?
- Pursuant to Section 42 of Chapter 697 of the Acts of 1987, the answer is “on or after January 12, 1988.”
- Fun Fact: January 12, 1988 is now 34 years ago, and counting.
- Further Fun Fact: There is a local option for retirees who picked Option C and retired prior to January 12, 1988 to partake in the pop-up.

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## Question 8: Option D Minimum Allowance

- Timothy died in service, naming his son Thomas as his Option D beneficiary.
- Thomas is 35 years old at the time of his father’s death, and he is not incapacitated.
- There is a minimum allowance for Option D beneficiaries.
- May this be applied to Thomas’ benefit?

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### NOTES:





## Answer to Question 8: Option D Minimum Allowance

- The minimum allowance under Section 12(2)(d) is only available to the spouse of an active member who dies. Section 12(2)(d) specifically states :  
*"The normal monthly member-survivor allowance provided for under this option **to a spouse** of a deceased member shall not be less than \$250 or \$500 a month..."*  
(Emphasis supplied.)
- Thomas, who is not a spouse, would only receive the Option D benefit as calculated.
- See PERAC Memorandum No. 14 of 2012.

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## Question 9: Accidental Disability Retiree Dies Half a Century Following Retirement

- Barney was a police officer who suffered a heart attack on duty and retired for ADR under the Heart Law with an effective date of February 2, 1972.
- Yes, 1972.
- He dies on March 3, 2022, of congestive heart failure. He has outlived the wife to whom he was married in 1972 when he retired, and another wife, and is survived by his third wife, Maisie, whom he married in 2000.
- Is Maisie entitled to apply for either the Section 9 benefit or the Section 101 benefit?

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### NOTES:

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## Answer to Question 9: Accidental Disability Retiree Dies a Half Century Following Retirement

- Yes, Maisie may apply for Section 9 benefits.
- She is the current spouse.
- It appears he died as the direct and proximate result of the cause for which he retired.
- She is also entitled to Section 101, both while the application for Section 9 is pending, and if the Section 9 application is ultimately not approved.
- Barney retired prior to November 7, 1996.
- Opinion of the Attorney General, February 7, 1974, p. 109.



## Question 10: Remarriage Penalty

- Daniel dies, and his 41-year-old wife, Ida, wonders if she should elect the Section 12(2)(d) benefit. She is asking if the benefit would end if she were to remarry at some point in the future?

### NOTES:



## Answer to Question 10: Remarriage Penalty

- Ida may elect the Option D benefit without fear.
- An Option D benefit is not affected by the remarriage of a surviving spouse at some point in the future.
- Chapter 123 of the Acts of 2000 eliminated the so-called “remarriage penalty” from all pertinent sections of Chapter 32.
- See PERAC Memorandum No. 34 of 2000, and PERAC Memorandum No. 8 of 2015, which partially superseded the earlier memorandum.

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## 6 Quick Facts About Chapter 32 Beneficiaries:

1. They cannot vote in retirement board elections.
2. They are eligible to receive COLAs.
3. The taxation of their benefit mirrors that of the member upon whose benefit their allowance is based.
4. Sometimes they get a benefit which was unintended.
5. Their benefit ends upon their own death or
6. Their benefit ends when they reach a certain age or status.

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### NOTES:

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## The All-Important Conclusion Slide

- Does anyone have any questions about any of the scenarios we have covered here?
- These are the most recent questions we have received, but obviously not the only ones.
- Does anyone have any questions about any beneficiary issues not covered here?
- If any questions arise after we leave here, please email them to me at [judith.a.corrigan@mass.gov](mailto:judith.a.corrigan@mass.gov).

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### COMMONWEALTH OF MASSACHUSETTS

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