

# MACRS

Spring 2022

## PERAC Disability Regulations



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## Introduction

- PERAC is updating its disability regulations.  
Ongoing process, and all suggestions are welcome.
- Intent is to simplify and streamline.
- Include PROSPER procedures and steps.
- All slides should be read as PERAC's intended changes.

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## 840 CMR 10.00 – Standard Rules for Disability Retirement

- Regulation 10.02 talked about the purpose of these regulations is to establish uniform standards and procedures.
  - Move that language to 10.00, as it should be upfront.
- Add that proceedings for accidental death benefits fall within these regulations.

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### NOTES:

## 840 CMR 10.01 - Definitions

- Existing regulation contains **no** definitions.
- Currently, regulation merely refers one to the meanings assigned to words in 840 CMR 1.01.
  - That regulation contains **no** definitions.
- Incorporate relevant disability definitions contained within PERAC form “Glossary of Terms.”
- PERAC also intends to include definitions of additional terms, such as “PROSPER.”

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## 840 CMR 10.02 – Retirement Board Policy

- Purpose of regulation is to establish uniform standards and procedures for all retirement boards.

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### NOTES:

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## 840 CMR 10.03 – Board Supplemental Rules

- Board permitted to promulgate supplemental rules that shall be consistent with PERAC’s regulations.
  - PERAC intends to add “... and Chapter 32.”
- Such rules shall take effect upon PERAC’s approval.
- Just stylistic changes.

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## 840 CMR 10.04 – Board Findings of Fact

- Regulation details the findings that a board must make in order to grant a disability retirement benefit.
- Incapacity, permanence and causation standards.
- Specific standards for presumptions.
- Include recently added presumptions (breast and reproductive cancers).
- Clarify the various standards and the findings that a board must make.

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### NOTES:

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## **840 CMR 10.05 – Proceedings, Parties, Representation, Record**

- Define proceedings, parties, representation and record.
- Add “Accidental death allowances” to the list of proceedings before the retirement board.
- Break up the paragraph defining “parties” for clarity.

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## **840 CMR 10.06 – Proceedings for Ordinary or Accidental Disability Retirement**

- Regulation describes the things that must be included in the application.
- Currently states that the application must be filed, and then states what must also be filed.
- Much of what is listed is contained within the application form, however.
- Clarify that “The application form must include...”
- Clarify what is and is not included in the application.
  - For example, “A certificate from a licensed medical doctor” is not in the application form (it is a separate form).
- Specify the information needed for the description of the subject accident.
- Describe the fair summary of facts that an employer must include in an involuntary application.

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### **NOTES:**

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## 840 CMR 10.07 – Information From Employer

- Simplify the language.
- Clarify that the information needed from the employer is regardless of whether the application is voluntary or involuntary.
- Add section about the employer's possible awareness of any other incidents or hazards unrelated to job duties that may have caused or contributed to cause the member's claimed disability.

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## 840 CMR 10.08 – Medical Panel

- Include any steps that the boards must take via the PROSPER portal.
- Scenario where board determines that a medical panel is warranted.
- Distinguish between “joint regional medical panel” and “three separate examinations.”
- Describe the forms that must be provided to the medical panel (Physician's Statement, Member's Application, Employer's Statement, etc...).
- Describe the process for the board to provide medical records that cannot readily be uploaded (MRI imaging, x-rays, etc...).
- Specify that the board shall not provide any summary or analysis conducted by the retirement board.

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### NOTES:

## 840 CMR 10.09 – Investigation of Facts; Denial; Appeal

- Reiterate that board shall not provide the medical panel with a summary or analysis of the medical or other records.
- Clarify that the board may terminate the proceedings prior to requesting a medical panel if it determines that the member cannot be retired as a matter of law.
- Mandate that a member denied at this point must be provided with his or her appeal rights.

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## 840 CMR 10.10 – Medical Panel Examination

- Distinguish between a joint regional medical panel, and three single examinations.
- Define “non-invasive” medical tests.
- Merge the sections about representation and confidentiality.
- Rewrite the section about rescheduling an examination to require the member to show good cause and that PERAC may use its discretion whether to grant.
- Rewrite the section about documents that are submitted to the medical panel to account for PROSPER.

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### NOTES:

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## **840 CMR 10.11 – Medical Panel Findings, Further Examinations, Denial**

- Add PROSPER steps.
- Clarify what steps PERAC will take regarding clarifications.
  - Board permitted one clarification (from each doctor).
  - For subsequent clarifications or requests to convene a new medical panel, the board must petition PERAC and provide a compelling reason.
  - PERAC will use its discretion to determine whether such request is warranted and permissible.

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## **840 CMR 10.12 – Retirement Board Hearings**

- Very important regulation. Outlines the steps for holding a hearing.
- Should not be limited to just disability-related hearings.
- Add the content of this sub-regulation to make a new stand-alone regulation not limited to disability hearings.
- Edit this sub-regulation to be specific to disability and 91A hearings, and refer to the new stand-alone regulation.
- Insert 91A hearing language regarding PERAC's role and participation.

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### **NOTES:**

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## 840 CMR 10.13 - Decision

- Identify that the “decision” is the transmittal uploaded to PROSPER.
- Highlight that there should be a statement of the facts found by the board.
- Identify by name the documents to be sent to PERAC along with the transmittal (“Member’s Application for Disability Retirement” form).
- Require board to provide any clarification responses.
- Add “employer’s fair summary of the facts” for involuntary applications.
- Add “death certificate” for section 9 applications.
- Add “proof of veteran status” for section 6 applications.

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## 840 CMR 10.14 – Comprehensive Medical Examination (“CME”)

- Move request for medical records to the first paragraph, and replace “may” with “shall”.
- Clarify that the initial record review is done by PERAC, and that the examination may be referred to a doctor to conduct a comprehensive medical evaluation.
- Add notification and PROSPER procedures.
- Include what happens if member is found unable to return to work.

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### NOTES:

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## 840 CMR 10.15 – Restoration to Service (“RTS”)

- Clarify that a retiree only proceeds to the RTS stage when the doctor who conducted the CME finds the retiree able to perform the essential duties of the position from which he or she retired.
- Add notification procedures and edit for consistency.
- Highlight that the decision of the three-member medical panel must be unanimous in order to return to service.
- Remove mention of section 91A.
- Include requirement that the retiree must be given written notice and an opportunity to be heard prior to any suspension of retirement benefit.
- Clarify procedures for sworn members of the State Police.

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## 840 CMR 10.16 – Annual Statement of Earned Income

- Include PROSPER procedures and steps.
- Rewrite to provide that a member will have an opportunity to be heard before any termination shall take effect.
- Substitute “suspension” with “termination,” pursuant to the language in the statute.
- Describe the hearing process and PERAC’s role therein.
- Add section that retirees are not permitted to waive their pension every year when they are close to hitting their earnings limit.
- Add fact that disability retiree is still limited in hours and earnings pursuant to section 91(b).

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### NOTES:

## 840 CMR 10.17 – Modification of Retirement Allowance

- Incorporate PERAC's policy regarding modification.
- Policy implemented when retiree has excess earnings and must repay his or her entire allowance for three or more consecutive years.
- Opportunity to be heard by the Commission.
- Modification of allowance will remain in effect until retiree establishes that he or she no longer has potential earnings.
- Board permitted to pay over to a health insurance carrier that portion of the allowance to maintain the retiree's health insurance coverage.

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## 840 CMR 10.18, 10.19, 10.20 – Rehabilitation

- No significant changes.

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### NOTES:

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## 840 CMR 10.21 – Essential Duties

- No significant changes.

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## 840 CMR 10.22 - Failure to Provide Information

- No significant changes.

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### NOTES:

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## 840 CMR 10.23 – Application of a PERAC Employee

- Specific just to PERAC employees.
- No significant changes, although PERAC's Information Technology Unit is looking into whether access to information can be limited in PROSPER.

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## Conclusion

- The editing and updating of the disability regulations is ongoing.
- PERAC welcomes any and all suggestions.
- Please send any questions or suggestions to:  
[kenneth.j.hill@mass.gov](mailto:kenneth.j.hill@mass.gov)

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### NOTES:

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## **COMMONWEALTH OF MASSACHUSETTS**

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