IN PERSON & VIRTUAL BOARD MEETING

FEBRUARY 23, 2023 AT 9:00 AM
BOARD OF RETIREMENT OFFSITE

TO VIEW VIA WEB

https://lacera.com/leadership/board-meetings

TO PROVIDE PUBLIC COMMENT

Members of the public may address the Boards orally and in writing. To provide Public Comment, you should visit the above link and complete the request form by selecting whether you will provide oral or written comment from the options located under Options next to the Boards meeting.

Attention: If you have any questions, you may email PublicComment@lacera.com. If you would like to make a public comment during the committee meeting, review the Public Comment instructions.

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
300 N. LAKE AVENUE, SUITE 650, PASADENA, CA

AGENDA

A SPECIAL MEETING OF THE BOARD OF RETIREMENT AND

BOARD OF INVESTMENTS*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

PASADENA HILTON - 168 S. ROBLES AVENUE, PASADENA CA 91101

9:00 A.M., THURSDAY, FEBRUARY 23, 2023

This meeting will be conducted by the Board of Retirement and Board of Investments both in person and by teleconference under California Government Code Section 54953(e).

Any person may view the meeting online at https://LACERA.com/leadership/board-meetings

The Boards may take action on any item on the agenda, and agenda items may be taken out of order.

9:00 a.m. Call to Order

Public Comment

(Members of the public may address the Board orally and in writing. To provide Public Comment, you should visit https://LACERA.com/leadership/board-meetings and complete the request form by selecting whether you will provide oral or written comment from the options located under Options next to the Board meeting.

If you select oral comment, we will contact you via email with information and instruction as to how to access the meeting as a speaker. You will have up to 3 minutes to address the Board. Oral comment request will be accepted up to the close of the Public Comment item on the agenda.

If you select written comment, please input your written public comment or documentation on the above link as soon as possible and up to the close of the meeting. Written comment will be made part of the official record of the meeting. If you would like to remain anonymous at the meeting without stating your name, please select the "I would like to remain anonymous" in the request form. If you have any questions, you may email PublicComment@lacera.com.)

9:05 a.m. Welcome & Opening Remarks
Santos H. Kreimann, Chief Executive Officer

9:10 a.m. Retiree Healthcare Overview
Tatiana Bayer and Tionna Fredericks, Retiree Healthcare Division

Staff will be presenting our Healthcare Program history, healthcare program overview, Medicare basics and Part B premium reimbursement and Retiree Healthcare developments providing way for a great member's experience.

9:50 a.m. Federal Legislative/Regulatory Update
Amy Dunn, Vice President and Senior Consultant, National Health Compliance Practice, Segal Consulting

The 2022 mid-term election results will bring change to Washington D.C. During this session, Ms. Dunn will project how future health care regulations and legislation that affect retiree healthcare may be influenced during the 118th United States Congress.

10:30 a.m. Break

10:45 a.m. Overview of California's Master Plan for Aging (SCAN)
Dr. Sarita A. Mohanty, MD, MPH, MBA, President and CEO of The SCAN Foundation

We all are aging and want the opportunity to age well. California's Master Plan for Aging (MPA) is a 10 -year blueprint to building communities, systems, and policies that support equitable aging. A brief history of California's Master Plan for Aging, highlighting progress to date, priorities for the next two years, and opportunities for local engagement will be shared.

11:30 a.m. Specialty Drugs: Therapeutic Benefits and Financial Challenges
David Lauck, Strategic Account Executive and Lara Clower, Senior Clinical Advisor, CVS Health

An overview of LACERA's Prescription Drug performance, with a focus on the therapeutic benefits associated with specialty drugs and the financial challenges they pose.

12:15 p.m. Lunch

1:15 p.m. Disability Retirement Process Overview
Hernan Barrientos, Disability Retirement Specialist and Russell Lurina, Senior Disability Retirement Specialist

A high-level overview of the disability retirement process including eligibility, benefit types, investigative process, and Board of Retirement outcomes.

1:45p.m. Board of Retirement's Role in Administering Disability- Retirement Applications and Legal Standards for Permanent Incapacity and Service Connection
Frank Boyd, Senior Staff Counsel

A review of retirement boards' role in administering disability-retirement applications, applicant's burden of proof, and the legal standards for permanent incapacity and service connection.

2:15 p.m. Break

2:30 p.m. Getting to Know the Disability Litigation Office (DLO)
Vincent Lim, Chief Counsel, Disability Litigation; Allison Barrett, Senior Staff Counsel; and Eugenia Der, Senior Staff Counsel

An introduction to the Disability Litigation Office, who they are, what they do, and how they do it. Includes a discussion of their litigation philosophy, its origins, and examples of how it is applied.

3:00 p.m. Heart & Cancer Presumptions Under CERL
Frank Boyd, Senior Staff Counsel

An in-depth review of Government Code sections 31720.5 and 31720.6, the Heart and Cancer Presumptions.

4:00 p.m. Closing

The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.

Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Trustees at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

Requests for reasonable modification or accommodation of the telephone public access and Public Comments procedures stated in this agenda from individuals with disabilities, consistent with the Americans with Disabilities Act of 1990, may call the Board Offices at (626) 564-6000, Ext. 4401/4402 from 8:30 a.m. to 5:00 p.m. Monday through Friday or email PublicComment@lacera.com, but no later than 48 hours prior to the time the meeting is to commence.


BUILDING
A BETTER
TOMORROW
BOARD OF RETIREMENT OFFSITE

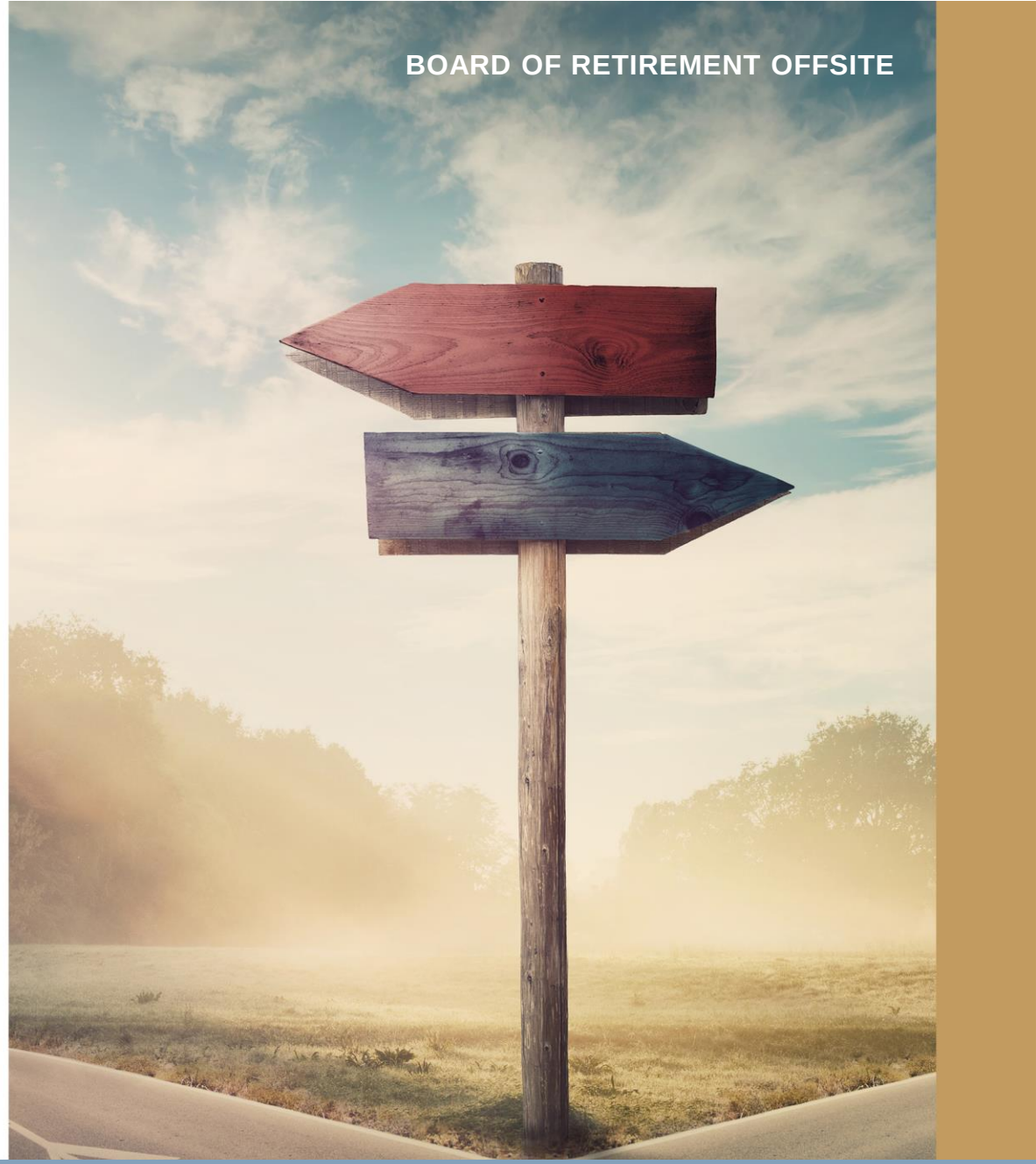
RHC AGENDA

Retiree Healthcare Program history
- 1982 Agreement
- OPEB trust

Healthcare program
- Medical plans
- Dental/vision plans
- Interactive forms/sample forms
- Enrollment process
- Member eligibility
- Dependent eligibility
- Cost/Benchmark
- Tier 1 & 2

Medicare basics
Medicare Part B premium reimbursement

RHC enhancements – member's experience



April 1982

LACERA and Los Angeles County signed 1982 agreement

May 1992

The Retiree Healthcare Division was formed

July 1, 1992

The Medicare Part B premium reimbursement program was implemented

January 1, 1994

Caremark Managed prescription Drug Program was implemented

March 1996

BOR approved the Long-Term Care insurance plan

May 1996

CIGNA Dental Health was implemented

September 1996

Open enrollment for SCAN Health Plan was implemented

February 4, 1998

The Board of Retirement approved Blue Cross of California as the medical insurance carrier

The 1982 Agreement Highlights

1971

BENCHMARK

Benchmark plan was established based on the indemnity plans.

to April 1982

FUNDING

LACERA funded the retiree healthcare program using surplus earnings.

April 1982

COUNTY OF LOS ANGELES

The County of Los Angeles took over the funding of the healthcare program.

1994

BENEFITS

Los Angeles County approve to continue the RHC program to retirees even if they decided to cease active employee's healthcare benefits.

Other Post-Employment Benefits (OPEB)

OPEB refers to benefits an employee will begin to receive at the start of retirement – including retiree health and dental care benefits and the death benefit (does not include a retiree's pension benefit).

May 15, 2012

The Board of Supervisors approved establishing an OPEB trust to prefund the LACERA-administered Retiree Healthcare Benefits Program.

Retiree Healthcare Benefits Program – Medical Plan Options

Medical Plans

- **Indemnity (PPO) Plans**
  - ❖ Anthem I
  - ❖ Anthem II
  - ❖ Anthem Prudent Buyer
- **Health Maintenance Organizations(HMO) Plans**
  - ❖ Kaiser Permanente
  - ❖ United Healthcare
  - ❖ Cigna Network Model Plan

Medicare Plans (Medicare Parts A and B required)

- **Medicare Supplement Plan**
  - ❖ Anthem III
- **Medicare Advantage Plans**
  - ❖ Kaiser Senior Advantage
  - ❖ United Healthcare Medicare Advantage
  - ❖ SCAN (CA, AZ, NV)
  - ❖ Cigna Medicare Select Rx plan (Arizona only)

Retiree Healthcare Benefits Program – Dental Plans

- Cigna Indemnity Dental/Vision (PPO plan)
- Cigna HMO Dental/Vision

Retiree Healthcare Benefits Program - interactive healthcare enrollment forms

All forms, including sample of new enrollment, change and cancellation forms are available at www.lacera.com under RHC-forms-and-publications

- Medical form
- Dental/vision form
- Medicare Advantage – Prescription Drug form (MA-PD)

Retiree Healthcare Benefits Program – Enrollment Process

- **Members must submit enrollments within 60 days of their retirement date or Board letter date (whichever is later) otherwise, the late enrollment rules apply:**
  - **6 month wait for medical**
  - **12 month wait for dental/vision**

- **Once documents are imaged into member's account, an acknowledgement letter will automatically be sent out**

- **Local 1014 – members must contact Local 1014 directly**

- **If member wishes to waive, they can submit a waiver to LACERA**

Retiree Healthcare Benefits Program – Member Eligibility

LACERA members who retire from:

- County of Los Angeles

Participating Agencies of the County

- South Coast Air Quality Management District
- Little Lake Cemetery District
- Local Agency Formation Commission
- Los Angeles County Office of Education
- LACERA

Retiree Healthcare Benefits Program – Dependent Eligibility

- **Lawful spouse unless legally separated**

- **Domestic Partner registered with the California Secretary of State**

- **Eligible dependent children:**
  - **Up to age 26 or**
  - **Disabled adult children that meet all handicap criteria**

- **Vital documents are required to add eligible dependents**
- **Disabled verification is required to add disabled adult children**

Retiree Healthcare Benefits Program – Benchmark Rates – Tier 1 & 2

Tier 1 (hired before June 30, 2014)

- Anthem Blue Cross I & II
- Cigna Indemnity Dental/Vision plan

Note:
- ❖ Medicare is not mandatory

Tier 2 (hired after June 30, 2014)

- Anthem Blue Cross I & II – Not eligible for Medicare
- Anthem Blue Cross III – Medicare eligible
- Cigna Indemnity Dental/Vision plan

Notes:
- ❖ Mandatory enrollment in Part A & B if entitled.
- ❖ Part B reimbursement for retiree/survivor only.
- ❖ Premium subsidy applies to retiree/survivor only.

Retiree Healthcare Benefits Program – Cost and Benchmark

- **County contributes if member has at least 10 years of retirement service credit**
  - **40% of benchmark rate (Anthem I & II) for 10 years of service credit**
  - **4% of benchmark rate for each additional year up to a maximum of 100% for 25 years or more of service credit**
  - **Members will be responsible for the premium difference - if plan selected is above benchmark rate even with 25+ years of service**

Years of Service	Member Pays	County Subsidizes
Under 10	100%	0%
10	60%	40%
11	56%	44%
12	52%	48%
13	48%	52%
14	44%	56%
15	40%	60%
16	36%	64%
17	32%	68%
18	28%	72%
19	24%	76%
20	20%	80%
21	16%	84%
22	12%	88%
23	8%	92%
24	4%	96%
25 or more	0	100%
SCD less than 13 years	50%	50%

Medicare Basics

What is Medicare

Medicare is a Federal health insurance program.

Medicare is a fee-for service plan.

Eligibility requirements

Age 65 or older; or
Under age 65 with certain disabilities; or
Any age with permanent Kidney failure.

What does LACERA require:

Proof of Medicare Parts A and B or Social Security ineligibility letter.

Annual proof of Medicare Part B premium, as needed.

Medicare Part B Premium Reimbursement Program

Members must meet the following requirements:

- **Must pay Part B premiums through Social Security deduction or receive a Medicare billing notice**
- **Enrolled in a LACERA-administered MAPD or Medicare supplement plan**
- **Not being reimbursed by any other agency**

Note: The Medicare Part B Premium Reimbursement Program (up to the standard rate only) is subject to annual approval by the Board of Supervisors

- **Tier 1 members - up to 2-party Part B reimbursement**
- **Tier 2 members – only retiree**
  - **survivor qualifies for the Part B reimbursement**

Annual Part B verification is required in order for LACERA to adjust the monthly Part B Premium Reimbursement (automatization with systems in progress)

RHC ENHANCEMENTS – MEMBER EXPERIENCE

- Amazon Connect call back feature
- Members ability to upload documents via Member Portal
- Automated letters for Part B verification
- Modification to annual Part B verification process
- Sample online enrollment forms (lacera.com)

Future plans:

- RHC enrollment and Medicare video
- Electronic enrollment submission
- Electronic eligibility data submission to carriers (Kaiser Pilot program)


THANK
YOU

Federal Legislative/Regulatory Update

February 23, 2023

Segal

Agenda

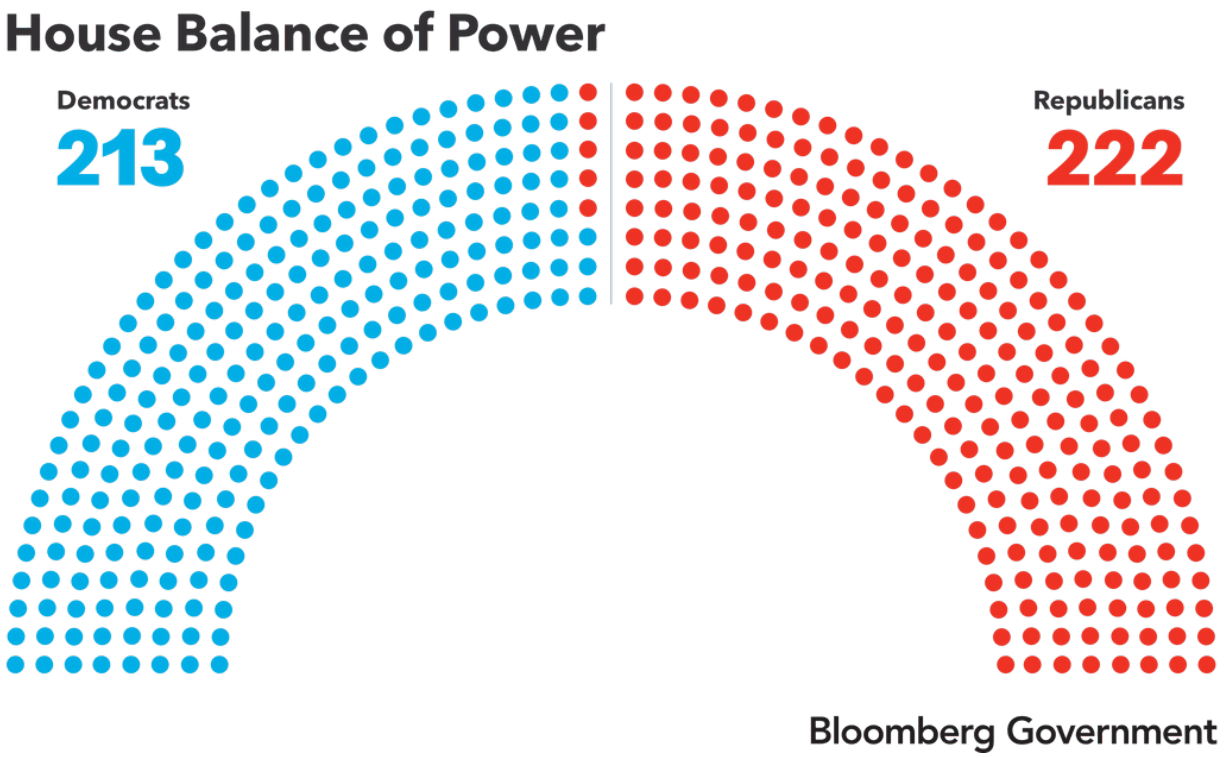
What Can We Expect Next in DC?

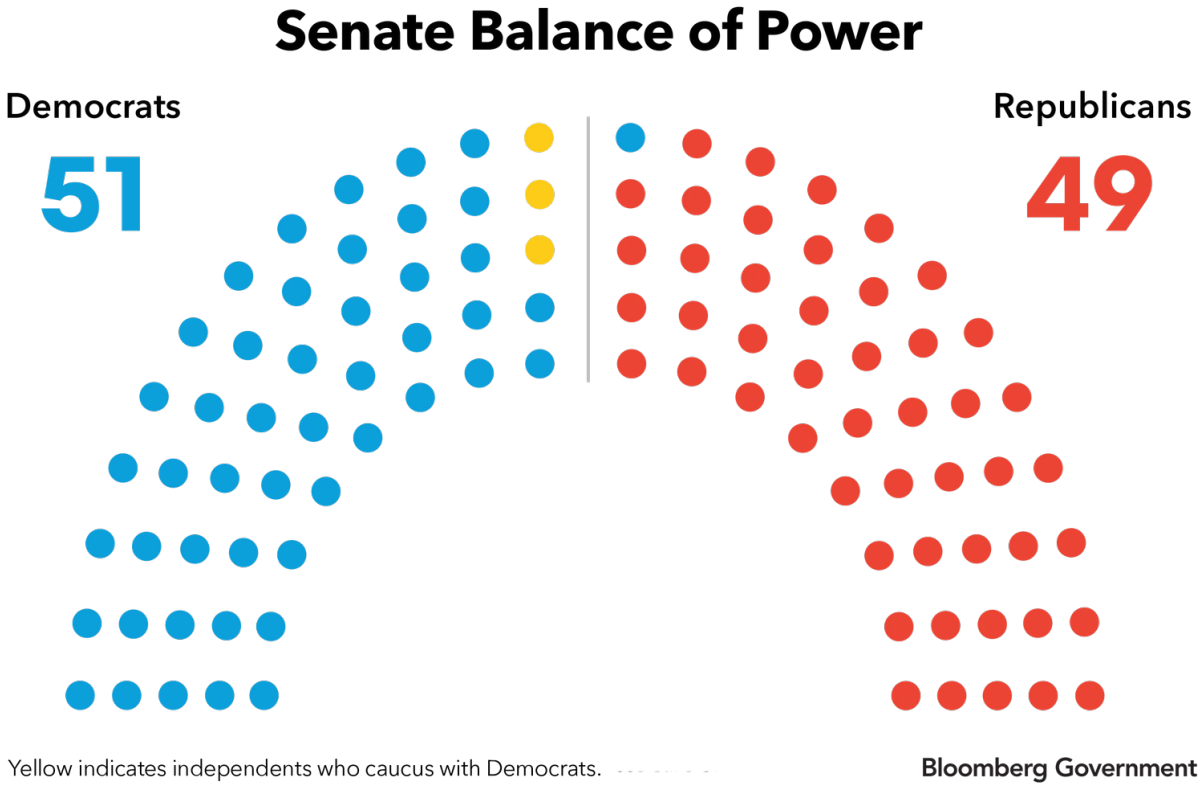
Legislation from 117th Congress

What's Happening with the Public Health Emergency?

What Can We Expect Next in DC?

2022 Midterm Elections





Speaker of the House

- Kevin McCarthy was elected speaker after 15 ballots
- What did he agree to and how will that shape policy?
- Deal included:
  - Promises about how to address appropriations bills and the debt ceiling
    - Two-thirds majority to raise taxes, mandate new spending (but not tax cuts) to be paid for, and permits amendments to fire or reduce the pay of federal officials, votes on specific measures
  - Change in House rules that would make it easier to trigger an effective no-confidence vote in leadership
  - Committee assignments demanded by the Freedom Caucus, including positions on the Rules Committee

House Investigations

- Every House committee will function like the House Oversight and Accountability Committee to use its authority to dig into the Biden Administration
  - Oversight:
    - COVID-19 (e.g., origin, vaccines)
  - Judiciary:
    - DHS Secretary Mayorkas and the border
  - Foreign Policy (e.g., US/China relations; Ukraine)

Federal Debt Limit

- President Biden and Speaker McCarthy initially met 2/1
- Speaker McCarthy essentially wants a budget-cap agreement to reduce federal spending back to 2022 levels
- Treasury Department says it is taking extraordinary measures to avoid defaulting on the nation's debt, and that it expects the ceiling won't be breached before June
- Biden Administration plans to release its proposed budget for the 2024 fiscal year by March 9

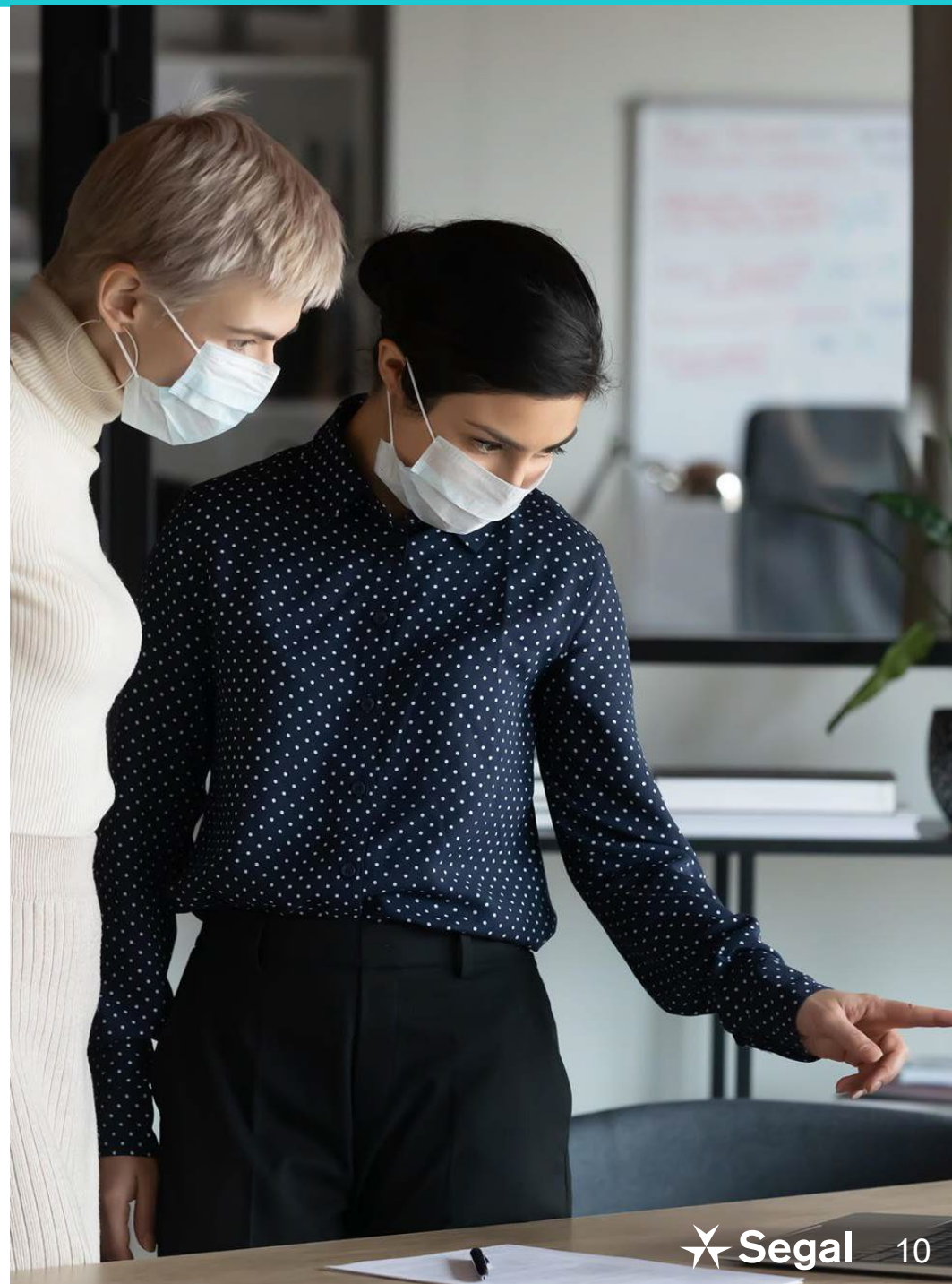
What about the Senate?

- Judicial Confirmations
  - As of February 1, 2023, the United States Senate has confirmed the following Biden nominations:
    - Associate Justice to the Supreme Court Ketanji Brown Jackson
    - 28 judges for the United States courts of appeals
    - 68 judges for the United States district courts
    - There are 52 nominations awaiting Senate action: 9 for the courts of appeals, and 43 for the district courts
- Democratic majority allows them to more easily control committees and move nominations

Legislation from 117th Congress

Telehealth Coverage in Medicare

- Telehealth expanded for Medicare beneficiaries during the pandemic
- CAA 23 continued expansive coverage of telehealth under Medicare through 2024
- Includes audio and video communications
- In 2025, telehealth coverage reverts back to old policies – generally only available in rural areas



Inflation Reduction Act

- The Inflation Reduction Act was signed August 16, 2022
- The Act was passed using the “budget reconciliation process”
- The Act significantly changes Medicare coverage
  - Medicare will negotiate prices for certain prescription drugs
  - Medicare will receive inflation rebates from manufacturers
  - Part D coverage changes significantly
  - Additional Medicare coverage for vaccines and insulin

Medicare to Negotiate Prices for Some Drugs

- In 2023, Medicare will choose 10 drugs to be negotiated
- The 10 drugs are chosen from a list of the highest-spending, brand-name Medicare Part D drugs that do not have competition. The negotiated Medicare drug prices for these first 10 drugs will be available starting in 2026
- Medicare will choose and negotiate 15 more Part D drugs for 2027, 15 more Part B or Part D drugs for 2028, and 20 more Part B or Part D drugs for each year after that
- Manufacturers that do not follow the negotiation rules for the selected drugs will pay a tax and potential penalties

Inflation Rebates to Medicare

Part D: Beginning October 1, 2022, drug manufacturers will be required to pay rebates to Medicare if their prices for certain Part D drugs increase faster than the rate of inflation over a 12-month period

1 Jan. 2023

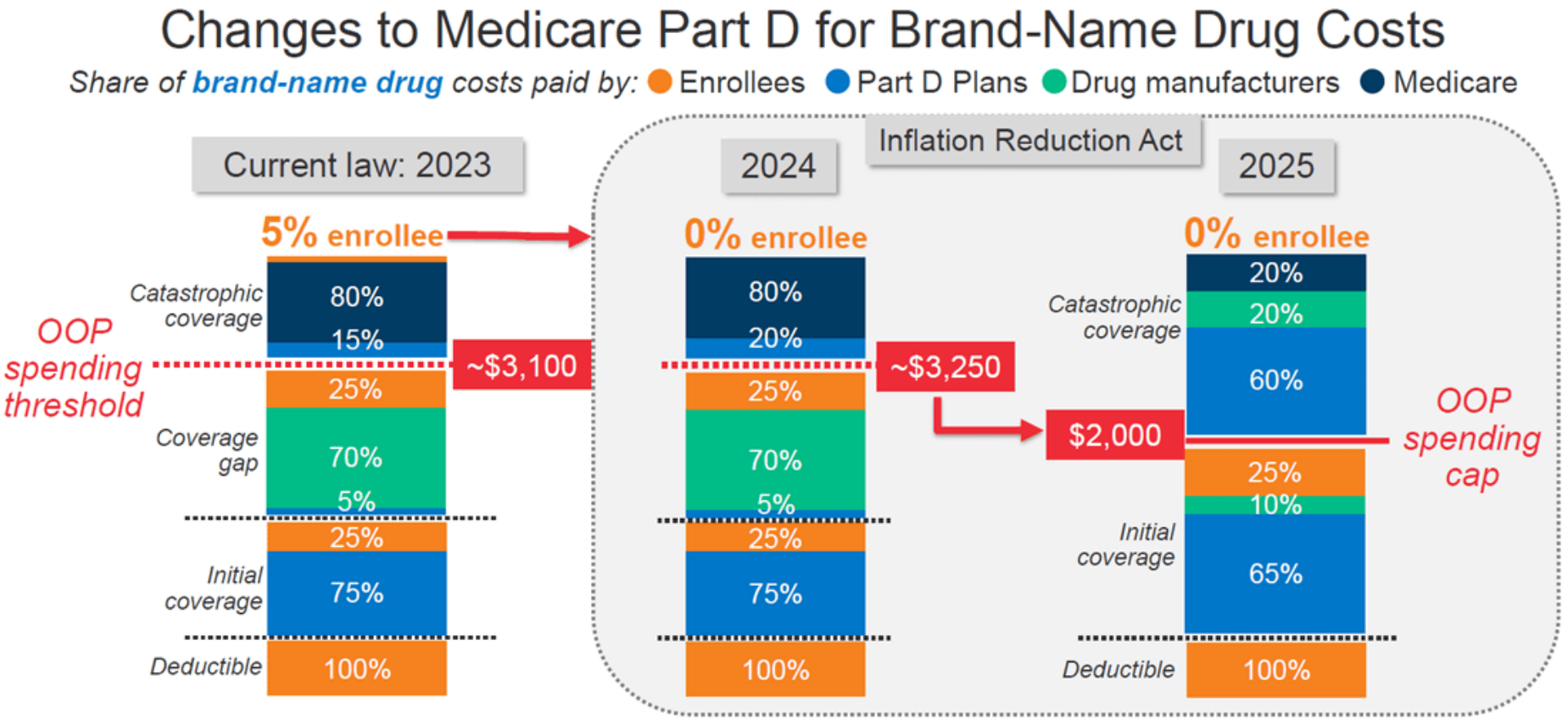
1 Oct. 2022

Part B: Beginning January 1, 2023, drug manufacturers will be required to pay rebates to Medicare if prices for certain Part B drugs increase faster than the rate of inflation for a quarter

Part D Benefit Changes

- Medicare Part D benefit significantly modified to eliminate participant coinsurance during the catastrophic payment period, and change who pays during that period
- By 2025, would create an annual out-of-pocket maximum of $2,000 (smoothing permitted to allow beneficiaries to pay monthly)
- Part D premiums: Increases limited to six percent per year from 2024 – 2029
- Manufacturer discount program changed
- Expanded income eligibility for Low Income Subsidy

Plan Design Change



NOTE: OOP is out-of-pocket. The out-of-pocket spending threshold will be $7,400 in 2023 and is projected to be $7,750 in 2024 and $8,100 in 2025, including what beneficiaries pay directly out of pocket and the value of the manufacturer discount on brand-name drugs in the coverage gap phase. These amounts translate to out-of-pocket spending of approximately $3,100, $3,250, and $3,400 (based on brand-name drug use only).

KFF

Insulin Coverage

Medicare changes:

- In 2023 and 2024, Medicare beneficiaries cannot be required to pay more than $35 for a 30-day supply of insulin
- In 2025 and beyond changed to lesser of $35 or 25 percent of the negotiated rate

Group health plan changes:

- NONE: The cap on insulin copayments does not apply to group health plans or employer-sponsored plans
- The cap also does not apply to a retiree plan that gets the Retiree Drug Subsidy

What's Not Included in the Inflation Reduction Act

- No expansion of Medicare to cover vision, dental or hearing
- Medicare eligibility age not lowered
- No change in calculation of affordability for ACA purposes
- No federal paid leave program

The "Build Back Better" Act would have made substantial changes to Medicare and other programs, but was not enacted. Its provisions were scaled back into the Inflation Reduction Act.

What's Happening with the Public Health Emergency?

COVID-19 Health Emergency Extended

- White House announced January 30, 2023, that the Public Health Emergency and National Emergency will be extended until May 11, 2023, and then be lifted at that time
- Medicare Advantage plans may have extended additional coverage for COVID-19 related tests and treatment
  - Each plan took different approaches, so important to determine how they are addressing the end of the pandemic

COVID-19 Financial Impact

- HHS announced August 30, 2022
  - More than three in four Americans have received at least one COVID-19 vaccine shot; therapeutics are available within 5 miles of 90% of Americans; and testing is readily accessible
- Cost implications
  - Federal government will transition responsibility to the private sector to pay for:
    - Vaccines (early 2023)
    - Therapeutics, including Lagevrio (early 2023) and Paxlovid (mid-2023)

Questions?

LACERA Board Retreat
February 23, 2023

Overview of California's Master Plan for Aging

Sarita A. Mohanty, MD, MPH, MBA
President & CEO
The SCAN Foundation

THE scan FOUNDATION

The SCAN Foundation Vision for the Future

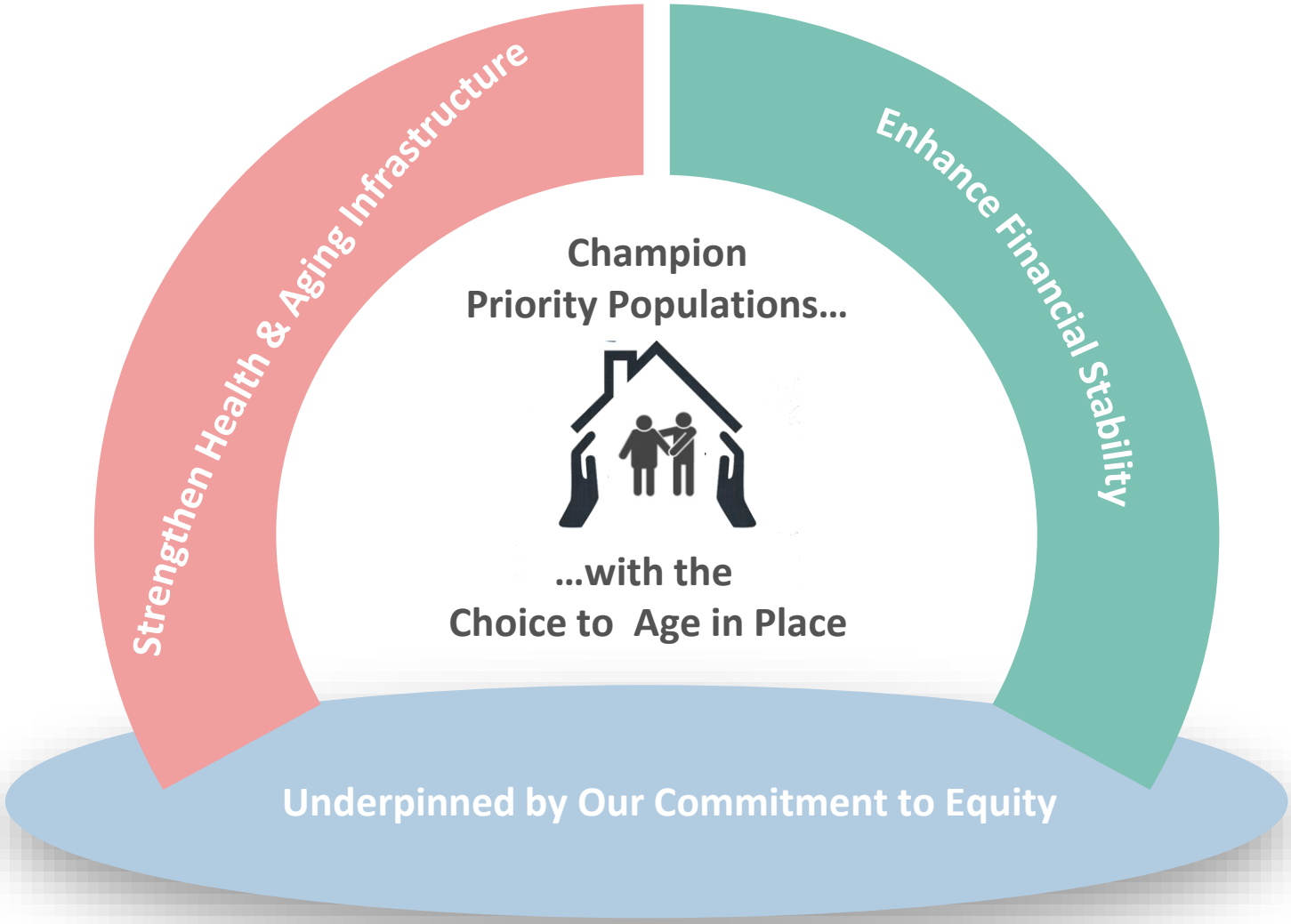
OUR VISION FOR TOMORROW

We envision a society where **every older adult** has the **opportunity to age well,** and **with choices**

OUR MISSION

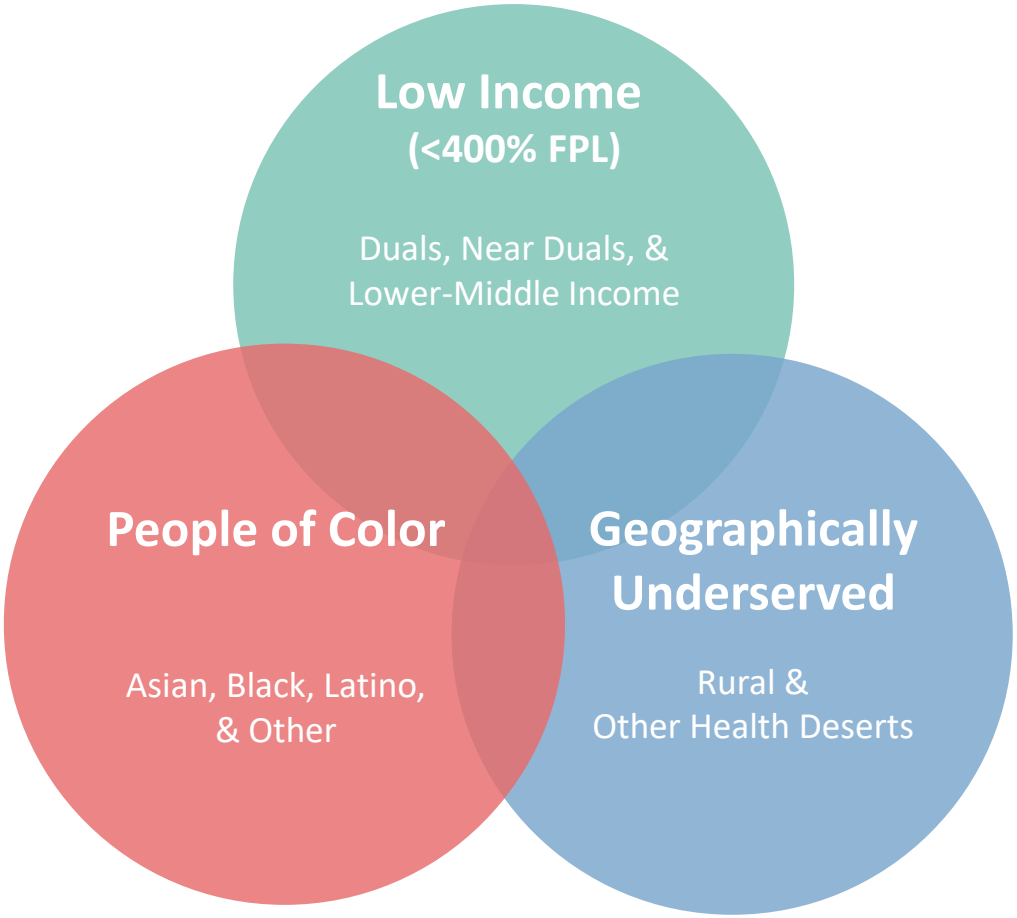
We pursue this vision by **igniting bold and equitable changes** in how older adults age in both **home and community**

How The SCAN Foundation Drives Impact



The SCAN Foundation: Priority Populations

The priority populations are not mutually exclusive, and many individuals may fall into one or more categories. By addressing the unique challenges faced by populations representing each category, we can develop more targeted solutions to improve health and aging for all.



The SCAN Foundation: A Multidisciplinary Approach

Sarita A. Mohanty MD, MPH, MBA
President & CEO

Narda Ipakchi MBA
Vice President,
Policy

Anika Heavener MMSc-GHD
Vice President,
Innovation &
Investments

Rigo J. Saborio MSG
Vice President,
Programs, Equity, &
Community Impact

> This executive team joining me embodies our commitment to supporting older adults through policy change, social impact investing and equity-driven grantmaking.
>
> – Sarita A. Mohanty, President & CEO

Newsom: Commitment & Executive Order

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

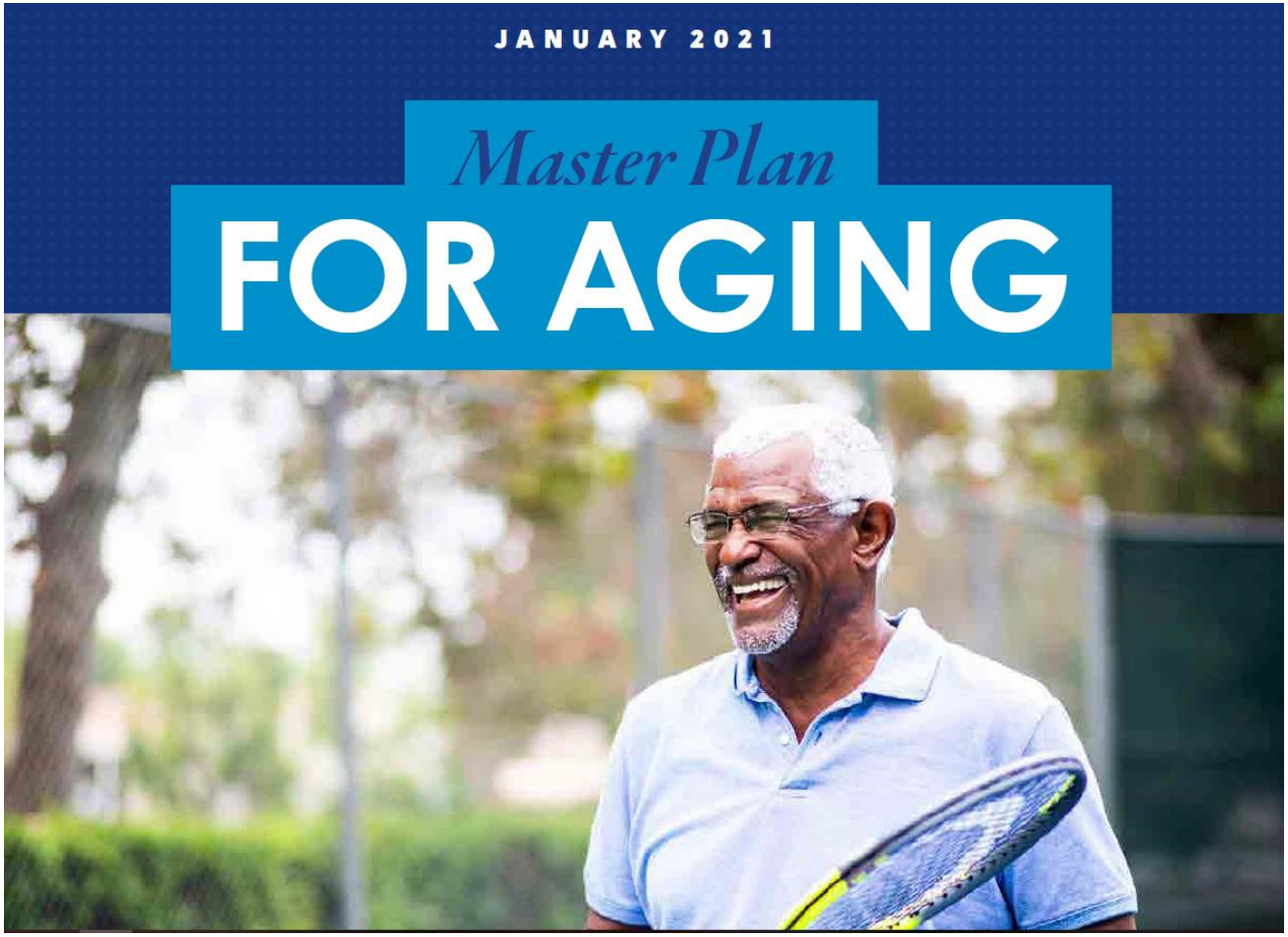
Executive Order N-14-19

WHEREAS, the State of California values older Californians and is committed to building an age-friendly state so that all Californians can age with dignity and independence; and

"We need to get ready for this major demographic challenge headed our way. It's time for a new Master Plan on Aging in California."

- ***Governor Gavin Newsom, State of the State address, February 12, 2019***

California's Master Plan for Aging: Released January 6, 2021



What's in the Master Plan: Five Bold Goals

Examples

Increasing affordable housing options

Improving health care affordability

Bridging the digital divide

Address the direct care workforce shortage

End homelessness for older adults

https://mpa.aging.ca.gov/

Equity at the Master Plan's Center

Equity should be at the center of the Master Plan for Aging's implementation. Systemic racism, ageism, able-ism, and sexism can only by eliminated through intentional systemic solutions. It's time to transform our systems so that they may positively impact the lives of those most affected by historical and institutionalized discrimination and who, therefore, have disproportionately suffered during COVID-19.

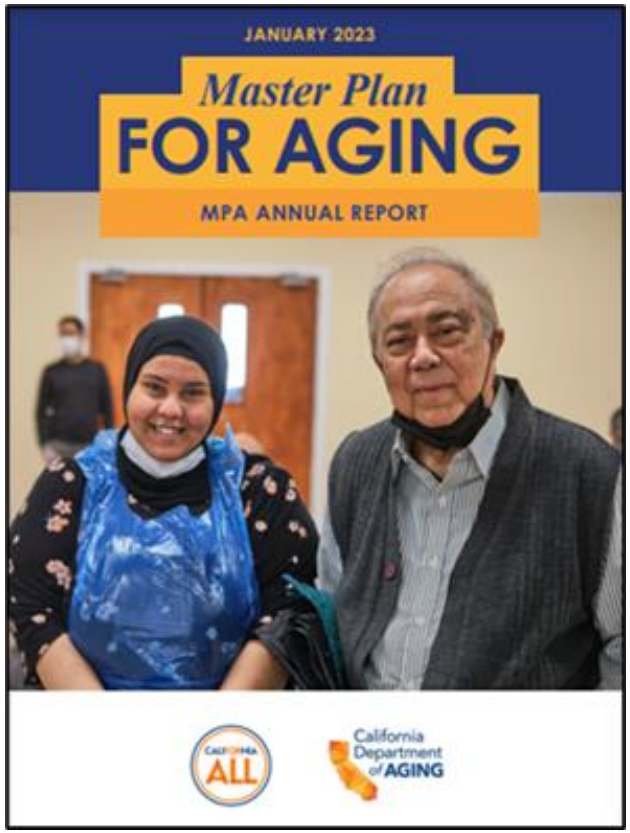
— Kiran Savage-Sangwan, California Pan Ethnic Health Network

What's Needed for Master Plan Success?

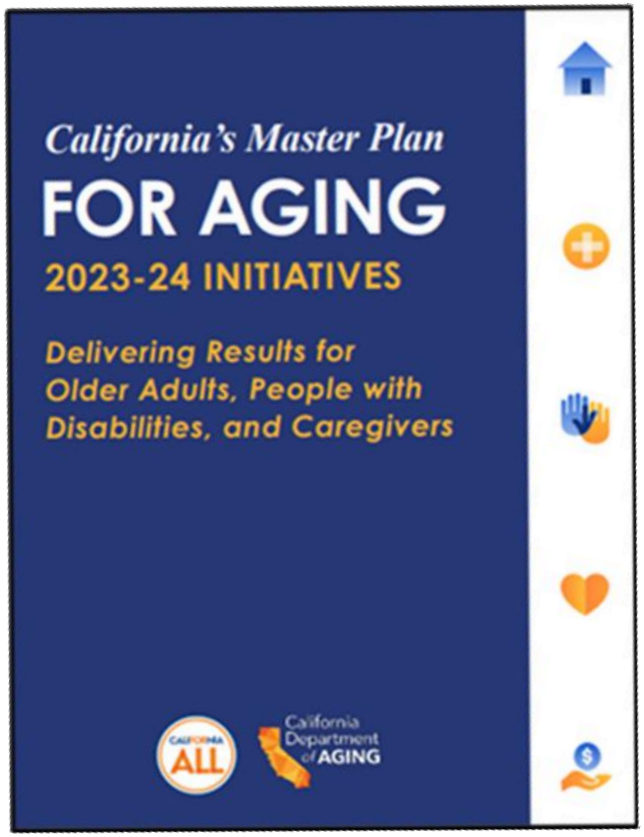
FIVE ELEMENTS FOR PLAN SUCCESS

MPA Progress: Successes and Challenges

- **Affordable Housing**
  - Success: Initiatives to increase affordable housing
  - Challenges: Developing accessible housing options
- **Long-Term Care (LTC) Financing**
  - Success: State exploring LTC financing options
  - Challenges: Feasibility and timing
- **Health Care Workforce**
  - Success: CalGrows Initiative
  - Challenges: Including aging in broader workforce investments



Refreshed Priorities for 2023-24



- **Accessible Transportation**
  - New policies to improve quality and access to para-transit.
- **Home-and Community-Based Services (HCBS) Roadmap**
  - Improve access to HCBS services, prioritizing underserved populations and geographies
- **Older Adult Workforce**
  - Create opportunities to support older adults in the workforce (i.e. recruitment, training)

Transparency in Tracking Progress

State of California
Master Plan for Aging
Implementation Tracker

The **Master Plan for Aging** (MPA) is comprised of Five Bold Goals, 23 strategies, and over 200 initiatives to drive action across California in the pursuit of building the most age-and disability-friendly state in the nation.

The MPA Implementation Tracker is a publicly available resource for monitoring the implementation activities of the Master Plan. You are invited to search for progress updates on each of the MPA initiatives using the Search Box or Filters below. If you would like to download a copy of your search results, click “Download” from the options in the upper right corner.

Los Angeles County: A Leader in Planning for Aging

Los Angeles County – An early adopter of planning for an aging community.

QUESTIONS?

Specialty Drugs: Therapeutic Benefits and Financial Challenges

February 23, 2022

CVS Health®

PBMs help clients control costs and improve plan member health outcomes

We are continuously innovating to find new ways of getting the **right medication to the right patient at the right time** – always at the lowest possible cost

LACERA's prescription benefit financial summary

Financial summary

	Oct-Sep 21	% Change	Oct-Sep 22
Your Total Prescription Cost (AWP)	$267,952,561	8.9%	$291,877,615
Total Discount	$135,398,932	9.7%	$148,543,810

Cost components

	Oct-Sep 21	% Change	Oct-Sep 22
Total Gross Cost	$132,553,630	8.1%	$143,333,805
Member Cost	$9,452,770	4.7%	$9,900,599
Member Cost Share	7.1%	-3.1%	6.9%
Total Net Cost	$123,100,859	8.4%	$133,433,205

Financial impact beyond drug costs

	Oct-Sep 21	% Change	Oct-Sep 22
Less:			
Client Share of Invoiced Rebates*	$34,153,447	11.7%	$38,154,057
Add:			
Administration Fees	$0	0.0%	$0
Total Net Plan Cost	**$88,947,413**	**7.1%**	**$95,279,149**

Additional program fees not included.

* Rebates represent client share of earned rebates (less: point of sale rebates) as of report run date of 02-06-2023 and may not reconcile with rebate guarantees or rebates paid to date. Rebates included for this time period: 2021Q4 - 2022Q3. Prior period rebates include the same number of quarters as current period.

Executive summary: LACERA's top non-specialty classes by contribution to trend

Key metrics

Non-specialty prescriptions represented

59.4%

of total gross cost and comprised

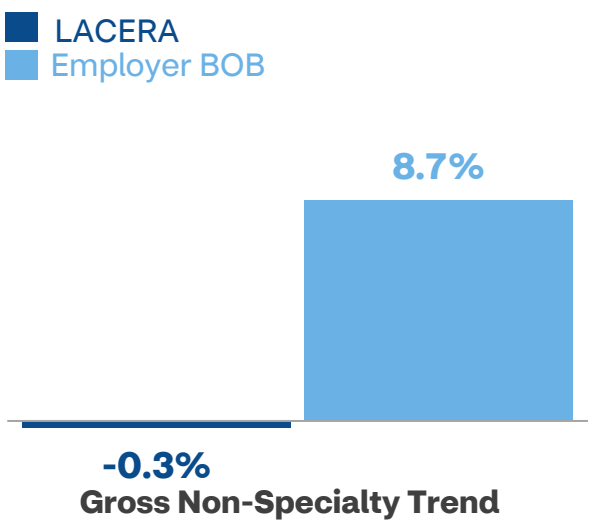
99.1%

of all prescriptions.

Newly launched medications contributed

0.7%

to non-specialty trend.



-0.2%

Overall non-specialty utilization decrease compared to prior period

The top three (3) classes with the greatest contribution to non-specialty drug utilization trend are:

Antihyperlipidemics
Antidiabetics
Diagnostic Products

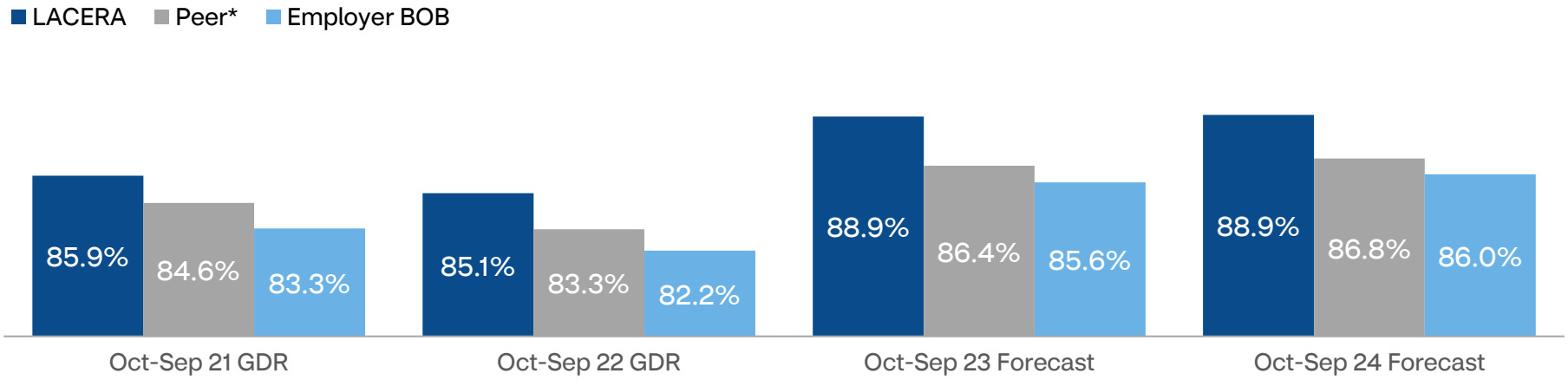
LACERA's top 5 contributing non-specialty classes

Non-Specialty Class	Top Drug Contributors	Gross Cost	Utilizers	Avg. Cost Per Utilizer	Contribution to Gross Trend
Antidiabetics	Ozempic, Jardiance	$21,455,053	5,075	**$4,227.60**	**1.9%**
Migraine Products	Nurtec, Ubrelvy	$1,491,047	575	**$2,593.13**	**0.5%**
Anticoagulants	Xarelto, Pradaxa	$10,401,257	2,866	**$3,629.19**	**0.3%**
Vaccines	Pfizer-Biontech Covid-19, Moderna Covid-19 Vaccine	$1,442,310	13,254	**$108.82**	**0.3%**
Digestive Aids	Zenpep, Creon	$928,221	115	**$8,071.49**	**0.2%**

BOB Segment: Employer

Generics remain the most important trend reducer

Past and two-year forecast (Assuming no plan changes)



LACERA'S opportunity

Therapeutic Class**	Oct-Sep 21 GDR	Oct-Sep 22 GDR	Peer* GDR	Value Formulary Clients	Generic Step Therapy Clients	Oct-Sep 23 Forecasted GDR	Oct-Sep 24 Forecasted GDR
Analgesics - Anti-Inflammatory	90.2%	91.2%	91.8%	91.1%	89.0%	94.3%	94.3%
Antiasthmatic And Bronchodilator Agents	61.4%	61.6%	70.6%	74.1%	73.2%	75.0%	75.8%
Anticonvulsants	96.5%	97.4%	96.7%	97.8%	96.3%	98.4%	98.4%
Antidepressants	97.8%	98.3%	98.0%	98.7%	98.1%	98.5%	98.5%
Antidiabetics	56.8%	54.3%	49.3%	53.1%	49.2%	60.9%	61.3%
Antihyperlipidemics	96.1%	95.7%	98.1%	97.8%	97.0%	99.3%	99.5%
Antihypertensives	99.0%	99.2%	99.7%	99.9%	99.7%	99.3%	99.3%
Endocrine And Metabolic Agents	89.8%	89.1%	78.7%	79.7%	76.9%	91.8%	92.5%
Hematological Agents	91.5%	91.5%	86.3%	81.0%	83.0%	91.7%	91.7%
Ulcer Drugs	95.6%	98.2%	98.5%	98.2%	97.3%	99.6%	99.6%

*Peer: Government

**Therapeutic classes displayed are based on a static list of classes with high generic opportunity. Not a guarantee; Actual results may vary.

Specialty drugs

The fastest-growing area of pharmacy spend

What are Specialty Medications?

Specialty medications are typically defined by one or more of the following

- Certain pharmaceuticals, biotech, or biological drugs that are dispensed from a specialty pharmacy
- May require unique handling, distribution and/or administration requirements
- Used in the management of chronic, complex, rare, or genetic diseases
- Require clinical management to optimize safety and adherence
- Include, but are not limited to injectable, infused, inhaled, or oral medications
- May have a FDA-mandated Risk Evaluation Mitigation Strategy (REMS) program

A robust set of criteria are used to determine whether products should be designated as Specialty by CVS Health

CVSHealth

Active drug pipeline remains a key challenge for payors seeking to balance member access and cost

2022 look back

37 novel medicines were approved[1]

7 biosimilars approved[2]

77 supplemental specialty indications[3]

2023-2025 anticipated robust pipeline[4]

606 new drugs

211 supplemental specialty indications drugs

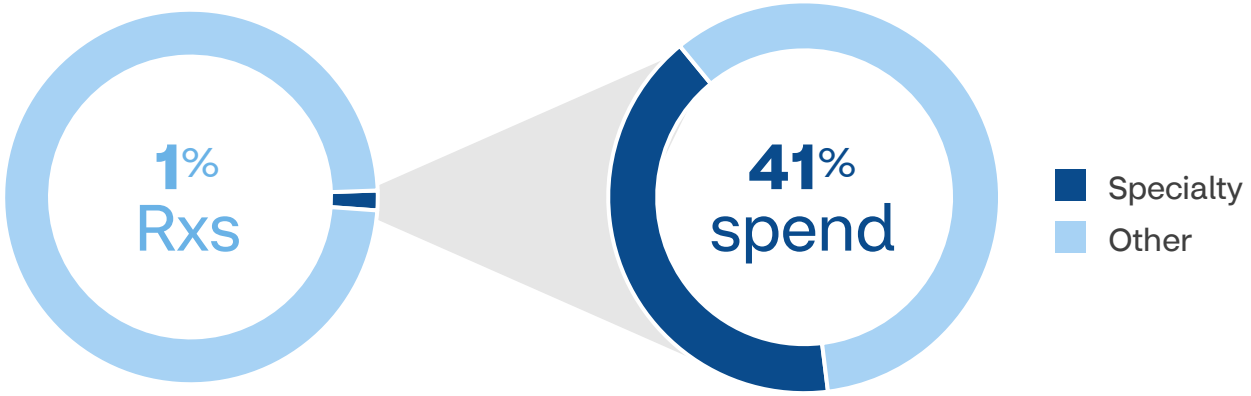
34 gene therapy products

30 biosimilar approvals and **41** launches

1. https://www.fda.gov/drugs/new-drugs-fda-cders-new-molecular-entities-and-new-therapeutic-biological-products/novel-drug-approvals-2022, accessed January 9, 2023. 2. https://www.fda.gov/drugs/biosimilars/biosimilar-product-information, accessed January 9, 2023. 3. Pipeline Services 2023. 4. Pipeline Services 2022, Pipeline Services projections, data 2023 through 2025, as of September 26, 2022. New drug count includes new molecular entities, new biologics, biosimilars, new combinations, new formulations, CAR-T and non CAR-T projections by Pipeline Services.

CVSHealth

Less than 1% of all prescriptions comprise 41% of LACERA's total gross spend



$25M In Specialty Cost

1,090 Specialty Utilizers

LACERA's top specialty classes

	Gross cost	Avg. Cost Per Utilizer
Oncology	$24.0M	$86,718
Rheumatoid Arthritis	$7.2M	$85,927
Psoriasis	$3.3M	$51,020
Psoriatic Arthritis	$2.7M	$60,298
HIV	$2.2M	$27,805

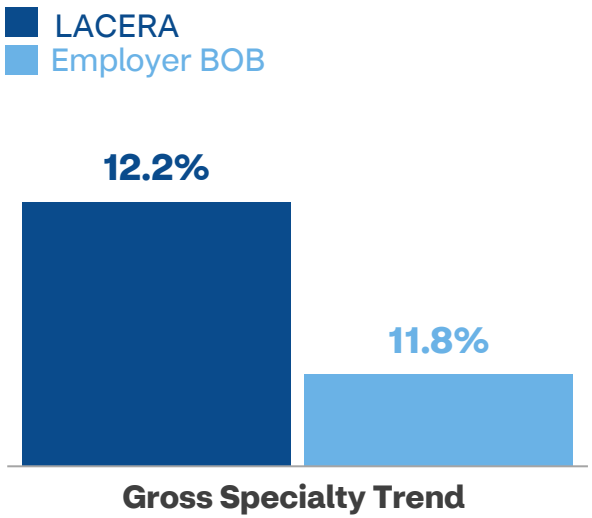
Executive summary: LACERA's top specialty classes by contribution to trend

Key metrics

Specialty prescriptions represented **40.6%** of total gross cost and comprised **0.9%** of all prescriptions.

Newly launched medications contributed **0.3%** to specialty trend.

Price inflation contributed **5.0%** to specialty trend.



Gross Specialty Trend

6.4%

Overall specialty utilization increase compared to prior period

The top three (3) classes with the greatest contribution to specialty drug utilization trend are:

Transplant
Osteoporosis
Oncology

LACERA's top 5 contributing specialty classes

Specialty Class	Top Drug Contributors	Gross Cost	Utilizers	Avg. Cost per Utilizer	Contribution to Gross Trend
Oncology	Targretin, Lenalidomide	$24,020,886	277	**$86,718.00**	**2.1%**
Rheumatoid Arthritis	Humira, Orencia	$7,198,096	136	**$52,927.17**	**0.5%**
Psoriasis	Skyrizi, Humira	$3,265,273	64	**$51,019.89**	**0.3%**
Amyloidosis	Vyndamax, Vyndaqel	$1,267,191	6	**$211,198.50**	**0.3%**
Thrombocytopenia	Doptelet, Promacta	$698,743	5	**$139,748.55**	**0.3%**

BOB Segment: Employer

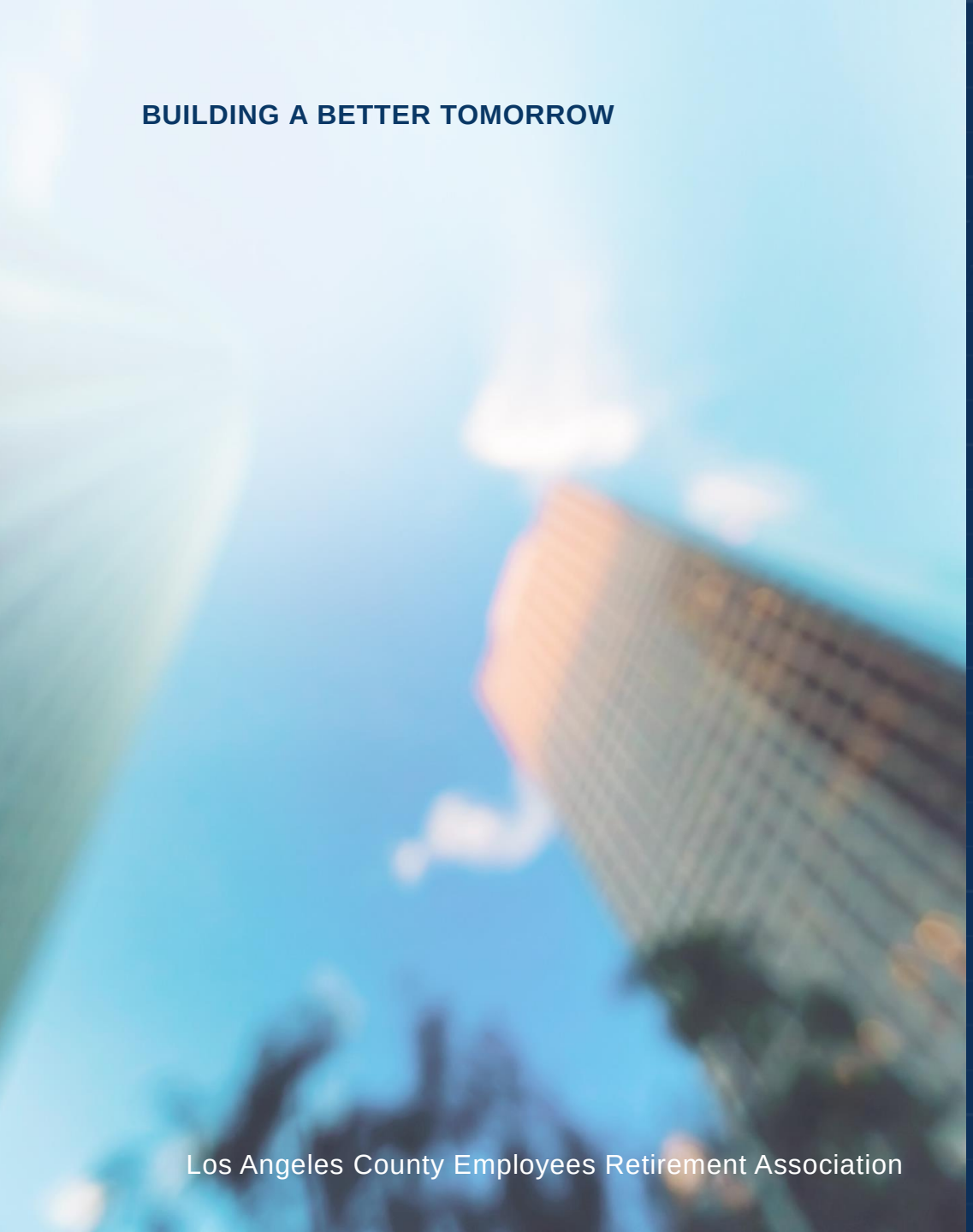
Autoimmune savings drivers

$2,662,722: 14% savings across programs shown below

Savings by solution	Results
Utilization Management savings	$2,615,219
Supply Management Optimization savings	$47,503

Engagement that supports savings	Results
Intelligent Medication Monitoring interventions	259
Adherence percent optimal* medication possesion ratio	79.1%
Specialty Connect participating eligible members	15.2%
Clinical messages outbound messages	803

* % Optimal: ≥ 80% MPR



BUILDING A BETTER TOMORROW

LACERA

BOARD OF RETIREMENT OFFSITE

Disability Retirement

Process Overview

Los Angeles County Employees Retirement Association

February 22-23

FISCAL YEAR 2023-2024

Meet the Team

DISABILITY RETIREMENT SERVICES DIVISION

- DIVISION MANAGER
- DRS SUPERVISORS
- LEGAL COUNSEL
- DISABILITY RETIREMENT SPECIALISTS
- ADMINISTRATIVE SUPPORT
- Intake & Records Management
- Anchors
- Appeals

What Disability Benefits Does LACERA Offer?

Service-Connected Survivor Benefit

- Active death
- Eligible Survivors
- Death must be service-connected

Service-Connected Disability

- Eligible from first day of employment
- Must be permanently disabled
- Must have a direct causational link to the workplace
- Benefit = 50% of salary (FAC), tax free, and 50% healthcare subsidy

Nonservice-Connected Disability

- Must have at least five years of service (60 months)
- Must be permanently disabled
- No direct link to the workplace
- Benefit = up to 33.3% of salary (FAC)

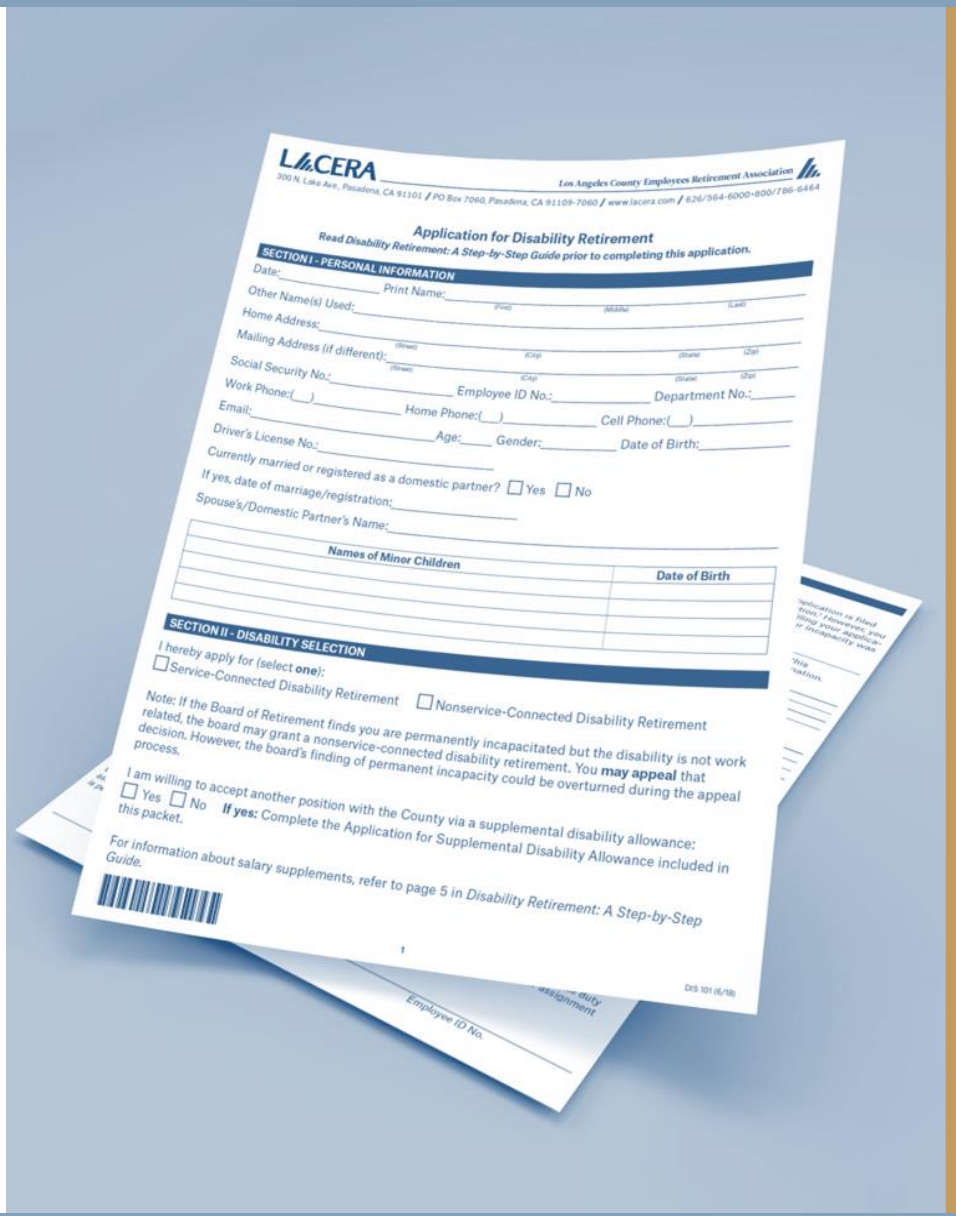
Salary Supplement

- Same application process as SCD/NSCD*
- Allows member to continue working in a new position
- Benefit amount is dependent what benefit is granted SCD/NSCD

Employee

Application

- Disability Retirement: A Step-by-Step Guide
- Application for Disability Retirement
- Authorization for Release of Medical, Psychological, Employment Records and Information, and Workers' Compensation Records
- Physician Statement for Disability Retirement
- Missed Medical Appointment Form
- Claims Against Third Parties
- Notice of Attorney Representation
- Application for Supplemental Disability Allowance



When should a member apply?

An application for disability retirement must be filed while the member is in active service or within four months of terminating County service to be considered timely

Late-Filed Applications

- If an application is filed after four months of terminating service, the application is considered LATE
- *Member must meet additional burden of proving continuous incapacity if the application is LATE*
- LACERA's Independent Medical Examiner must address continuous incapacity, in addition to permanent incapacity and causation

Employer

Application

- Disability Retirement: A Step-by-Step Guide
- Employer Application for Disability Retirement
- Authorization for Release of Medical, Psychological, Employment Records and Information, and Workers' Compensation Records
- Physician Statement for Disability Retirement
- Missed Medical Appointment Form
- Claims Against Third Parties
- Notice of Attorney Representation
- Application for Supplemental Disability Allowance


Employer's Application

APPLICATION FOR DISABILITY RETIREMENT
(FOR DEPARTMENT FILING ON BEHALF OF EMPLOYEE)
(Please provide the requested information for the employee. Complete all pages. If more space is required, attach additional sheets of paper. Print in ink.)

Date:
Name: (First) (Middle) (Last) Social Security No.:
Other names used during County employment:
Address: (Street, Apt. No.) (City) (State/Prov.) (ZIP Code)
Home Phone No.: Work Phone No.:
Cell Phone No.: Fax No.:
Age: Sex: Birth Date: Driver's License No.:
Currently married or registered as a domestic partner? ☐ Yes ☐ No
If Yes, Date of Marriage/Registration:
Spouse/Domestic Partner Name:
Spouse/Domestic Partner Birth Date:

Names and birth dates of children under 18 years of age:
Name Date of Birth

Position for which permanently incapacitated:
Item No.: Employee No.: Department No.:
Department Name: Location:
Years of Service: Last Date at Work:

DIS 121 (12/09)

We need member cooperation

If a department files on behalf of a member, DRS cannot proceed unless the member cooperates and provides the required supporting documents.

- Intake Unit will contact member to advise them that their department has applied, provide a copy of the ER application and required documents within one (1) week of receiving the application.
- Intake/Disability Retirement Specialist will provide comprehensive counseling on the process and the documents required in order to proceed within two (2) weeks of receiving the application.
- Member has 60 days to respond and submit required documents.
- If the member does not respond or submit the required document, the application will be closed, and a Notice of Closure issued to the member and filing department. This does not prevent the member from filing their own application at a later date.

What do we evaluate?

- Applications are evaluated to confirm **permanent incapacity and causation.**
- Applicants do not have to wait for their workers' compensation case to settle to file for disability retirement.
- LACERA is not bound by Workers' Compensation decisions.

How LACERA differs from other systems?

	LACERA	OTHER SYSTEMS
Fully Outsourced	NO	YES – Administrative, Investigative, Medical Evaluations & Legal Counsel
Partially Outsourced	YES – Medical Evaluation ONLY	YES – Investigative, Medical Evaluations, & Legal Counsel
In-House Case Processing	YES -Administrative, Investigative, Legal Counsel	YES – Administrative, Legal Counsel

LACERA's in-house investigative process and evidentiary gathering is labor intensive, dynamic, and nuanced with high touch business processes, on-going member interactions, recurrent plan sponsor engagement, and overlapping benefit entitlements.

Application Process

REVIEW APPLICATION

- Complete Application
- Eligibility Assessment
- Initial Counseling Needs

OBTAIN RECORDS

- Medical Providers
- Third Party Administrators (TPAs)
- Personnel and Return to Work

CONDUCT INTERVIEW

- Employee Statements
- Supervisor, Co-Worker, and/or RTW Statements

EXAM BY PANEL PHYSICIAN

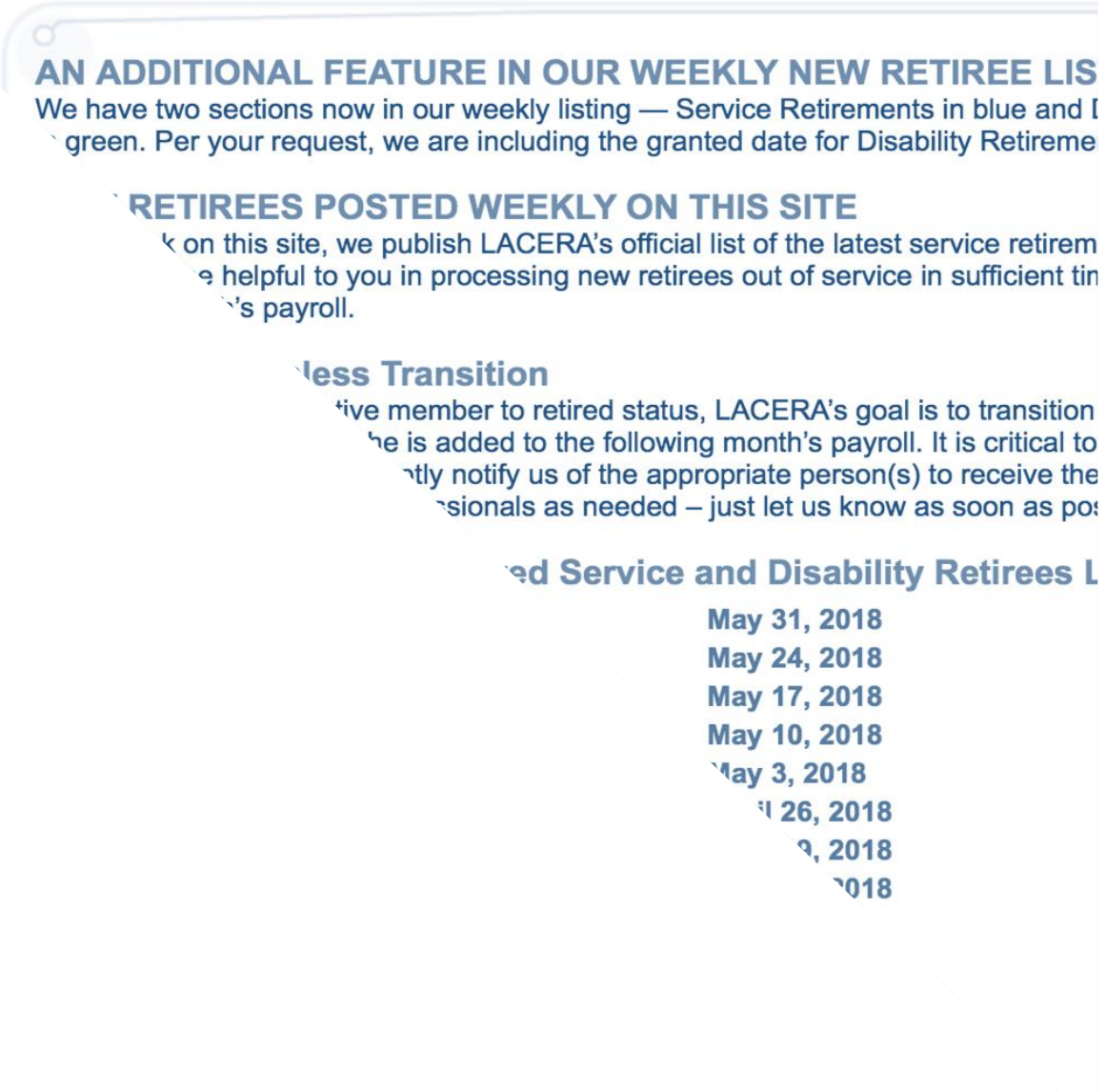
- Incapacity
- Service Connection
- Work Restrictions (if any)

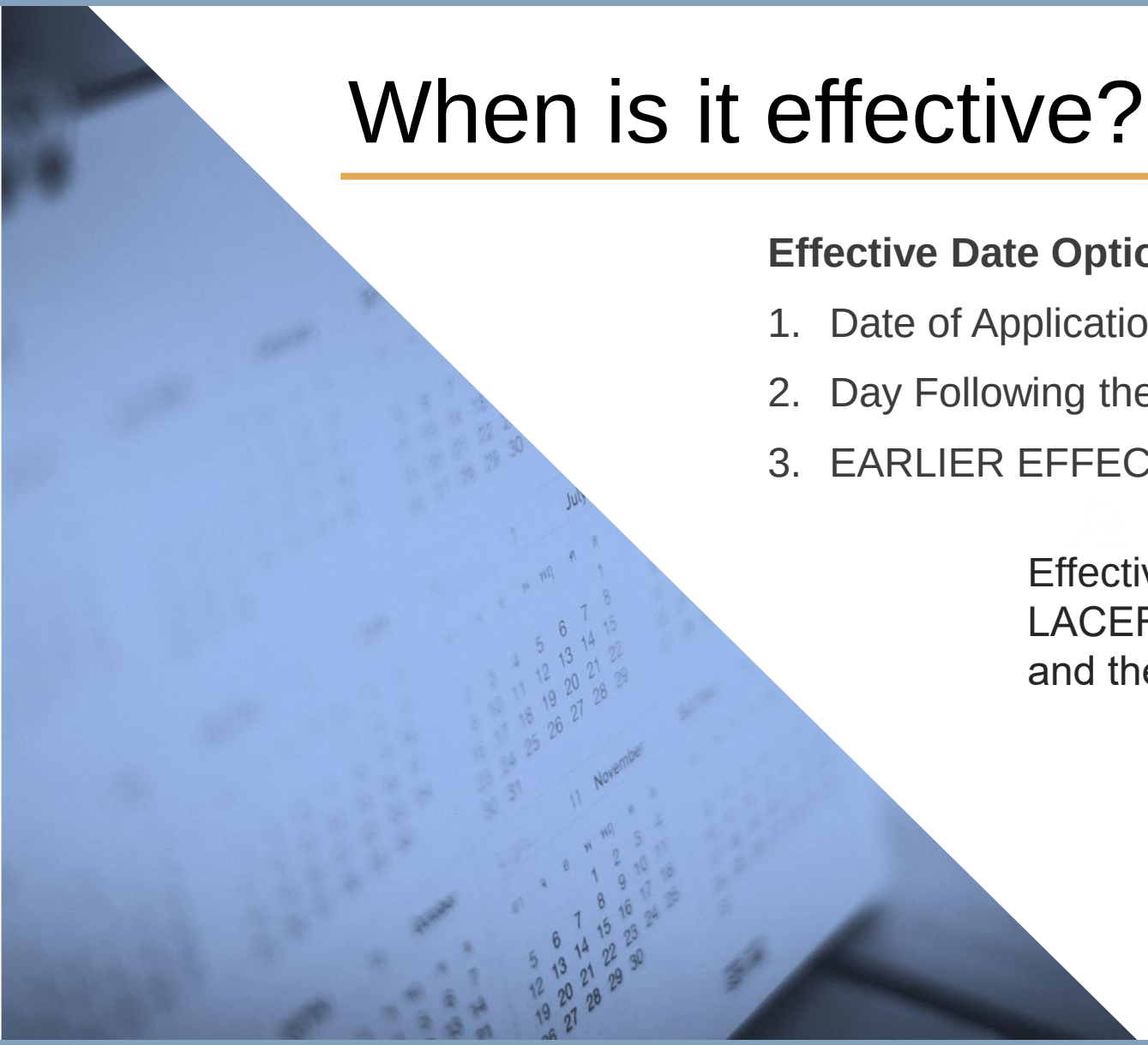
SUBMIT TO THE BOARD

- The Board of Retirement is the Final Trier of Fact

Board of Retirement

- Monthly Meetings – DRS submits cases to the BOR for review
- Board Actions posted on the LACERA website within 48 hours of the Board meeting.
- Notice of Board Actions, issued 7 days after board meeting. Applicant is advised of BOR's decision and appeal rights.





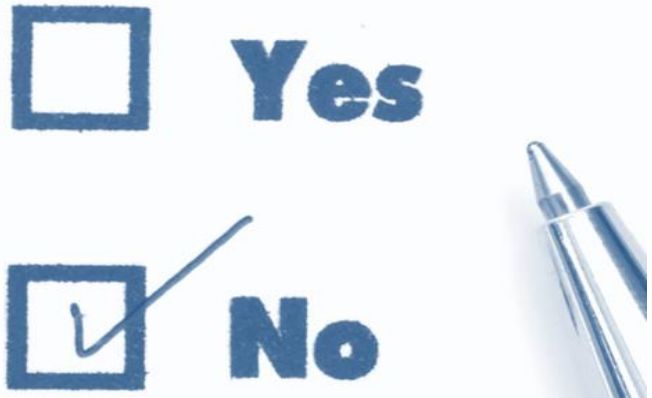
When is it effective?

Effective Date Options

1. Date of Application
2. Day Following the Last Day of Regular Compensation
3. EARLIER EFFECTIVE DATE

Effective dates are coordinated with LACERA's Benefits Division, the member, and the member's department.

Notice of Board Action advises that the Benefits Division will contact the member within 45 days of the Board decision.



Reasons applications are denied

Board determines that the applicant is not disabled, the applicant can return to work, full duty, to the original position.

Panel Physician issues permanent work restrictions, and the department indicates they have a reasonable accommodation available.

Applicant and/or department can appeal the Board decision **within 30 days.**

Board may deny without prejudice, to allow the applicant to seek treatment or provide additional information without having to go through the entire process again. Six months to provide additional information.

Supplemental Disability Allowance

A Supplemental Disability Allowance allows a member to continue working in an alternate position despite permanent incapacity. Member remains an active county employee and if salary is reduced, the salary supplement may compensate the member up to the total amount of their disability retirement pension.

It is contingent on:

01 An offer of an alternative position that is compatible/ accommodates the member's permanent work restrictions

02 Mutual agreement between the member and their department.

03 Board of Retirement MUST grant the supplemental disability allowance.


THANK
YOU

Board of Retirement's Role

Administering Disability Retirement Applications & Legal Standards for Permanent Incapacity and Service Connection

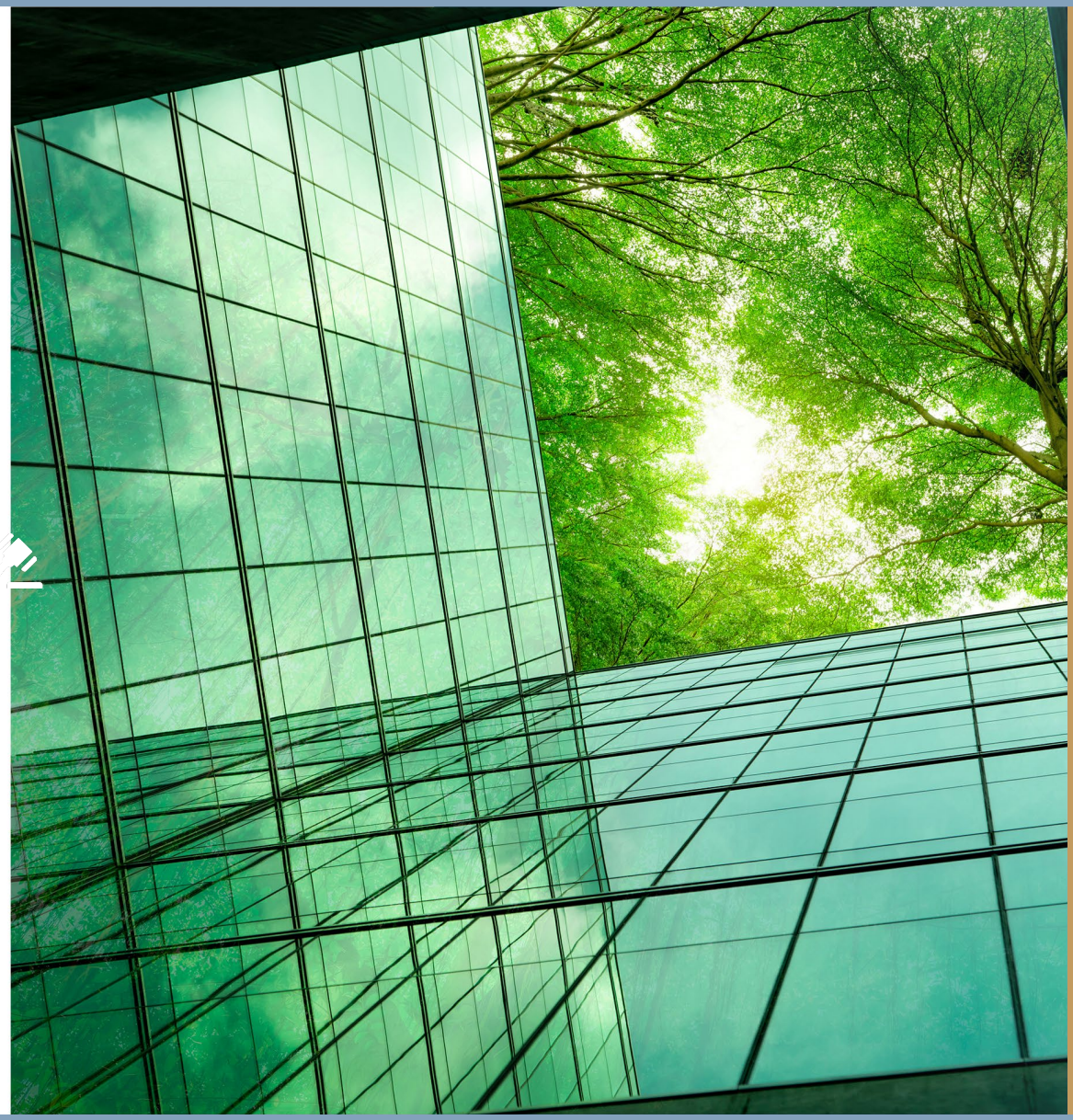
Presented By

Frank Boyd, Senior Staff Counsel

Purpose

We will discuss:

- **The Board of Retirement's role in administering disability retirement applications.**
- **Applicants' burden of proof.**
- **The legal standards for permanent incapacity and service-connection under Government Code section 31720.**



The Board of Retirement's Role in Administering Disability Retirement Applications

THE BOARD HAS A TRIPARTITE ROLE IN GOVERNING LACERA

(Cal. Const., art. XVI, § 17, subd. (a) and (b).)

Executive

Legislative

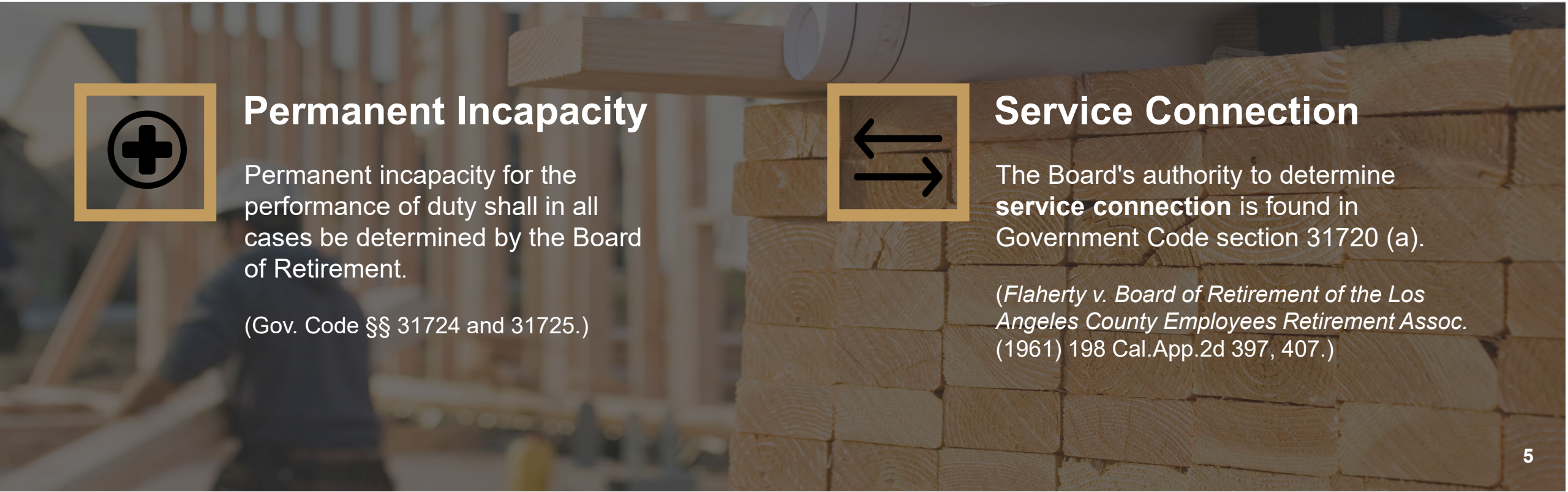
Quasi Judicial

The court explains the Board's role in the following manner:

> "It [the Board] administers the retirement system, promulgates rules and regulations, determines member contributions, investigates claims and makes determinations concerning the eligibility of members for retirement benefits. **It is both the 'forum' and a 'party' in proceedings for disability retirement which it conducts."**

(*Preciado v. County of Ventura* (1982) 143 Cal.App.3d 783, 789. (Emphasis added).)

The Board of Retirement exercises its quasi-judicial role when it weighs the evidence to determine eligibility for a disability retirement.



Permanent Incapacity

Permanent incapacity for the performance of duty shall in all cases be determined by the Board of Retirement.

(Gov. Code §§ 31724 and 31725.)

Service Connection

The Board's authority to determine **service connection** is found in Government Code section 31720 (a).

(*Flaherty v. Board of Retirement of the Los Angeles County Employees Retirement Assoc.* (1961) 198 Cal.App.2d 397, 407.)

The Board's Fiduciary Duty

The Board of Retirement has a fiduciary duty to pay benefits only to those members who are eligible for them.

(*McIntyre v. Santa Barbara County Employees' Ret. Sys.* (2001) 91 Cal.App.4th 730, 734.)

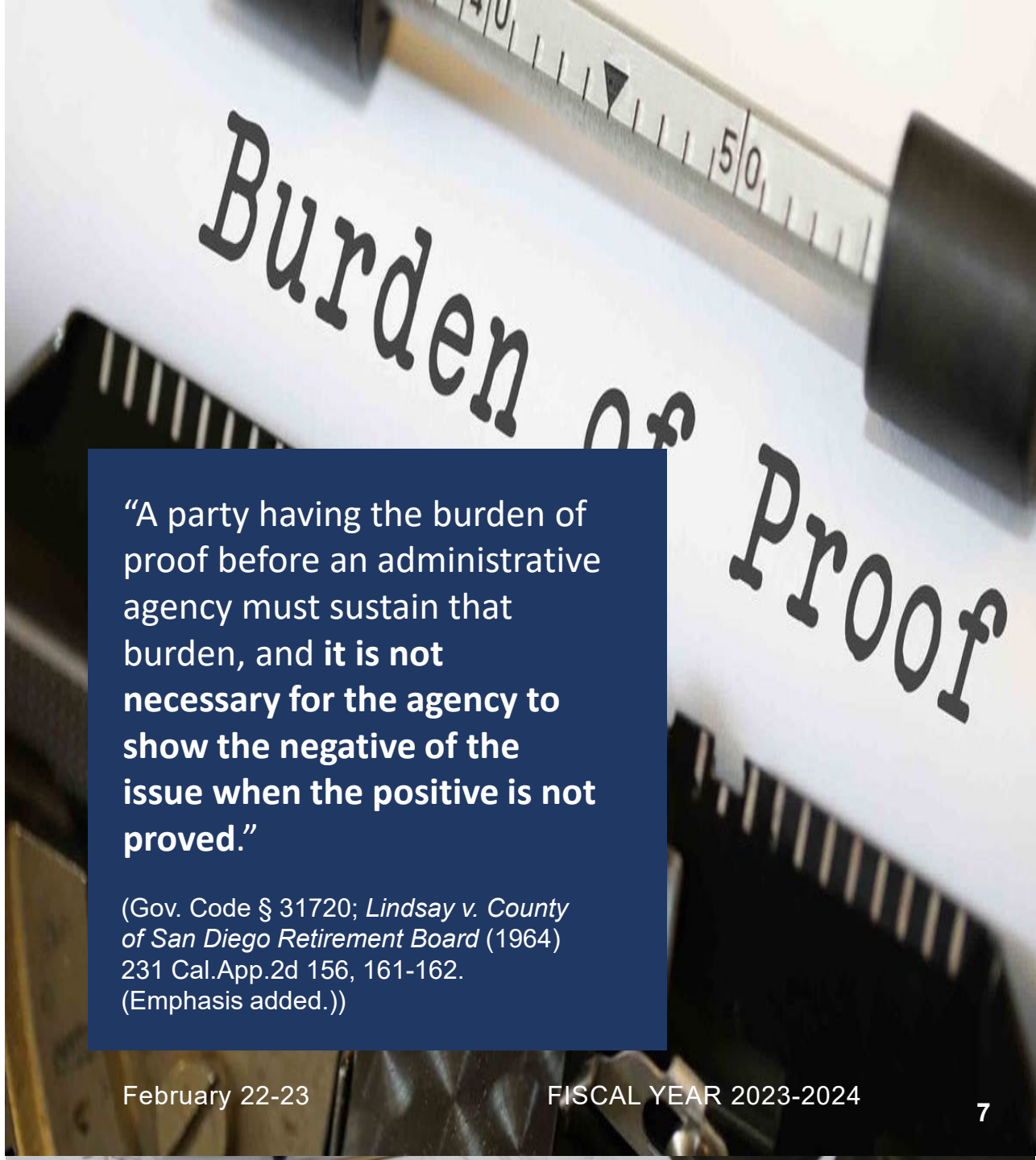
"The constitutional mandate by which [a retirement system] operates does not include an overlay of fiduciary obligations justifying an order to pay greater benefits than the statutes allow."

(*Chaidez v. Board of Administration etc.* (2014) 223 Cal.App.4th 1425, 1431.)

Applicant's Burden of Proof

BURDEN OF PROVING INCAPACITY TO THE BOARD IS ON THE APPLICANT

Applicants carry the burden of proving by a preponderance of the evidence that they are permanently incapacitated and that the incapacity is service-connected.



"A party having the burden of proof before an administrative agency must sustain that burden, and **it is not necessary for the agency to show the negative of the issue when the positive is not proved**."

(Gov. Code § 31720; *Lindsay v. County of San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161-162. (Emphasis added.))

Grant of Benefits Must be Based on Substantial Medical Evidence

1 A determination of whether a member is eligible to retire for disability must be based on **competent medical evidence**.

(Gov. Code § 31720.3.)

2 A finding of permanent incapacity and service-connection must be based on a **preponderance of the evidence**.

(*Glover v. Board of Retirement (1989) 214 Cal.App.3d 1327, 1332.)*

3 The evidence that is deemed to preponderate must amount to "**substantial evidence**."

(*Weiser v. Bd. of Ret.* (1984) 152 Cal.App.3d 775, 783.*)*

PREPONDERANCE OF EVIDENCE

The **greater weight of the evidence**; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . Also termed . . . balance of probability.

(Black's Law Dict. (7th ed. 1999) p. 1201, col. 1.)

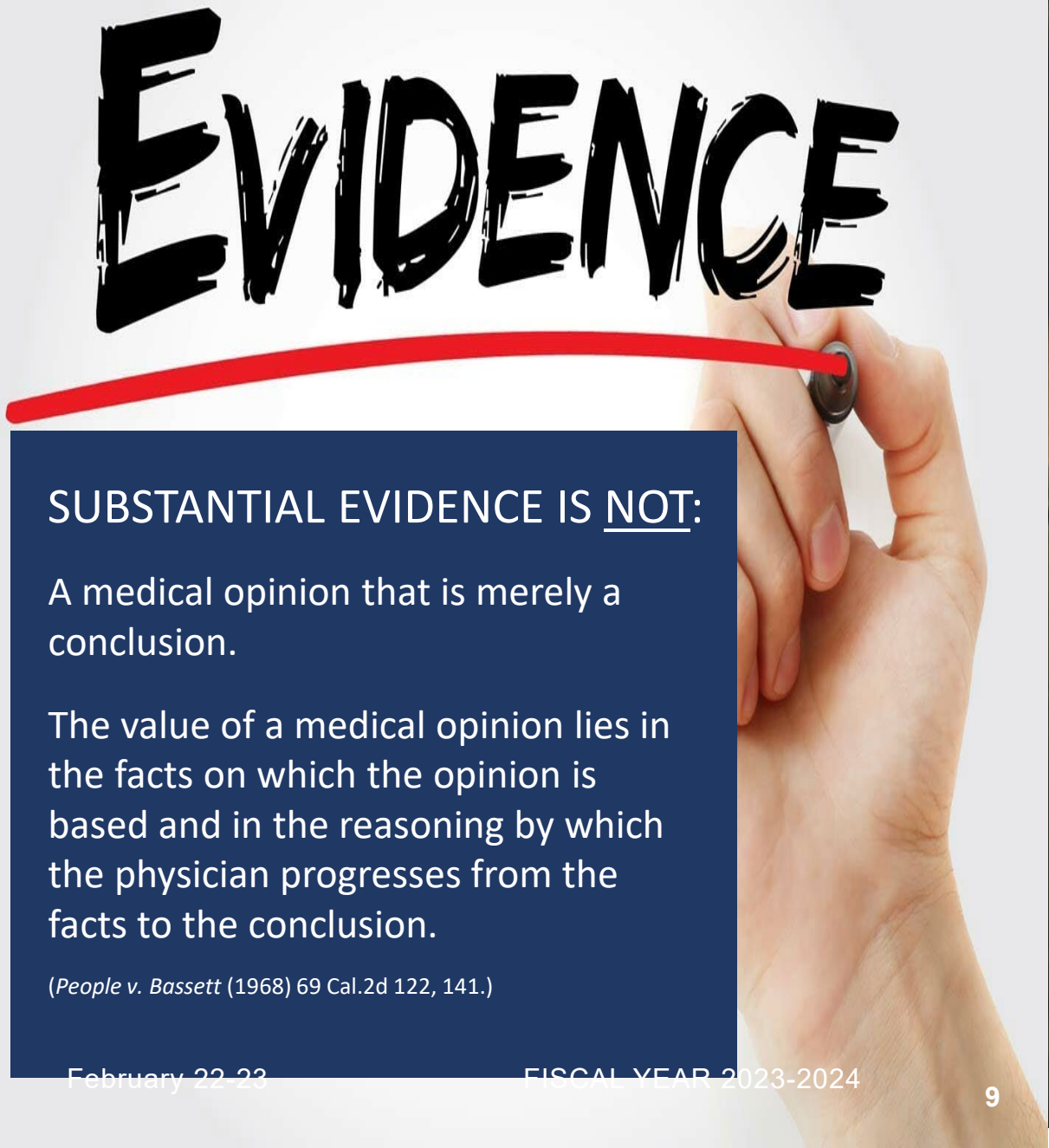
SUBSTANTIAL EVIDENCE

- "Relevant evidence that a reasonable mind might accept as adequate to support a conclusion."

  (*Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307.)

- Evidence that is reliable, solid proof—it must inspire confidence.

  (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644).



SUBSTANTIAL EVIDENCE IS NOT:

A medical opinion that is merely a conclusion.

The value of a medical opinion lies in the facts on which the opinion is based and in the reasoning by which the physician progresses from the facts to the conclusion.

(*People v. Bassett* (1968) 69 Cal.2d 122, 141.)

Lay opinion on a medical issue is not substantial evidence.

A finding on a *medical issue* must be based on medical expert opinion.

(*Peter Kiewit & Sons v. Industrial Acci. Com.* (1965) 234 Cal.App.2d 831, 838.)

In *Kiewit*, the court specifically stated that a question of whether or not work aggravated or accelerated a back condition is a medical issue that can only be determined by a medical expert. The court specifically stated that laypersons (such as the members of the Industrial Accident Commission) are not qualified to determine this medical issue.

Workers' Compensation Decisions

The Board of Retirement is not bound by the factual determinations made against the county in the workers' compensation case. A retirement system under the CERL of 1937 is a "**nonintegrated system**." It is not an administrative subdivision of the county or any district. It is a separate legal entity.

(*Flaherty v. Board of Retirement of Los Angeles County Employees Retirement Assoc.* (1961) 198 Cal.App.2d 397, 402-403.)

The legal standards for permanent incapacity & service connection under Government Code section 31720.

Permanent Incapacity

The evidence must establish that an applicant is substantially unable to perform the **usual duties of the job.**

1

USUAL DUTIES

The actual duties performed on a regular basis.

2

REMOTE OR UNCOMMON

Duties are not usual duties.

(*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; *Schrier v. San Mateo County Employees' Ret. Ass'n* (1983) 142 Cal.App.3d 957, 961-962.)

What does permanent mean?

There is no reported appellate court opinion that defines "permanent" for purposes of the CERL of 1937, and it is not defined in the CERL of 1937 itself. The following authorities provide some guidance.

"... a disability is generally regarded as **'permanent' where further change-for better or worse-is not reasonably to be anticipated under usual medical standards.** It may be that no further treatment is possible, or that the only treatment suggested is so problematical of success as to warrant the employee's refusal to undergo it.

(*Sweeney v. Industrial Acci. Com.* (1951) 107 Cal.App.2d 155, 159).

". . . **further change for better or for worse is not reasonably to be anticipated under usual medical standards.** Either no further medical treatment is possible or the success of that which is suggested is so problematical as to warrant refusal to undergo it."

(Subsequent Injuries Fund v. Industrial Acci. Com. (1964) 226 Cal.App.2d 136, 143.)

1

Arising out of employment:

Injury has its source in a **risk or hazard** of employment as opposed to a risk or hazard that is personal to the employee or the general community.

2

In the course of employment:

Injury or illness occurs in the **time, place,** and **circumstances of employment.**

3

Substantially Contribution Clause [added in 1980]:

“and such employment contributes substantially to the incapacity.”

Service Connection (3 elements)

Government Code section 31720 requires that the applicant's incapacity results from an injury or disease:

“Substantial Contribution” Amendment Background

Workers’ Compensation, Labor Code section 3600(a)

“Liability for the compensation provided by this division, in lieu of any other liability whatsoever . . . shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees **arising out of and in the course of the employment . . .**”

Background of the "Substantial Contribution" Amendment to Section 31720

- *Heaton v. Marin County Employees Retirement Bd.* (1976) 63 Cal.App.3d 421.

- Deputy Sheriff who suffered from anxiety and claimed that her job was a factor. There was also evidence of family problems.
- **Board Physician:** Heaton was incapaciated from anxiety. From her history, he could not find any anxiety reactions prior to her employment. He could not rule out the ***possibility*** Heaton suffered an acute anxiety-reaction cause at ***least partially*** by her employment.
- **Board Referee:** Recommended granting an SCD.
- **Board of Retirement:** Board rejected the Referee's decision and determined that the incapacity was not service connected.

Heaton v. Marin County Employees Retirement Bd.

Trial Court: Granted Heaton's writ of mandate. The court said ". . . the effects of her job would be ***very substantially less than 50% of the causal situation for her disability***, but we can't gainsay [deny] that it was one of the causative factors for disability, and I really think that is what is controlling."

On appeal, the Board argued:

- Despite the same "arise out of" and "course of employment" language in the Labor Code for workers' compensation, the Legislature intended that the two bodies of law be treated differently because workers' compensation awards are subject to apportionment according to the degree of injury while retirement for disability is an all or nothing proposition. ". . . **this works an unfair result under retirement law, since even an *infinitesimal contribution* to the disability might require full compensation** . . ."
- Causation must be established by a showing of **100 percent (or thereabouts)** connection, otherwise the Board's right to hear disability claims will be rendered meaningless.

Heaton v. Marin County Employees Retirement Bd.

Court of Appeal denied the appeal:

- "It cannot be denied that the two bodies of law, despite the fact that they are independent statutory schemes, overlap in some of their functions. **Comparison of the two does not in any way support appellant's contention that under retirement law, employment must be the sole or *substantial cause* of disability before an award may be made.** Neither does appellant direct this court's attention to any specific authority which might support such an interpretation.
- **The Board's remedy is with the Legislature, not the Court.**

Response to *Heaton*: Legislation

After the *Heaton* decision, **Retirement Boards were concerned that any connection, even an *infinitesimal* connection** between the employment and incapacitating condition would qualify members to a service-connected disability retirement.

Legislation was sponsored and in 1980, Section 31720(a) was amended to include a substantial contribution clause. This section now reads:

Amendment of Section 31720 to include a "Substantial Contribution" clause.

Government Code section 31720

"Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if:

(a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, ***and such employment contributes substantially to such incapacity***. . ."

What does “contributes substantially” mean?

***DePuy v. Board of Retirement* (1978) 87 Cal.App.3d 392.**

Trial Court: Granted the member’s writ and held that an ***infinitesimal, inconsequential*** causal connection between employment and incapacity satisfied the requisites for service connection.

Court of Appeal: Overturned the trial court and stated,“**. . .** the causal connection between the stress and the disability **may be a small part of the causal factors, it must nevertheless be real and measurable.** There must be substantial evidence of **some connection between the disability and the job.**”

Los Angeles County Employees Retirement Association

Aggravation or Acceleration of Pre-existing Conditions

"It is not the law that the aggravation must be the ***sole or proximate cause*** of the disability. . . . Instead the law, both statutory and decisional, is clear that all that is required is a ***material and traceable*** connection to appellant's mental deterioration that was caused by the stress of his county job."

***Gelman v. Board of Retirement of Los Angeles County Employees Retirement Asso.* (1978) 85 Cal.App.3d 92, 96-97.**

Los Angeles County Employees Retirement Association

Aggravation/Acceleration of Pre-existing Conditions

"... It has been held, based on reasoning parallel to that behind the principle in workers' compensation law, that an employer takes his employee as he finds him, and therefore any acceleration or aggravation of a preexisting disability becomes a service-connected injury of that employment [citations], and that an applicant for a government retirement pension will be awarded service-connected benefits **where he or she can show a *material and traceable* connection between disability and employment**."

***Lundak v. Bd. of Ret.* (1983) 142 Cal.App.3d 1040, 1043.**

Bowen v. Bd. of Ret. (1986) 42 Cal.3d 572, 577-578.

Los Angeles County Board of Retirement found Bowen psychiatrically incapacitated but denied that the incapacity was service connected because the evidence did not establish that his employment contributed more than 50% to his incapacity.

Los Angeles County Employees Retirement Association

Bowen v. Bd. of Ret. (1986) 42 Cal.3d 572, 577-578.

The Supreme Court stated that in the 1980 amendment to section 31720, **the Legislature intended to disapprove** not the entire body of case law construing that section, but **only the "infinitesimal contribution" language in Heaton.**

The Supreme Court said that “contributes substantially” was already defined in *Depuy*, *Gelman*, and *Lundak*, and it reaffirmed that "while the causal connection between the [job] stress and the disability may be a small part of the causal factors, it must nevertheless **be real and measurable**. There must be **substantial evidence of some connection** between the disability and the job

Los Angeles County Employees Retirement Association


THANK
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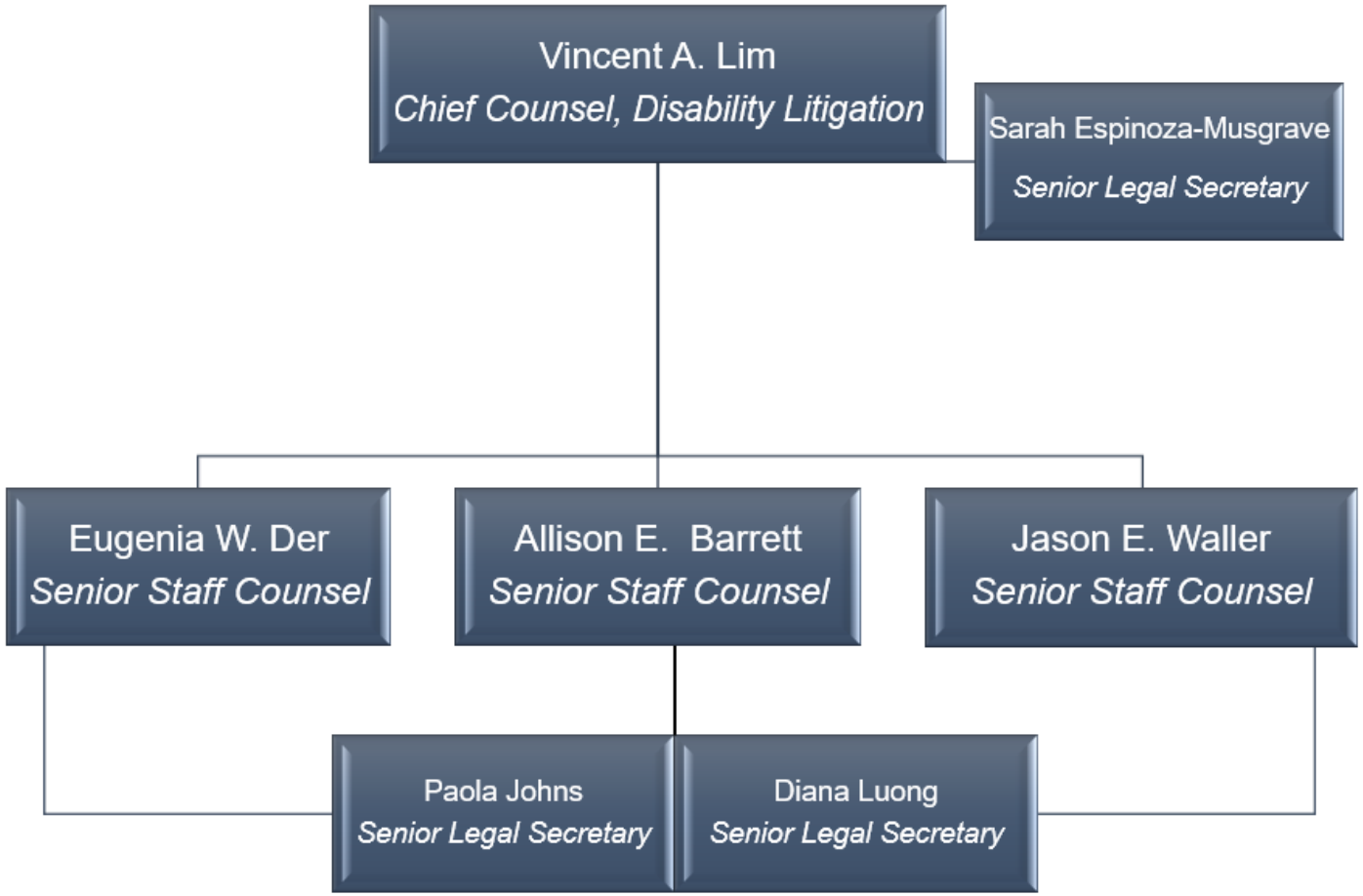
GETTING TO KNOW THE DISABILITY LITIGATION OFFICE

WHAT IS THE DISABILITY LITIGATION OFFICE (DLO)?

The DLO is a small law office separate and distinct from LACERA's Legal Office.

DISABILITY LITIGATION OFFICE



DISABILITY LITIGATION TEAM

WHO DOES THE DISABILITY LITIGATION OFFICE REPRESENT?

The DLO represents LACERA in disability retirement appeals, service-connected survivor benefit appeals, and felony forfeiture appeals.

DISABILITY RETIREMENT APPEALS

- Appeals are litigated at administrative hearings before Board-appointed referees.

THE TWO PRIMARY ISSUES IN DISABILITY RETIREMENT APPEALS

1. Permanent incapacity.

2. Service-connection.

WHO MAKES THE FINAL DECISION?

The Board of Retirement makes the final decision.

LITIGATION PHILOSOPHY = IMPARTIAL JUSTICE

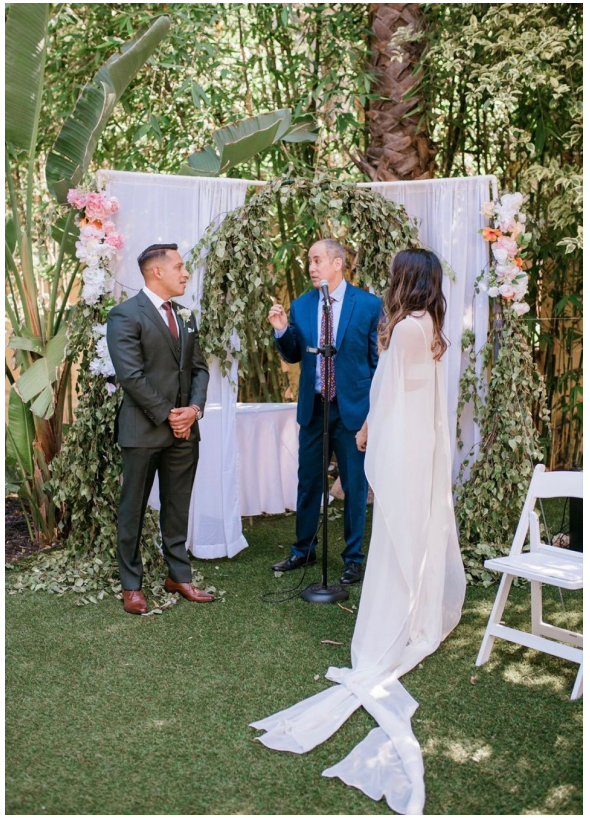
Standard of Conduct

Attorneys in the Disability Litigation Office will be diligent and vigorous in marshalling the evidence necessary to defend the respondent's position. Attorneys and support staff will treat witnesses, the plan sponsor, applicants, and the attorneys representing them with fairness and respect and will be always mindful that the ultimate objective of the Office is to achieve impartial justice.

VINCENT LIM

Chief Counsel, Disability Litigation

- Started at LACERA on March 19, 2007
- Celebrating 40 years of marriage in February 2023
- Moonlights as a wedding officiant



ALLISON BARRETT

Senior Staff Counsel

- Has two film degrees, including one from N.Y.U.
- Worked as an Applicant's attorney for seven years.
- Joined LACERA in January 2015.

EUGENIA DER

Senior Staff Counsel

- Joined LACERA on April 1, 2012.
- Was supposed to be an electrical engineer.
- Secret dream is being a professional ballerina.

Vicariously living through her daughter.


THANK
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BUILDING A BETTER TOMORROW

LACERA

BOARD OF RETIREMENT OFFSITE

Heart & Cancer Presumptions Under CERL

Frank Boyd, Senior Staff Counsel

Service Connection in Retirement Cases

NON-PRESUMPTION & PRESUMPTION CASES

Presumptions address *service connection* and are only applied after the evidence establishes that the member is permanently incapacitated.

Determining whether an industrial exposure caused and/or contributed to ***heart trouble*** or ***cancer*** is a medical issue.

A finding on a *medical issue* must be based on expert medical opinion.

(*Peter Kiewit & Sons v. Industrial Acci.Com.* (1965) 234 Cal.App.2d 831, 838.)

Service Connection in Retirement Cases

Service Connection in Non-Presumption Cases

After proving permanent incapacity, service connection will be established only if the member's incapacity arose out of and in the course of the member's employment, and such employment substantially contributed to the incapacity.
Gov. Code section 31720

Substantial contribution: There must be a "real and measurable" connection between the employment and the incapacity.
Bowen v. Bd. of Ret. (1986) 42 Cal.3d 572.

Service Connection in Retirement Cases

Burden of Proof in Non-Presumption Cases

- Preponderance of evidence.
- Physician(s) describe the mechanism by which the job was a causal factor in the incapacity.
- The Board weighs competing opinion(s) then determines whether members have met their burden of proof.

Service Connection in Retirement Cases

Burden of Proof in Presumption Cases

When a presumption is rebuttable, the burden of proving that the incapacity arose out of and in the course of employment and that the employment substantially contributed to the incapacity switches from the applicant to LACERA.

When the presumption is not rebuttable, the connection between the incapacity and employment is conclusive.

What is a Presumption?

DEFINITION:

It is an assumption of fact the law requires to be drawn from one or more other facts already established in the action.

Evidence Code section 600.

1 Rebuttable Presumption:

Establishes the existence of a fact unless evidence is introduced which would support a finding that the presumed fact does not exist.

Evidence Code sections 604 and 606.

2 Conclusive Presumption:

A finding of fact that the law requires to be made once prerequisite facts are established, even if there is evidence that would establish that the presumed fact is not true.

Evidence Code Section 620 *et seq.*

Heart Presumption

(Government Code section 31720.5)

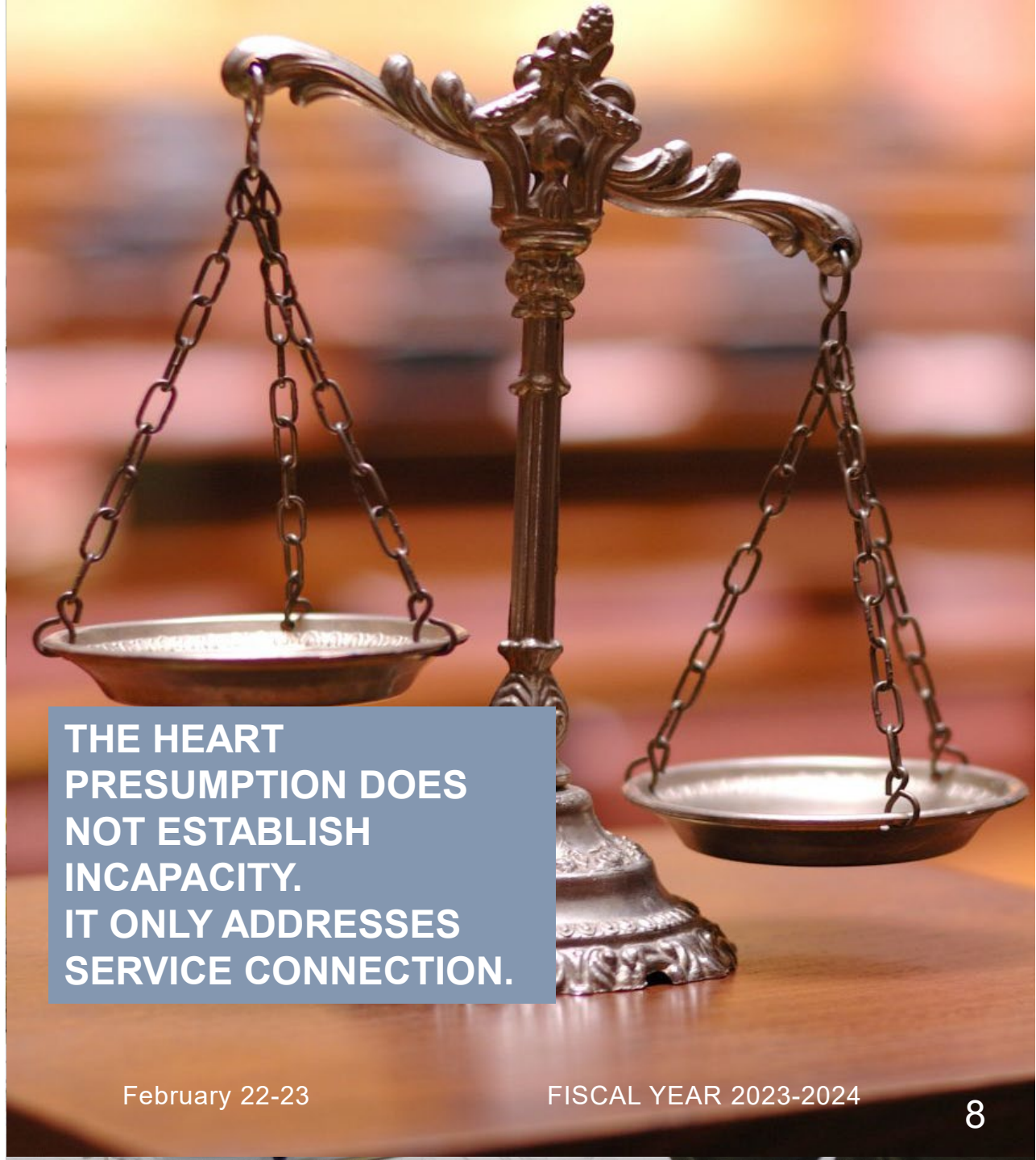
Government Code section 31720.5:

(a) If a safety member, a fireman member, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both under this retirement system or under the State Employees' Retirement System or under a retirement system established under this chapter in another county, and develops heart trouble, that heart trouble developing or manifesting itself in those cases shall be presumed to arise out of and in the course of employment. That heart trouble developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to such development or manifestation.

(b) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption.

(c) As used in this section, "fireman member" includes a member engaged in active fire suppression who is not classified as a safety member.

(d) As used in this section, "member in active law enforcement" includes a member engaged in active law enforcement who is not classified as a safety member.



1

Safety membership, active fire suppression, or active law enforcement.

2

5 years of service.

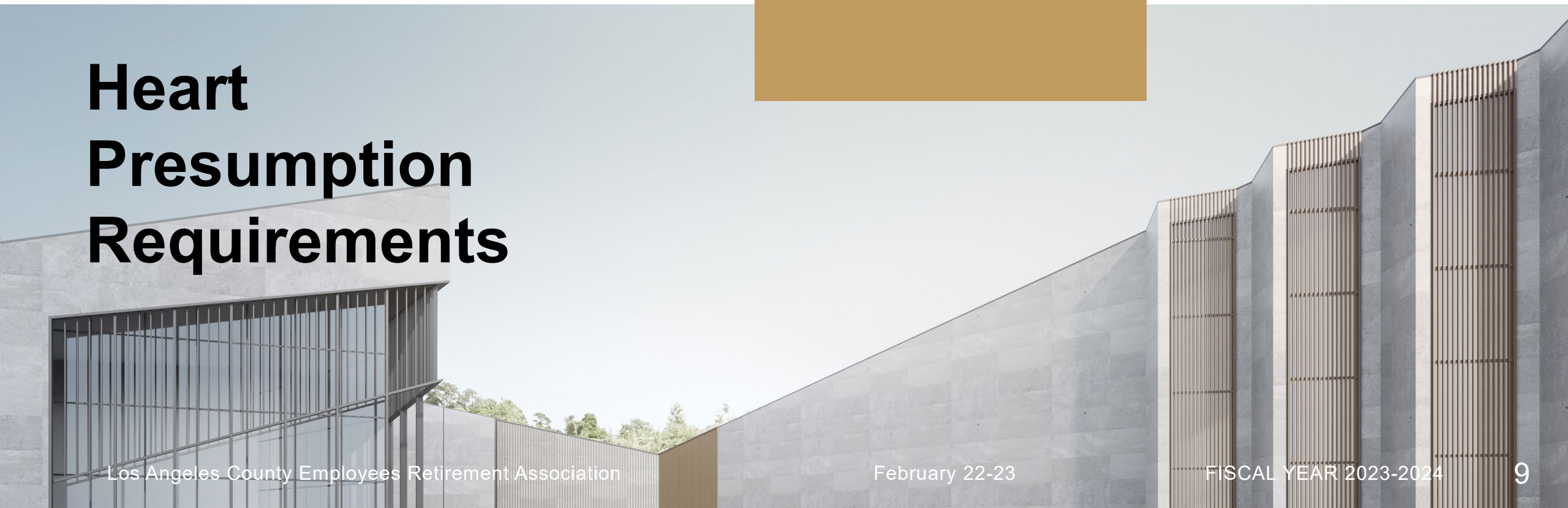
3

HEART TROUBLE

4

Disease must manifest itself as required.

Heart Presumption Requirements



1. Safety membership; or active fire suppression

Active Fire Suppression

"Fireman" includes "active fire suppression" even if not a safety member.

- No CERL case law. Have to look to workers' comp. cases for guidance.
- Extinguishing flames and rescuing victims not required.
- Proof of physically arduous duties not required.
- Frequently engaged in active fire suppression not required.

Active Law Enforcement

Member in "active law enforcement" even if not a safety member.

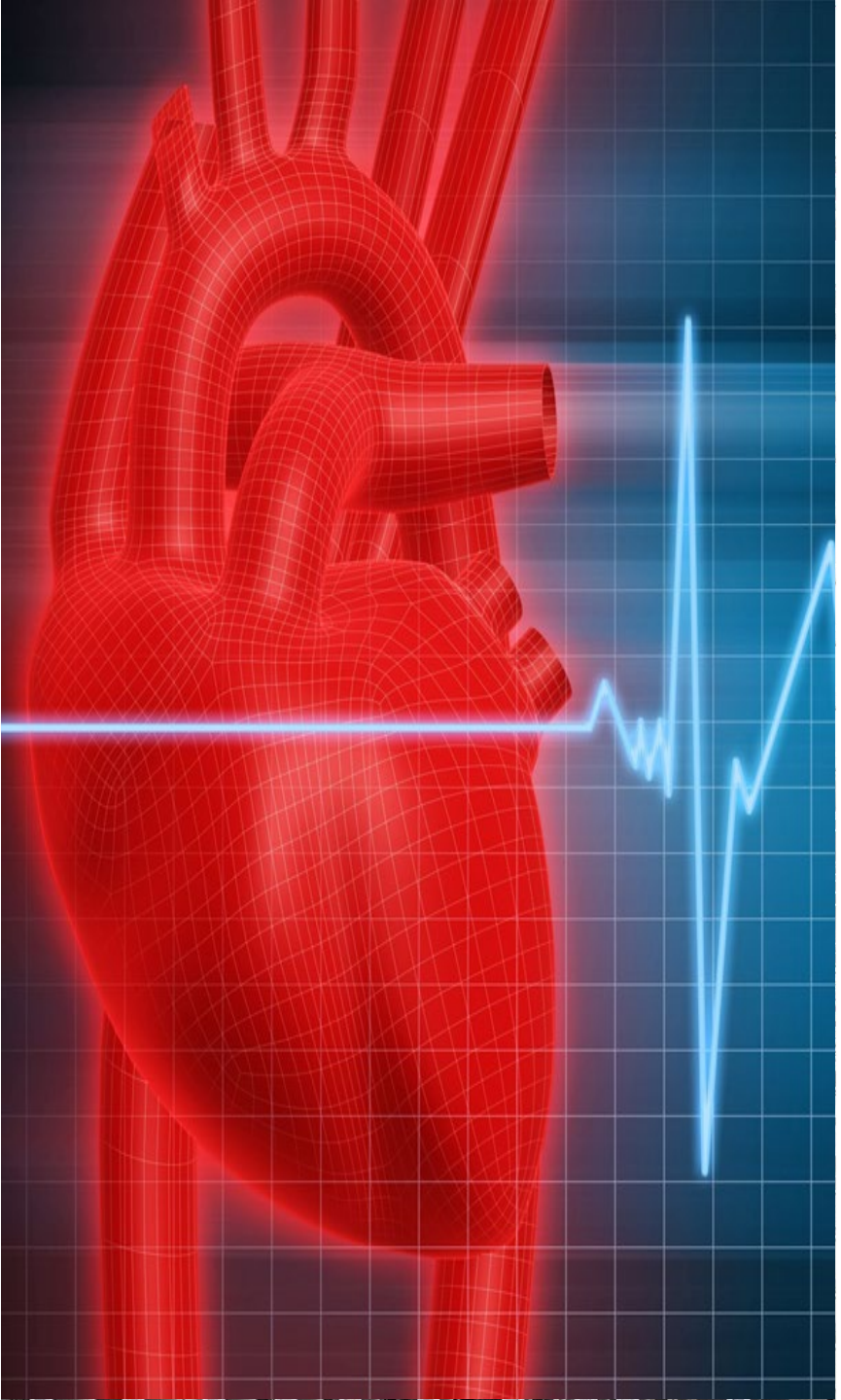
Ames v. Board of Retirement:

- Primary duty is to maintain security.
- Contact with prisoners on a regular basis.
- Exposure to hazards from prisoner conduct; and
- Risk of injury from the necessity of being able to cope with potential dangers inherent in the handling of prisoners.

Ames v. Board of Retirement (1983) 147 Cal.App.3d 906, 916.

2. Years of Service Credit Required

- 5 Years
- Under specified system or systems



3. Develops Heart Trouble

Has the heart been placed in a TROUBLED CONDITION?

1

Heart Trouble:

". . . encompass[es] any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body . . ."

Muznik v. Workmen's Comp. Appeals Bd. (1975) 51 Cal.App.3d 622, 635.

2

No Heart Trouble:

If the heart is not placed in a troubled condition, there is no presumption.

There is no presumption that the member is incapacitated.

The presumption establishes that the heart trouble is work-related provided the member meets the prerequisites.

4. Disease must manifest itself while in service.

Can the Heart Presumption be rebutted?

***ALMOST* impossible**

Pre-existing conditions cannot be used to rebut presumption.

EXCEPTIONS

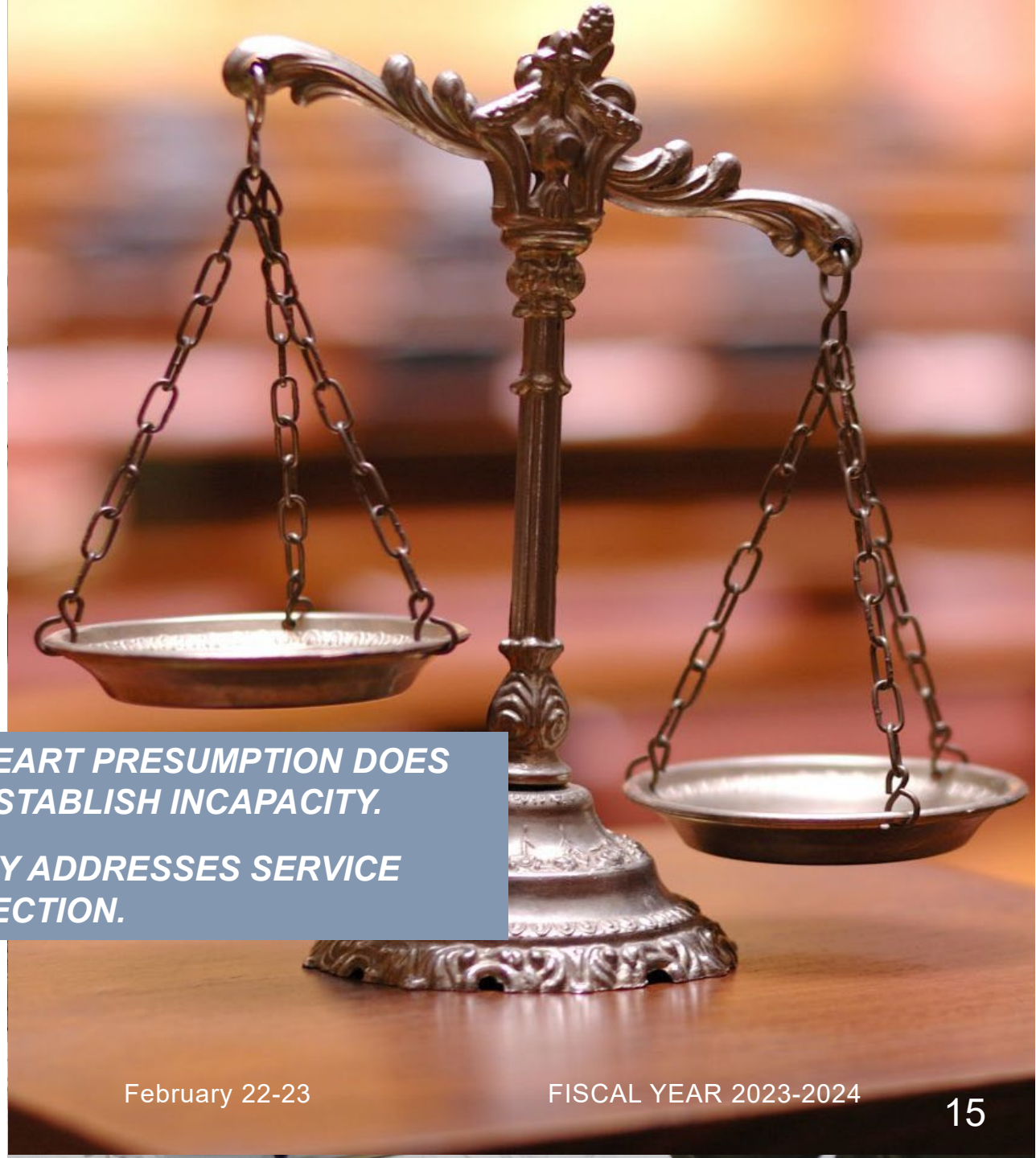
Nonindustrial exertion *may* rebut.

Concurrent employment *may* rebut.

Pellerin Case

- It was previously thought that the presumption could not be rebutted.
- *Pellerin* found that the presumption could be rebutted.

Pellerin v. Kern County Employees' Retirement Assn. (2006) 145 Cal.App.4th 1099.



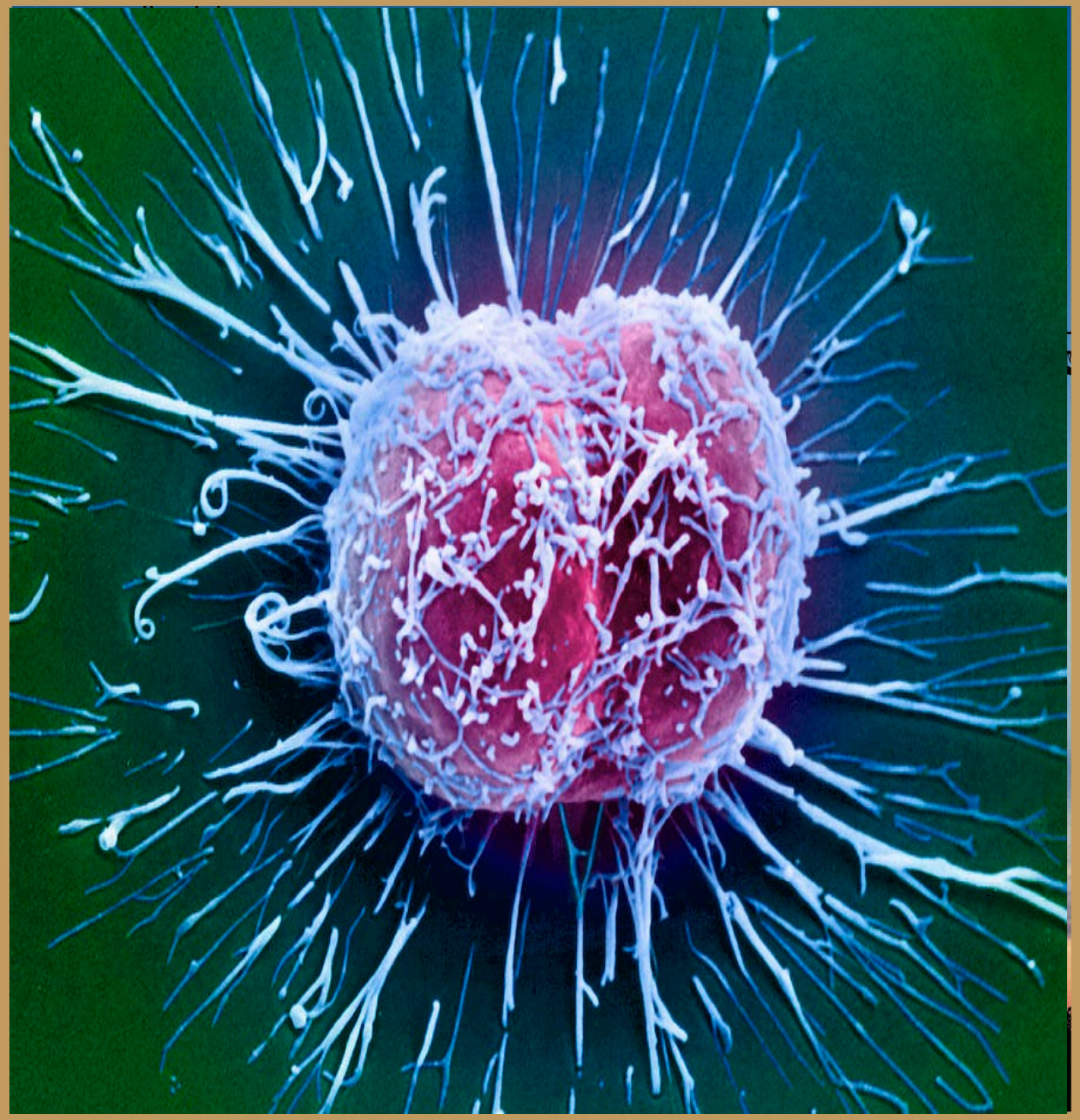
THE HEART PRESUMPTION DOES NOT ESTABLISH INCAPACITY.

IT ONLY ADDRESSES SERVICE CONNECTION.

Is there an extension after the member retires?

NO

Unlike the other presumptions, the "heart trouble" presumption is not extended for up to 60 months beyond termination of service as are the presumptions for cancer, most blood-borne infectious disease and illnesses from biochemical substance exposure.



Cancer Presumption

(Government Code section 31720.6)

Government Code section 31720.6:

(a) If a safety member, a firefighter, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both under this retirement system or under the Public Employees' Retirement System or under a retirement system established under this chapter in another county, and **develops cancer, the cancer, so developing or manifesting itself** in those cases shall be presumed to arise out of and in the course of employment. The cancer **so developing or manifesting** itself in those cases shall in no case be attributed to any disease existing prior to that **development** or **manifestation**.

(b) Notwithstanding the existence of nonindustrial predisposing or contributing factors, any safety member, firefighter member, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of cancer shall receive a service-connected disability retirement if the member demonstrates that he or she was exposed to a known carcinogen as a result of performance of job duties. "Known carcinogen" for purposes of this section means those carcinogenic agents recognized by the International Agency for Research on Cancer, or the Director of the Department of Industrial Relations.

Government Code section 31720.6 (con't):

(c) The presumption is disputable and may be controverted by evidence, that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, provided that the primary site of the cancer has been established. Unless so controverted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) "Firefighter," for purposes of this section, includes a member engaged in active fire suppression who is not classified as a safety member.

(e) "Member in active law enforcement," for purposes of this section, includes a member engaged in active law enforcement who is not classified as a safety member. (Emphasis added.)

Cancer Presumption Requirements

1

Cancer causes incapacity.

2

Safety member, firefighter, or active law enforcement.

3

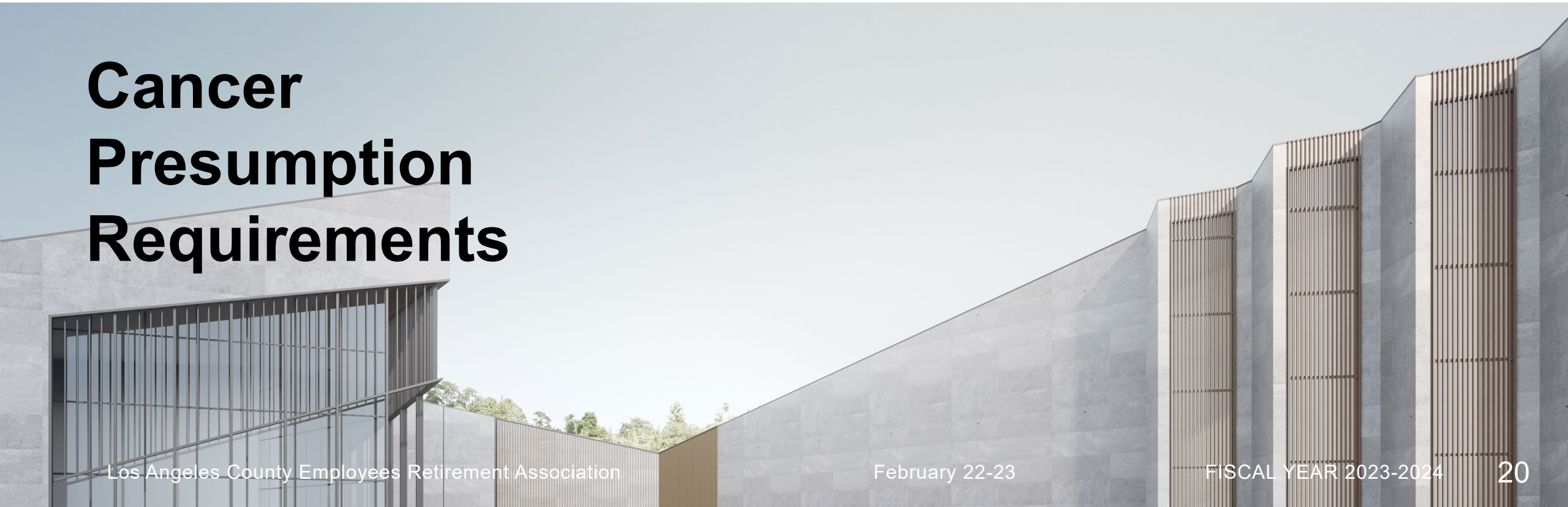
Five years of service.

4

Develops cancer while in service. Time extension. (up to five years after last day worked)

5

Exposure to known carcinogen on job.



1. Member must be permanently incapacitated by Cancer

- The presumption only addresses **causation**, it does not establish incapacity.

2. Safety membership; or Firefighter

Firefighter

"Firefighter" includes "active fire suppression" even if not a safety member.

- No CERL case law. Have to look to workers' comp. cases for guidance.
- Extinguishing flames and rescuing victims not required.
- Proof of physically arduous duties not required.
- Frequently engaged in active fire suppression not required.

Active Law Enforcement

Member in "active law enforcement" even if not a safety member.

Ames v. Board of Retirement:

- Primary duty is to maintain security.
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Ames v. Board of Retirement (1983) 147 Cal.App.3d 906, 916.

3. Years of Service Credit Required

- 5 Years
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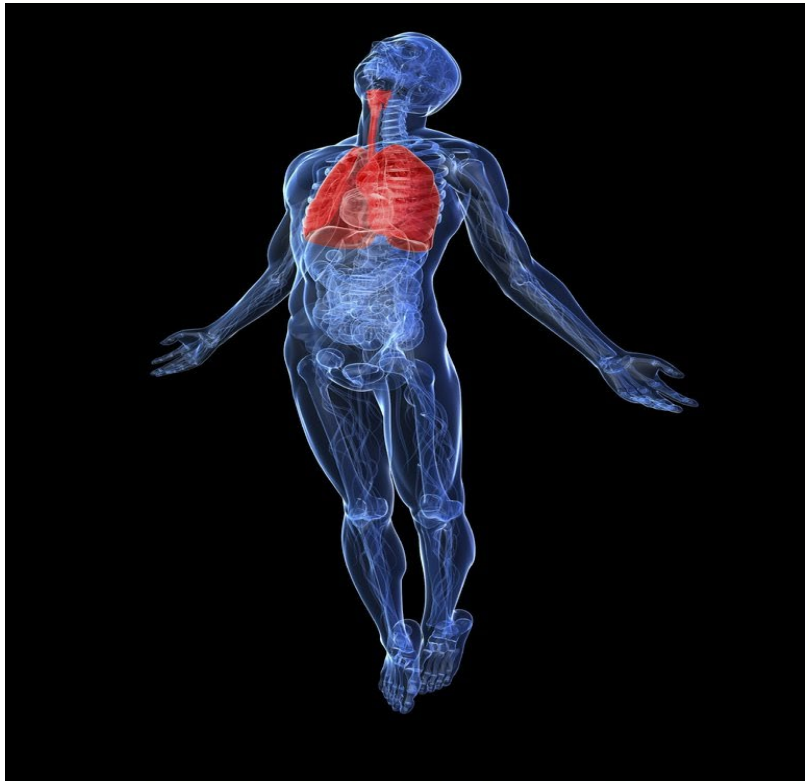

4. Develops Cancer

Cancer must *develop* or *manifest itself* in the applicant.

Extension: ". . . This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last day actually worked in the specified capacity."

§31722. Time for application
The application shall be made while the member is in service, within four months after his or her discontinuance of service, **within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service,** or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties. (Emphasis added.)

5. Exposure to a known carcinogen on the job

The applicant must demonstrate that he or she was exposed to a **"known carcinogen"** as a result of performance of job duties.

Known Carcinogen: "those carcinogenic agents recognized by the International Agency for Research on Cancer, or the Director of the Department of Industrial Relations."

Rebutting the Cancer Presumption

The Presumption cannot be attributed to any disease existing prior to that development or manifestation. But . . .

The presumption may be rebutted if:

The primary site of the cancer has been established; **and**

The carcinogen to which the member was exposed is not reasonably linked to the disabling cancer; **or**

The period between the exposure and the manifestation is not within the cancer's latency period as established by medical evidence.
Sameyah v LACERA (2010) 190 Cal.App.4th 199.


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