



ASRS Long Term Disability Program

This document, published by the Arizona State Retirement System (ASRS), is issued as a convenience to those persons applying for and/or participating in the ASRS Long Term Disability program. It is a compilation of Arizona Revised Statutes (A.R.S.) Title 38, Chapter 5, §§ 38-797 et seq. and the administrative rules and regulations promulgated thereunder, Arizona Administrative Code (A.A.C.) Title 2, Chapter 8, that constitute the laws and regulations governing the ASRS Long Term Disability program.

These laws and regulations apply to ASRS Long Term Disability benefits and may impact your claim for benefits, any benefit payments you receive, and/or any benefit payments you are required to repay to the ASRS or the ASRS contracted LTD claims administrator.

Although every effort has been taken to ensure the accuracy of the material presented, it is not intended or represented to be the official record of laws and regulations of the State of Arizona. True and correct copies of statutes of this State are found in the Arizona Revised Statutes filed and issued by the Secretary of State. As a courtesy, the Arizona Legislature also publishes statutes at azleg.gov/arstitle/. True and correct copies of the administrative rules and regulations are contained in the Arizona Administrative Code filed and issued by the Secretary of State at <https://azsos.gov/rules/arizona-administrative-code>.

Each person who may be involved with any action that requires a review of the official text is cautioned to consult the Arizona Revised Statutes and Arizona Administrative Code.

Arizona Revised Statutes | Chapter 5 | Article 2.1 | Long-Term Disability Program

§38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.
12. "Normal retirement date" has the same meaning prescribed in section 38-711.
13. "Political subdivision" has the same meaning prescribed in section 38-711.
14. "State" has the same meaning prescribed in section 38-711.

§38-797.01. LTD program

- A. A long-term disability program is established.
- B. The program is known as the LTD program.

§38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

§38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

§38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

§38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

§38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines pursuant to this section. The actuary shall make this determination in an annual

valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

§38-797.07. LTD program benefits; limitations; definitions

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

- (e) All of any workers' compensation benefits.
 - (f) All of any payments for a veteran's disability if both of the following apply:
 - (i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.
 - (ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.
 - (g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.
 - (h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.
2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.
3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.
4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.
5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.
6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:
- (a) An intentionally self-inflicted injury.
 - (b) War, whether declared or not.
 - (c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period the member receives LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.
2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.
3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

§38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

§38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

§38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

§38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

§38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

§38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

§38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

Arizona Administrative Code | 2 A.A.C. 8 | Title 2. Administration | Chapter 8. State Retirement System Board

Article 3. Long-Term Disability

R2-8-301. Definitions

The following definitions apply to this Article unless otherwise specified:

1. “Attending Physician” means a provider:

- a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
- b. Whose medical training and clinical experience are qualified to treat the member’s disabling condition;
- c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
- d. Who is licensed to practice in the jurisdiction where care is being given;
- e. Who is practicing within the scope of the license; and
- f. Who is not related to the member by blood or marriage.

2. “Direct Care” means the member is actively receiving treatment from a provider for the member’s disability at least once per calendar year.

3. “Estimated Social Security disability income amount” means the same as in R2-8-801(1).

4. “Legal proceeding” means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.

5. “LTD” means the Long-Term Disability program described in A.R.S. § 38-797 et seq.

6. “LTD benefit” means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38- 797.07(A)(11).

7. “LTD contribution” means the amount of funds the member remits to the ASRS from the member’s compensation as payment for the LTD program.

R2-8-302. Application for Long-Term Disability Benefit

A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.

B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.

C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.

D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

R2-8-303. Long-Term Disability Calculation

A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).

B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).

C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

R2-8-304. Payment of Long-Term Disability Benefit

A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.

B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.

C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

R2-8-305. Social Security Disability Appeal

A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8- 302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.

B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38- 797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.

C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:

1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.

D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

R2-8-306. Approval of Social Security Disability

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

Article 4. Practice and Procedure before the Board

R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

1. “Appealable agency action” has the same meaning as in A.R.S. § 41-1092.
2. “Board” means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. “Final administrative action” has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. “Health Plan” means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. “Health Plan Vendor” means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:

1. To the ASRS’s vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
2. To the ASRS Member Services Division Assistant Director, or such director’s designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.

B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director’s designee, shall send a response letter to the person requesting the appeal notifying the person of:

1. The decision the agency is making in response to the letter of appeal; and
2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.

C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.

D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:

1. The agency action the ASRS is taking in response to the letter of appeal; and
2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:

1. The name and mailing address of the member, employer, or other person filing the Request;
2. The name and mailing address of the attorney for the person filing the Request, if applicable;
3. A concise statement of the reasons for the appeal.

F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).

G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).

H. Pursuant to subsection (B):

1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

I. The Board has delegated to each Health Plan Vendor the authority to:

1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.

J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.

B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.

D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:

1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;

2. Misconduct of the Board, the hearing officer, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.

G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.

I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Article 8. Recovery of Overpayments

R2-8-801. Definitions

For purposes of this article, the following definitions apply, unless specified otherwise:

1. “Estimated Social Security disability income amount” and “Revised Social Security disability income amount” mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. “LTD” means long-term disability program as described in A.R.S. § 38-797 et seq.
3. “LTD benefit” means the same as in R2-8-301.
4. “Overpayment” means:
 - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
 - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

A. The ASRS contracted LTD claims administrator shall determine a member’s estimated Social Security disability income amount as follows:

1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member’s full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38- 797.07(A)(9); and
2. Upon the member’s death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member’s LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38- 797.07(A)(9).

B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.

C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.

D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount

based on the supporting documentation provided by the member or survivor pursuant to subsection (B).

E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:

1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.

F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

R2-8-803. Reimbursement of Overpayments

A. Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.

B. A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.

C. An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.

D. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.

E. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

F. If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

R2-8-804. Collection of Overpayments from Forfeiture

A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).

B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:

1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

R2-8-805. Collection of Overpayments from Retirement Benefit

A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.

B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:

1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).

C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:

1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements

within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.

D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

R2-8-806. Collection of Overpayments from Survivor Benefit

A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.

B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).

C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.

D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.

E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any over payment the member received from the ASRS and has not reimbursed pursuant to this Section.

R2-8-808. Collection of Overpayments by the Attorney General

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.