

October 7, 2005

Jean I. Thorne
Administrator
Public Employees' Benefit Board
775 Court Street, N. E.
Salem, Oregon 97301

Dear Ms. Thorne:

At its October 7, 2005 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 05A-1005

STATED FACTS: The Public Employees' Benefit Board (PEBB) manages and negotiates health benefits for current and former state employees and their dependents. Over recent years, PEBB has been developing an approach to health care that, in addition to providing health care services, focuses on health outcomes with members becoming involved in managing their own health. This approach has been developed under a project named "Vision for 2007."

PEBB has awarded, and plans to continue to award, contracts to health plans willing to incorporate provisions supporting Vision for 2007. In designing the request for bid proposals PEBB will ask the proposed plans to include incentives for PEBB members who participate in managing their own health. These incentives could take various forms. Some may offer rewards to members with chronic illnesses who follow suggested dietary or exercise regimes. Other proposals may reward certain health outcomes or might reward those members who participate in an assessment to identify their health risks. Yet others could include cash awards or waivers of co-pays.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020(15) " 'Public official' means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services."

244.020(16) " 'Relative' means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse."

244.040 "**Code of ethics; prohibited actions; honoraria.** The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120:"

244.040(1)(a) "No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated."

QUESTION: If a public official accepted any of the various incentives offered through a PEBB health care plan, to reward the public official's participation in activities encouraged by that plan, would the public official violate Government Standards and Practices law?

OPINION: ORS 244.040(1)(a) prohibits a public official from using or attempting to use the official position or office to obtain a financial gain or to avoid a financial detriment that would not otherwise be available but for the public official's holding the official position or office. In addition the public official is prohibited from using an official position or office to obtain financial gain or avoid a financial detriment for a spouse or children. There are exceptions to this prohibition. The public official can accept official salary, honoraria, reimbursement of expenses and unsolicited awards for professional achievement.

The Government Standards and Practices Commission has always considered any part of a public officials "compensation package" as official salary permitted as an exception in ORS 244.040(1)(a). Health care plans offered to public officials by their public employer are considered by the GSPC to be part of the compensation package. Accordingly, incentives that reward health plan members' efforts to manage their own health would also be considered to be part of the compensation package. Public officials who accept such incentives for themselves or for relatives [defined in ORS 244.020(16)] would not appear to be in violation of Government Standards and Practices law.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 7th day of October 2005.

John P. Kopetski, Chairperson

Lynn Rosik, Assistant Attorney General