AGENDA

HEALTH EVIDENCE REVIEW COMMISSION
Meridian Park Hospital
Health Education Center Room 117B & C
Tualatin, Oregon
January 12, 2012

(All agenda items are subject to change and times listed are approximate)
(The Commission will be served a working lunch at approximately 12:00 PM)

#	Time	Item	Presenter	Action Item
1	9:00 AM	Call to Order and Introductions • Approval of agenda	Darren Coffman *HERC Director*	
2	9:10 AM	Welcome	Sean Kolmer *Governor's Office*	
3	9:20 AM	Conduct as a Commission Member	Linda Grimms *Dept. of Justice*	
4	9:30 AM	Review of Draft Bylaws	Darren Coffman	X
5	9:40 AM	Election of Chair and Vice-Chair	Darren Coffman/Chair	X
6	9:50 AM	Overview of Work To Date • Prioritized List of Health Services • Value-based benefit design • Evidence-based guidelines • Medical technology assessments	Som Saha Ariel Smits *HERC Medical Director* Cat Livingston *Clinical Consultant* Darren Coffman	
7	10:45 AM	Review of Draft Work Plan • Proposed subcommittee/advisory panel structure • Public input process	Jeanene Smith *OHPR Administrator* Darren Coffman	X
8	11:45 AM	Remaining Issue from December 2011 HSC Meeting • Clarification of composite dental filling coverage	Darren Coffman Jim Tyack	X
9	12:00 PM	Identification of Initial Topics for Development of Evidence-Based Guidelines and Medical Technology Assessments	Cat Livingston	X
10	12:40 PM	Next Steps • Schedule next meeting	Chair	
11	12:50 PM	Public Comment		
12	1:00 PM	Adjournment	Chair	

Health Evidence Review Commission Roster

Gerald Ahmann, MD, is Medford physician who is board-certified in internal medicine and clinical oncology and is a practicing hematologist/oncologist for Hematology Oncology Associates. He also serves as a co-investigator in clinical trials involving breast cancer patients.
Physician Representative; Term: 1/1/12-12/31/15

Wiley Chan, MD, an internal medicine physician from Portland, is Director of Guidelines and Evidence-based Medicine for Kaiser Permanente Northwest.
Physician Representative; Term: 1/1/12-12/31/14

Alissa Craft, DO, MBA, is the Medical Director for Samaritan Health Plans in Corvallis. She is a board-certified pediatrician with a specialty in neonatal and perinatal medicine.
Insurance Industry/Osteopath Representative; Term: 1/1/12-12/31/14

Irene Croswell, RPh, is a retail pharmacist for Haggen Pharmacy in Tualatin and is President of the Oregon State Pharmacy Association.
Pharmacy Representative; Term: 1/1/12-12/31/13

Lisa Dodson, MD, is a board-certified family physician who acts as Director of the Oregon Area Health Education Centers at OHSU. She provides locum tenens physician service to rural communities and previously practiced for seven years in John Day.
Physician (Hospital-Based) Representative; Term: 1/1/12-12/31/15

Leda Garside, RN, BSN, MBA, is the Clinical Nurse Manager for the ¡Salud! Program, an outreach program of the Tuality Healthcare Foundation in Hillsboro. Her 25-year nursing career includes acute care, occupational health services and, in the last 10 years, community and public health.
Public Health Nurse; Term: 1/1/12-12/31/12

Mark Gibson is the Director of the OHSU Center for Evidence-based Policy in Portland and a Program Officer for Millbank Memorial Fund. A former fire fighter, he has also served as Health Policy Advisor to the Oregon Governor's Office.
Consumer Representative; Term: 1/1/12-12/31/15

Carla McKelvey, MD, is a board-certified pediatrician in private practice at North Bend Medical Center in Coos Bay. She is currently the President of the Oregon Medical Association.
Physician Representative; Term: 1/1/12-12/31/14

Vern Saboe, DC, is a practicing chiropractic physician with 30 years experience who is board certified in orthopedics, neurology and forensic science. He served on the Oregon Board of Chiropractic Examiners and is Past President of the Chiropractic Association of Oregon.
Alternative & Complementary Medicine Provider; Term: 1/1/12-12/31/15

Health Evidence Review Commission Roster

Somnath Saha, MD, MPH, currently practices as a general internist at the Portland VA Medical Center and is an Associate Professor of Medicine and Public Health & Preventive Medicine at OHSU. He is an active member of the Oregon Evidence-based Practice Center and has served as Chair of the Health Services Commission.
Physician Representative; Term: 1/1/12-12/31/13

James Tyack, DMD, MAGD, is a practicing dentist and owner of Tyack Dental Group, with offices in Astoria and Clatskanie. He is an adjunct faculty member at the OHSU School of Dentistry and is also a manuscript reviewer for the Journal of the Academy of General Dentistry.
Dentist; Term: 1/1/12-12/31/13

Kathryn Weit, of Eugene, is the Interim Executive Director and Policy Analyst for the Oregon Council on Developmental Disabilities and she has worked on behalf of people with disabilities and their families for over 25 years. Ms. Weit is a former teacher who worked in inner city and low-income high schools and is the parent of a 30 year-old son with developmental disabilities.
Consumer Representative; Term: 1/1/12-12/31/12

Beth Kaplan Westbrook, PsyD, is a practicing clinical psychologist from Portland with over 30 years of experience in both inpatient and outpatient settings. She is certified in Child and Adolescent Psychotherapy, Group Work Training and Crisis Intervention and is Past President of the Oregon Psychological Association.
Behavioral Health Representative; Term: 1/1/12-12/31/13

Enrolled
House Bill 2100

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of Governor John A. Kitzhaber for Oregon Health Authority)

CHAPTER .....

AN ACT

Relating to functions of the Oregon Health Authority; creating new provisions; amending ORS 3.408, 30.262, 87.533, 93.268, 106.045, 106.330, 113.085, 113.145, 114.305, 115.125, 115.195, 116.093, 130.370, 130.425, 179.505, 179.560, 179.570, 181.735, 185.140, 238.082, 243.061, 243.145, 243.862, 243.878, 279A.050, 292.051, 343.243, 343.507, 343.961, 408.370, 409.010, 409.161, 409.162, 410.040, 410.075, 410.080, 410.160, 410.230, 410.240, 410.300, 410.720, 411.010, 411.060, 411.070, 411.072, 411.081, 411.083, 411.087, 411.103, 411.300, 411.320, 411.400, 411.402, 411.404, 411.406, 411.408, 411.431, 411.432, 411.435, 411.439, 411.443, 411.459, 411.463, 411.593, 411.610, 411.620, 411.630, 411.632, 411.635, 411.640, 411.660, 411.670, 411.675, 411.690, 411.694, 411.703, 411.708, 413.011, 413.032, 413.033, 413.064, 414.025, 414.033, 414.041, 414.065, 414.211, 414.221, 414.227, 414.231, 414.312, 414.332, 414.334, 414.538, 414.705, 414.707, 414.708, 414.710, 414.712, 414.725, 414.730, 414.735, 414.736, 416.340, 416.350, 416.610, 417.349, 418.517, 418.975, 418.985, 419C.529, 426.005, 426.129, 426.250, 426.275, 426.495, 427.005, 430.021, 430.205, 430.210, 430.397, 430.610, 430.630, 430.632, 430.640, 430.670, 430.672, 430.695, 431.195, 431.962, 431.964, 431.966, 431.970, 431.974, 431.976, 431.978, 432.500, 433.055, 433.060, 433.095, 433.407, 441.021, 441.096, 442.011, 442.700, 443.410, 443.450, 443.465, 443.860, 443.861, 443.864, 443.869, 448.465, 475.495, 480.225, 497.162, 616.555, 616.560, 616.570, 616.575, 616.580, 676.150, 676.306, 676.350, 682.218, 708A.430, 723.466, 743.730, 743.736, 743A.010 and 743A.062 and section 1, chapter 426, Oregon Laws 2009, section 20, chapter 595, Oregon Laws 2009, and section 29, chapter 856, Oregon Laws 2009; repealing ORS 409.310, 409.330, 410.110, 414.338, 414.350, 414.355, 414.360, 414.365, 414.370, 414.375, 414.380, 414.385, 414.390, 414.395, 414.400, 414.410, 414.415, 414.715, 414.720, 414.741, 430.170, 431.190, 442.575, 442.580, 442.581, 442.583, 442.584, 442.588, 442.589 and 735.711 and section 57, chapter 9, Oregon Laws 2011 (Enrolled Senate Bill 353), and section 4, chapter ___, Oregon Laws 2011 (Enrolled House Bill 2600); appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

PHARMACY AND THERAPEUTICS COMMITTEE

SECTION 1. As used in sections 1 to 12 of this 2011 Act:

(1) "Compendia" means those resources widely accepted by the medical profession in the efficacious use of drugs, including the following sources:

(a) The American Hospital Formulary Service drug information.

(b) The United States Pharmacopeia drug information.

(c) The American Medical Association drug evaluations.

(d) Peer-reviewed medical literature.

(e) Drug therapy information provided by manufacturers of drug products consistent with the federal Food and Drug Administration requirements.

(2) "Criteria" means the predetermined and explicitly accepted elements based on compendia that are used to measure drug use on an ongoing basis to determine if the use is appropriate, medically necessary and not likely to result in adverse medical outcomes.

(3) "Drug-disease contraindication" means the potential for, or the occurrence of, an undesirable alteration of the therapeutic effect of a given prescription because of the presence, in the patient for whom it is prescribed, of a disease condition or the potential for, or the occurrence of, a clinically significant adverse effect of the drug on the patient's disease condition.

(4) "Drug-drug interaction" means the pharmacological or clinical response to the administration of at least two drugs different from that response anticipated from the known effects of the two drugs when given alone, which may manifest clinically as antagonism, synergism or idiosyncrasy. Such interactions have the potential to have an adverse effect on the individual or lead to a clinically significant adverse reaction, or both, that:

(a) Is characteristic of one or any of the drugs present; or

(b) Leads to interference with the absorption, distribution, metabolism, excretion or therapeutic efficacy of one or any of the drugs.

(5) "Drug use review" means the programs designed to measure and assess on a retrospective and a prospective basis, through an evaluation of claims data, the proper utilization, quantity, appropriateness as therapy and medical necessity of prescribed medication in the medical assistance program.

(6) "Intervention" means an action taken by the Oregon Health Authority with a prescriber or pharmacist to inform about or to influence prescribing or dispensing practices or utilization of drugs.

(7) "Overutilization" means the use of a drug in quantities or for durations that put the recipient at risk of an adverse medical result.

(8) "Pharmacist" means an individual who is licensed as a pharmacist under ORS chapter 689.

(9) "Prescriber" means any person authorized by law to prescribe drugs.

(10) "Prospective program" means the prospective drug use review program described in section 7 of this 2011 Act.

(11) "Retrospective program" means the retrospective drug use review program described in section 8 of this 2011 Act.

(12) "Standards" means the acceptable prescribing and dispensing methods determined by compendia, in accordance with local standards of medical practice for health care providers.

(13) "Therapeutic appropriateness" means drug prescribing based on scientifically based and clinically relevant drug therapy that is consistent with the criteria and standards developed under sections 1 to 12 of this 2011 Act.

(14) "Therapeutic duplication" means the prescribing and dispensing of two or more drugs from the same therapeutic class such that the combined daily dose puts the recipient at risk of an adverse medical result or incurs additional program costs without additional therapeutic benefits.

(15) "Underutilization" means that a drug is used by a recipient in insufficient quantity to achieve a desired therapeutic goal.

SECTION 2. (1) There is created an 11-member Pharmacy and Therapeutics Committee responsible for advising the Oregon Health Authority on the implementation of the retrospective and prospective programs and on the Practitioner-Managed Prescription Drug Plan.

(2) The Director of the Oregon Health Authority shall appoint the members of the committee, who shall serve at the pleasure of the director for a term of three years. An indi-

vidual appointed to the committee may be reappointed upon completion of the individual's term. The membership of the committee shall be composed of the following:

(a) Five persons licensed as physicians and actively engaged in the practice of medicine or osteopathic medicine in Oregon, who may be from among persons recommended by organizations representing physicians;

(b) Four persons licensed in and actively practicing pharmacy in Oregon who may be from among persons recommended by organizations representing pharmacists whether affiliated or unaffiliated with any association; and

(c) Two persons who are not physicians or pharmacists.

(3) If the committee determines that it lacks current clinical or treatment expertise with respect to a particular therapeutic class, or at the request of an interested outside party, the director shall appoint one or more medical experts otherwise qualified as described in subsection (2)(a) of this section who have such expertise. The medical experts shall have full voting rights with respect to recommendations made under section 4 (3) and (4) of this 2011 Act. The medical experts may participate but may not vote in any other activities of the committee.

(4) The director shall fill a vacancy on the committee by appointing a new member to serve the remainder of the unexpired term.

SECTION 3. Notwithstanding the term of office specified by section 2 of this 2011 Act, of the members first appointed to the Pharmacy and Therapeutics Committee:

(1) Three shall serve for a term ending December 31, 2012.

(2) Three shall serve for a term ending December 31, 2013.

(3) Five shall serve for a term ending December 31, 2014.

SECTION 4. (1) The Pharmacy and Therapeutics Committee shall advise the Oregon Health Authority on:

(a) Adoption of rules to implement sections 1 to 12 of this 2011 Act in accordance with ORS chapter 183.

(b) Implementation of the medical assistance program retrospective and prospective programs as described in sections 1 to 12 of this 2011 Act, including the type of software programs to be used by the pharmacist for prospective drug use review and the provisions of the contractual agreement between the state and any entity involved in the retrospective program.

(c) Development of and application of the criteria and standards to be used in retrospective and prospective drug use review in a manner that ensures that such criteria and standards are based on compendia, relevant guidelines obtained from professional groups through consensus-driven processes, the experience of practitioners with expertise in drug therapy, data and experience obtained from drug utilization review program operations. The committee shall have an open professional consensus process for establishing and revising criteria and standards. Criteria and standards shall be available to the public. In developing recommendations for criteria and standards, the committee shall establish an explicit ongoing process for soliciting and considering input from interested parties. The committee shall make timely revisions to the criteria and standards based upon this input in addition to revisions based upon scheduled review of the criteria and standards. Further, the drug utilization review standards shall reflect the local practices of prescribers in order to monitor:

(A) Therapeutic appropriateness.

(B) Overutilization or underutilization.

(C) Therapeutic duplication.

(D) Drug-disease contraindications.

(E) Drug-drug interactions.

(F) Incorrect drug dosage or drug treatment duration.

(G) Clinical abuse or misuse.

(H) Drug allergies.

(d) Development, selection and application of and assessment for interventions that are educational and not punitive in nature for medical assistance program prescribers, dispensers and patients.

(2) In reviewing retrospective and prospective drug use, the committee may consider only drugs that have received final approval from the federal Food and Drug Administration.

(3) The committee shall make recommendations to the authority, subject to approval by the Director of the Oregon Health Authority or the director's designee, for drugs to be included on any preferred drug list adopted by the authority and on the Practitioner-Managed Prescription Drug Plan. The committee shall also recommend all utilization controls, prior authorization requirements or other conditions for the inclusion of a drug on a preferred drug list.

(4) In making recommendations under subsection (3) of this section, the committee may use any information the committee deems appropriate. The recommendations must be based upon the following factors in order of priority:

(a) Safety and efficacy of the drug.

(b) The ability of Oregonians to access effective prescription drugs that are appropriate for their clinical conditions.

(c) Substantial differences in the costs of drugs within the same therapeutic class.

(5) The committee shall post a recommendation to the website of the authority no later than 30 days after the date the committee approves the recommendation. The director shall approve, disapprove or modify any recommendation of the committee as soon as practicable, shall publish the decision on the website and shall notify persons who have requested notification of the decision. A recommendation adopted by the director, in whole or in part, with respect to the inclusion of a drug on a preferred drug list or the Practitioner-Managed Prescription Drug Plan may not become effective less than 60 days after the date that the director's decision is published.

(6) The director shall reconsider any decision to adopt or modify a recommendation of the committee with respect to the inclusion of a particular drug on a preferred drug list or the Practitioner-Managed Prescription Drug Plan, upon the request of any interested person filed no later than 30 days after the director's decision is published on the website. The decision on reconsideration shall be sent to the requester and posted to the website without undue delay.

SECTION 5. In addition to the duties described in section 4 of this 2011 Act, the Pharmacy and Therapeutics Committee shall do the following subject to the approval of the Director of the Oregon Health Authority:

(1) Publish an annual report, as described in section 12 of this 2011 Act.

(2) Publish and disseminate educational information to prescribers and pharmacists regarding the committee and the drug use review programs, including information on the following:

(a) Identifying and reducing the frequency of patterns of fraud, abuse or inappropriate or medically unnecessary care among prescribers, pharmacists and recipients.

(b) Potential or actual severe or adverse reactions to drugs.

(c) Therapeutic appropriateness.

(d) Overutilization or underutilization.

(e) Appropriate use of generic products.

(f) Therapeutic duplication.

(g) Drug-disease contraindications.

(h) Drug-drug interactions.

(i) Drug allergy interactions.

(j) Clinical abuse and misuse.

(3) Adopt and implement procedures designed to ensure the confidentiality of any information that identifies individual prescribers, pharmacists or recipients and that is collected,

stored, retrieved, assessed or analyzed by the committee, staff of the committee, the Oregon Health Authority or contractors to the committee or the authority.

SECTION 6. In appropriate instances, interventions developed under section 4 (1)(d) of this 2011 Act may include the following:

(1) Information disseminated to prescribers and pharmacists to ensure that they are aware of the duties and powers of the Pharmacy and Therapeutics Committee.

(2) Written, oral or electronic reminders of recipient-specific or drug-specific information that are designed to ensure recipient, prescriber and pharmacist confidentiality, and suggested changes in the prescribing or dispensing practices designed to improve the quality of care.

(3) Face-to-face discussions between experts in drug therapy and the prescriber or pharmacist who has been targeted for educational intervention.

(4) Intensified reviews or monitoring of selected prescribers or pharmacists.

(5) Educational outreach through the retrospective program focusing on improvement of prescribing and dispensing practices.

(6) The timely evaluation of interventions to determine if the interventions have improved the quality of care.

(7) The review of case profiles before the conducting of an intervention.

SECTION 7. The prospective drug use review program must use guidelines established by the Oregon Health Authority that are based on the recommendations of the Pharmacy and Therapeutics Committee. The program must ensure that prior to the prescription being filled or delivered a review will be conducted by the pharmacist at the point of sale to screen for potential drug therapy problems resulting from the following:

(1) Therapeutic duplication.

(2) Drug-drug interactions, including serious interactions with nonprescription or over-the-counter drugs.

(3) Incorrect dosage and duration of treatment.

(4) Drug-allergy interactions.

(5) Clinical abuse and misuse.

(6) Drug-disease contraindications.

SECTION 8. The retrospective drug use review program must use:

(1) Guidelines established by the Oregon Health Authority that are based on the recommendations of the Pharmacy and Therapeutics Committee; and

(2) The mechanized drug claims processing and information retrieval system to analyze claims data on drug use against explicit predetermined standards that are based on compendia and other sources to monitor the following:

(a) Therapeutic appropriateness.

(b) Overutilization or underutilization.

(c) Fraud and abuse.

(d) Therapeutic duplication.

(e) Drug-disease contraindications.

(f) Drug-drug interactions.

(g) Incorrect drug dosage or duration of drug treatment.

(h) Clinical abuse and misuse.

SECTION 9. (1) Information collected under sections 1 to 12 of this 2011 Act that identifies an individual is confidential and may not be disclosed by the Pharmacy and Therapeutics Committee, the retrospective program or the Oregon Health Authority to any person other than a health care provider appearing on a recipient's medication profile.

(2) The staff of the committee may have access to identifying information for purposes of carrying out intervention activities. The identifying information may not be released to anyone other than a staff member of the committee, the retrospective program, the authority or a health care provider appearing on a recipient's medication profile or, for pur-

poses of investigating potential fraud in programs administered by the authority, the Department of Justice.

(3) The committee may release cumulative, nonidentifying information for the purposes of legitimate research and for educational purposes.

SECTION 10. (1) Notwithstanding ORS 192.610 to 192.690, the Pharmacy and Therapeutics Committee shall meet in an executive session for purposes of:

(a) Reviewing the prescribing or dispensing practices of individual physicians or pharmacists;

(b) Discussing drug use review data pertaining to individual physicians or pharmacists;

(c) Reviewing profiles of individual patients; or

(d) Reviewing confidential drug pricing information, including substantial cost differences between drugs within the same therapeutic class, that is necessary for the committee to make final recommendations under section 4 of this 2011 Act or to comply with section 9 of this 2011 Act.

(2) A meeting held in executive session is subject to the requirements of ORS 192.650 (2).

SECTION 11. (1) Except as provided in section 10 of this 2011 Act, the Pharmacy and Therapeutics Committee shall operate in accordance with ORS chapter 192. The committee shall annually elect a chairperson from the members of the committee.

(2) A committee member is not entitled to compensation but is entitled to reimbursement for actual and necessary travel expenses incurred in connection with the member's duties, pursuant to ORS 292.495.

(3) A quorum consists of six members of the committee.

(4) The committee may establish advisory committees to assist in carrying out the committee's duties under sections 1 to 12 of this 2011 Act, with the approval of the Director of the Oregon Health Authority.

(5) The Oregon Health Authority shall provide staff and support services to the committee.

(6) The committee shall meet no less than four times each year at a place, day and hour determined by the director. The committee also shall meet at other times and places specified by the call of the director or a majority of the members of the committee. No less than 30 days prior to a meeting the committee shall post to the authority website:

(a) The agenda for the meeting;

(b) A list of the drug classes to be considered at the meeting; and

(c) Background materials and supporting documentation provided to committee members with respect to drugs and drug classes that are before the committee for review.

(7) The committee shall provide appropriate opportunity for public testimony at each regularly scheduled committee meeting. Immediately prior to deliberating on any recommendations regarding a drug or a class of drugs, the committee shall accept testimony, in writing or in person, that is offered by a manufacturer of those drugs or another interested party.

(8) The committee may consider more than 20 classes of drugs at a meeting only if:

(a) There is no new clinical evidence for the additional class of drugs; and

(b) The committee is considering only substantial cost differences between drugs within the same therapeutic class.

SECTION 12. (1) The annual report required under section 5 (1) of this 2011 Act is subject to public comment prior to its submission to the Director of the Oregon Health Authority and must include the following:

(a) An overview of the activities of the Pharmacy and Therapeutics Committee and the prospective and retrospective programs;

(b) A summary of interventions made, including the number of cases brought before the committee and the number of interventions made;

(c) An assessment of the impact of the interventions, criteria and standards used, including an overall assessment of the impact of the educational programs and interventions on prescribing and dispensing patterns;

(d) An assessment of the impact of the criteria, standards and educational interventions on quality of care; and

(e) An estimate of the cost savings generated as a result of the prospective and retrospective programs, including an overview of the fiscal impact of the programs to other areas of the medical assistance program such as hospitalization or long term care costs. This analysis should include a cost-benefit analysis of both the prospective and retrospective programs and should take into account the administrative costs of the drug utilization review program.

(2) Copies of the annual report shall be submitted to the President of the Senate, the Speaker of the House of Representatives and other persons who request copies of the report.

DRUG USE REVIEW BOARD ABOLISHED

SECTION 13. (1) The Drug Use Review Board is abolished. On the operative date of this section, the tenure of office of the members of the Drug Use Review Board ceases.

(2) All the duties, functions and powers of the Drug Use Review Board are imposed upon, transferred to and vested in the Pharmacy and Therapeutics Committee.

SECTION 14. (1) The Director of the Oregon Health Authority shall:

(a) Deliver to the Pharmacy and Therapeutics Committee all records and property within the jurisdiction of the Drug Use Review Board that relate to the duties, functions and powers transferred by section 13 of this 2011 Act; and

(b) Transfer to the committee those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 13 of this 2011 Act.

(2) The committee shall take possession of the records and property and shall take charge of the employees and employ them, in the exercise of the duties, functions and powers transferred by section 13 of this 2011 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The director shall resolve any dispute between the Drug Use Review Board and the Pharmacy and Therapeutics Committee relating to transfers of records, property and employees under this section, and the director's decision is final.

SECTION 15. (1) The unexpended balances of amounts authorized to be expended by the Drug Use Review Board for the biennium beginning July 1, 2011, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 13 of this 2011 Act are transferred to and are available for expenditure by the Pharmacy and Therapeutics Committee for the remainder of the biennium beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions and powers transferred by section 13 of this 2011 Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the board remain applicable to expenditures by the committee under this section.

SECTION 16. The transfer of duties, functions and powers to the Pharmacy and Therapeutics Committee by section 13 of this 2011 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the committee is substituted for the Drug Use Review Board in the action, proceeding or prosecution.

SECTION 17. (1) Nothing in sections 1 to 16 of this 2011 Act or the repeal of ORS 414.350, 414.355, 414.360, 414.365, 414.370, 414.375, 414.380, 414.385, 414.390, 414.395, 414.400, 414.410 or 414.415 by section 228 of this 2011 Act relieves a person of a liability, duty or obligation ac-

cruing under or with respect to the duties, functions and powers transferred by section 13 of this 2011 Act. The Pharmacy and Therapeutics Committee may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Drug Use Review Board legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 13 of this 2011 Act are transferred to the Pharmacy and Therapeutics Committee. For the purpose of succession to these rights and obligations, the Pharmacy and Therapeutics Committee is a continuation of the Drug Use Review Board and is not a new authority.

SECTION 18. Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Drug Use Review Board or an officer or employee of the Drug Use Review Board, the reference is considered to be a reference to the Pharmacy and Therapeutics Committee or an officer or employee of the Pharmacy and Therapeutics Committee.

SECTION 19. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the "Drug Use Review Board" or its officers, wherever they occur in statutory law, words designating the "Pharmacy and Therapeutics Committee" or its officers.

SECTION 20. The Director of the Oregon Health Authority may take any action before the operative date specified in section 21 of this 2011 Act that is necessary to enable the Pharmacy and Therapeutics Committee to exercise, on and after the operative date of section 13 of this 2011 Act, the duties, functions and powers of the committee pursuant to section 13 of this 2011 Act.

SECTION 21. Except as otherwise specifically provided in section 20 of this 2011 Act, sections 1 to 16 of this 2011 Act become operative 31 calendar days after the effective date of this 2011 Act.

HEALTH EVIDENCE REVIEW COMMISSION

SECTION 22. (1) As used in this section:

(a) "Practice of pharmacy" has the meaning given that term in ORS 689.005.

(b) "Retail drug outlet" has the meaning given that term in ORS 689.005.

(2) The Health Evidence Review Commission is established in the Oregon Health Authority, consisting of 13 members appointed by the Governor in consultation with professional and other interested organizations, and confirmed by the Senate, as follows:

(a) Five members must be physicians licensed to practice medicine in this state who have clinical expertise in the areas of family medicine, internal medicine, obstetrics, perinatal health, pediatrics, disabilities, geriatrics or general surgery. One of the physicians must be a doctor of osteopathy, and one must be a hospital representative or a physician whose practice is significantly hospital-based.

(b) One member must be a dentist licensed under ORS chapter 679 who has clinical expertise in general, pediatric or public health dentistry.

(c) One member must be a public health nurse.

(d) One member must be a behavioral health representative who may be a social services worker, alcohol and drug treatment provider, psychologist or psychiatrist.

(e) Two members must be consumers of health care who are patient advocates or represent the areas of indigent services, labor, business, education or corrections.

(f) One member must be a complementary or alternative medicine provider who is a chiropractic physician licensed under ORS chapter 684, a naturopathic physician licensed under ORS chapter 685 or an acupuncturist licensed under ORS chapter 677.

(g) One member must be an insurance industry representative who may be a medical director or other administrator.

(h) One member must be a pharmacy representative who engages in the practice of pharmacy at a retail drug outlet.

(3) No more than six members of the commission may be physicians either in active practice or retired from practice.

(4) Members of the commission serve for a term of four years at the pleasure of the Governor. A member is eligible for reappointment.

(5) Members are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds available to the Oregon Health Authority for purposes of the commission.

SECTION 23. (1) The Health Evidence Review Commission shall select one of its members as chairperson and another as vice chairperson, for terms and with duties and powers the commission determines necessary for the performance of the functions of the offices.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least four times per year at a place, day and hour determined by the chairperson. The commission also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission.

(4) The commission may use advisory committees or subcommittees whose members are appointed by the chairperson of the commission subject to approval by a majority of the members of the commission. The advisory committees or subcommittees may contain experts appointed by the chairperson and a majority of the members of the commission. The conditions of service of the experts will be determined by the chairperson and a majority of the members of the commission.

(5) The Office for Oregon Health Policy and Research shall provide staff and support services to the commission.

SECTION 24. (1) The Health Evidence Review Commission shall regularly solicit testimony and information from stakeholders representing consumers, advocates, providers, carriers and employers in conducting the work of the commission.

(2) The commission shall actively solicit public involvement through a public meeting process to guide health resource allocation decisions.

(3) The commission shall develop and maintain a list of health services ranked by priority, from the most important to the least important, representing the comparative benefits of each service to the population to be served. The list must be submitted by the commission pursuant to subsection (5) of this section and is not subject to alteration by any other state agency.

(4) In order to encourage effective and efficient medical evaluation and treatment, the commission:

(a) May include clinical practice guidelines in its prioritized list of services. The commission shall actively solicit testimony and information from the medical community and the public to build a consensus on clinical practice guidelines developed by the commission.

(b) May include statements of intent in its prioritized list of services. Statements of intent should give direction on coverage decisions where medical codes and clinical practice guidelines cannot convey the intent of the commission.

(c) Shall consider both the clinical effectiveness and cost-effectiveness of health services, including drug therapies, in determining their relative importance using peer-reviewed medical literature as defined in ORS 743A.060.

(5) The commission shall report the prioritized list of services to the Oregon Health Authority for budget determinations by July 1 of each even-numbered year.

(6) The commission shall make its report during each regular session of the Legislative Assembly and shall submit a copy of its report to the Governor, the Speaker of the House of Representatives and the President of the Senate.

(7) The commission may alter the list during the interim only as follows:

(a) To make technical changes to correct errors and omissions;

(b) To accommodate changes due to advancements in medical technology or new data regarding health outcomes;

(c) To accommodate changes to clinical practice guidelines; and

(d) To add statements of intent that clarify the prioritized list.

(8) If a service is deleted or added during an interim and no new funding is required, the commission shall report to the Speaker of the House of Representatives and the President of the Senate. However, if a service to be added requires increased funding to avoid discontinuing another service, the commission shall report to the Emergency Board to request the funding.

(9) The prioritized list of services remains in effect for a two-year period beginning no earlier than October 1 of each odd-numbered year.

SECTION 25. (1) As used in this section and section 26 of this 2011 Act:

(a) "Medical technology" means medical equipment and devices, medical or surgical procedures and techniques used by health care providers in delivering medical care to individuals, and the organizational or supportive systems within which medical care is delivered.

(b) "Medical technology assessment" means evaluation of the use, clinical effectiveness and cost of a technology in comparison with its alternatives.

(2) The Health Evidence Review Commission shall develop a medical technology assessment process. The Oregon Health Authority shall direct the commission with regard to medical technologies to be assessed and the timing of the assessments.

(3) The commission shall appoint and work with an advisory committee whose members have the appropriate expertise to conduct a medical technology assessment.

(4) The commission shall present its preliminary findings at a public hearing and shall solicit testimony and information from health care consumers. The commission shall give strong consideration to the recommendations of the advisory committee and public testimony in developing its assessment.

(5) To ensure that confidentiality is maintained, identification of a patient or a person licensed to provide health services may not be included with the data submitted under this section, and the commission shall release such data only in aggregate statistical form. All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the commission in connection with obtaining the data necessary to perform its functions is confidential pursuant to ORS 192.501 to 192.505.

SECTION 26. (1) The Health Evidence Review Commission shall conduct comparative effectiveness research of medical technologies selected in accordance with section 25 of this 2011 Act. The commission may conduct the research by comprehensive review of the comparative effectiveness research undertaken by recognized state, national or international entities. The commission may consider evidence relating to prescription drugs that is relevant to a medical technology assessment but may not conduct a drug class evidence review or medical technology assessment solely of a prescription drug. The commission shall disseminate the research findings to health care consumers, providers and third-party payers and to other interested stakeholders.

(2) The commission shall develop or identify and shall disseminate evidence-based health care guidelines for use by providers, consumers and purchasers of health care in Oregon.

(3) The Oregon Health Authority shall vigorously pursue health care purchasing strategies that adopt the research findings described in subsection (1) of this section and the evidence-based health care guidelines described in subsection (2) of this section.

SECTION 26a. **The Health Evidence Review Commission, in ranking health services or developing guidelines under section 24 of this 2011 Act or in assessing medical technologies under section 26 of this 2011 Act, and the Pharmacy and Therapeutics Committee, in considering a recommendation for a drug to be included on any preferred drug list or on the Practitioner-Managed Prescription Drug Plan, may not rely solely on the results of comparative effectiveness research.**

HEALTH RESOURCES COMMISSION AND HEALTH SERVICES COMMISSION ABOLISHED

SECTION 27. **(1) The Health Resources Commission and the Health Services Commission are abolished. On the operative date of this section, the tenure of office of the members of the Health Resources Commission and the Health Services Commission ceases.**

(2) All the duties, functions and powers of the Health Resources Commission and the Health Services Commission are imposed upon, transferred to and vested in the Health Evidence Review Commission.

SECTION 28. **(1) The Director of the Oregon Health Authority shall:**

(a) Deliver to the Health Evidence Review Commission all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 27 of this 2011 Act; and

(b) Transfer to the commission those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 27 of this 2011 Act.

(2) The commission shall take possession of the records and property and shall take charge of the employees and employ them, in the exercise of the duties, functions and powers transferred by section 27 of this 2011 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The director shall resolve any dispute between the Health Resources Commission and the Health Services Commission and the Health Evidence Review Commission relating to transfers of records, property and employees under this section, and the director's decision is final.

SECTION 29. **(1) The unexpended balances of amounts authorized to be expended by the Health Resources Commission and the Health Services Commission for the biennium beginning July 1, 2011, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 27 of this 2011 Act are transferred to and are available for expenditure by the Health Evidence Review Commission for the remainder of the biennium beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions and powers transferred by section 27 of this 2011 Act.**

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Health Resources Commission and the Health Services Commission remain applicable to expenditures by the Health Evidence Review Commission under this section.

SECTION 30. **The transfer of duties, functions and powers to the Health Evidence Review Commission by section 27 of this 2011 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Health Evidence Review Commission is substituted for the Health Resources Commission or the Health Services Commission in the action, proceeding or prosecution.**

SECTION 31. **(1) Nothing in sections 22 to 30 of this 2011 Act or the repeal of ORS 414.715, 414.720, 414.741, 442.575, 442.580, 442.581, 442.583, 442.584, 442.588 and 442.589 by section 228 of this 2011 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 27 of this 2011 Act. The Health**

Evidence Review Commission may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Health Resources Commission and the Health Services Commission legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 27 of this 2011 Act are transferred to the Health Evidence Review Commission. For the purpose of succession to these rights and obligations, the Health Evidence Review Commission is a continuation of the Health Resources Commission and the Health Services Commission and is not a new authority.

SECTION 32. The Director of the Oregon Health Authority may take any action before the operative date of section 27 of this 2011 Act that is necessary to enable the Health Evidence Review Commission to exercise, on and after the operative date of section 27 of this 2011 Act, the duties, functions and powers of the commission pursuant to section 27 of this 2011 Act.

SECTION 33. Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Health Resources Commission or the Health Services Commission or an officer or employee of the Health Resources Commission or the Health Services Commission, the reference is considered to be a reference to the Health Evidence Review Commission or an officer or employee of the Health Evidence Review Commission.

SECTION 34. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the "Health Resources Commission" or the "Health Services Commission" or the officers of the Health Resources Commission or the Health Services Commission, wherever they occur in statutory law, words designating the "Health Evidence Review Commission" or its officers.

SECTION 35. Except as otherwise specifically provided in section 32 of this 2011 Act, sections 22 to 30 of this 2011 Act become operative on January 1, 2012.

OREGON HEALTH AUTHORITY FINANCIAL ADMINISTRATION

SECTION 36. Notwithstanding any other provision of law, federal laws shall govern the administration of federally granted funds. The Director of the Oregon Health Authority may request a waiver of any federal law in order to fully implement provisions of state law using federally granted funds.

SECTION 37. (1) There is established an Oregon Health Authority Special Checking Account in the State Treasury. Upon the written request of the Director of the Oregon Health Authority, the Oregon Department of Administrative Services shall draw payments in favor of the authority to be charged against appropriations and other moneys available to the authority in the same manner as other claims against the state, as provided in ORS chapter 293. All such payments shall be deposited in the special checking account and may be disbursed by check or other means acceptable to the State Treasurer.

(2) The special checking account may be used for the purpose of paying the administrative expenses of programs and services as assigned to the authority by law, including the payment of expenses to be reimbursed by the federal government.

(3) In addition to funds authorized under ORS 293.180, the authority may establish petty cash funds out of the special checking account or any account established in the State Treasury for the authority. The authority may pay expenses using small cash disbursements from a petty cash fund. Periodically, the authority shall request reimbursement for disbursements made from a petty cash fund. Upon receipt of a reimbursement payment from an appropriate account, the authority shall use the payment to reimburse the petty cash fund.

OREGON GOVERNMENT ETHICS LAW

A GUIDE FOR PUBLIC OFFICIALS

Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544
Telephone: 503-378-5105
Fax: 503-373-1456
Web address: www.oregon.gov/ogec

Adopted October 2010

DISCLAIMER

This guide has been approved by the Oregon Government Ethics Commission pursuant to ORS 244.320. ORS 244.320 requires this publication to explain in understandable terms the requirements of Oregon Government Ethics law and the Oregon Government Ethics Commission's interpretation of those requirements. Toward that end, statutes and rules have been summarized and paraphrased in this guide. Therefore, the discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

Any public official, business or any person shall not be liable under ORS Chapter 244 for any action or transaction carried out in accordance with Commission opinions set forth in this guide. "In accordance with" the opinions means that the fact circumstances of any action or transaction for which any public official, business or person shall not be liable must be the same fact circumstances for an action or transaction described in this guide as the basis for an opinion in this guide.

There may be other laws or regulations not within the jurisdiction of the Commission that apply to actions or transactions described in this guide.

TABLE OF CONTENTS

INTRODUCTION

In 1974, voters approved a statewide ballot measure to create the Oregon Government Ethics Commission (Commission). The measure established laws that are contained in Chapter 244 of the Oregon Revised Statutes (ORS).

When the Commission was established, it was given jurisdiction to implement and enforce the provisions in ORS Chapter 244 related to the conduct of public officials. In addition, the Commission has jurisdiction for ORS 171.725 through 171.992, related to lobbying regulations, and ORS 192.660, which are the executive session provisions of Oregon Public Meetings law.

The Commission publishes a guide for lobbyists and clients or employers of lobbyists regulated under provisions in ORS Chapter 171. This guide for public officials includes a discussion of some provisions that may also apply to lobbying activities, which are addressed by Lobbying Regulations. This is especially true when a lobbying activity involves paying the expenses for meals, lodging, travel, entertainment or other financial benefits of a legislative or executive official. Under specific circumstances, ORS Chapter 244 would allow the payment of such expenses, but the public official may have a reporting requirement under ORS Chapter 244 and the source of the payment may be required to register as a lobbyist or report the expenditure. If you have questions regarding registering as a lobbyist, lobbying activity or reports for lobbying expenditures, please refer to our Guide to Lobbying in Oregon.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. The statutory authority for executive sessions is limited to specific topics or procedures. This guide does not discuss that portion of the Oregon Public Meetings law, but there is a detailed discussion of ORS 192.660 in the Attorney General's Public Records and Meetings Manual, available on-line at www.doj.state.or.us/public_records/manual.shtml.

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. It is intended to be a useful discussion, in understandable terms, of topics and issues that are often the focus of inquiries the Commission receives from public officials and citizens. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, ORS Chapter 171.725 through 171.992, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at www.oregon.gov/ogec. Questions or comments may be submitted to the Commission by email at ogec.mail@state.or.us, by fax to 503-373-1456 or by telephone to 503-378-5105.

*****

JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited to provisions in ORS Chapter 244, ORS 171.725 through 171.992 and ORS 192.660. Other Oregon statutes may also regulate the activities of elected officials and public employees. Some examples are:

- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.
- Criminal activity of any type would fall under the jurisdiction of federal, state or local law enforcement.
- The Commission does not have jurisdiction over the laws that govern public meetings or records, except for the executive session provisions in ORS 192.660.
- The Oregon Bureau of Labor and Industries investigates cases involving employment related sexual harassment or discrimination on the basis of race, religion, disability or gender.

There are occasions when a public official engages in conduct that may be viewed as unethical, but that conduct may not be governed by Oregon Government Ethics law. Without an apparent statutory violation, the following are some examples of conduct by public officials that are not within the authority of the Commission to address:

- An elected official making promises or claims that are not acted upon.
- Public officials mismanaging or exercising poor judgment when administering public money.
- Public officials being rude or unmannerly.
- Public officials using deception or misrepresenting information or events.

While the conduct described above may not be addressed in Oregon Government Ethics law, public agency policies and procedures may prohibit or redress the behavior. Please contact the Commission staff if you need further clarification regarding how the Oregon Government Ethics law may apply to circumstances you may encounter.

*****

PUBLIC OFFICIAL: AN OVERVIEW

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens because service in a public office is a public trust and the provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

Public officials must know that they are held personally responsible for complying with the provisions in Oregon Government Ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, or when to disclose the nature of conflicts of interest. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's government employer or the governing body represented by the public official.

Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law. First, there are the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199. Second, the Commission website, www.oregon.gov/ogec, offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. Many government agencies offer training or the agency may request it from the Commission's trainers. There are a number of membership organizations, such as The League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association and Oregon Special Districts Association that provide training to public officials from their government members. It is imperative for government agencies or organizations that employ or represent public officials to ensure their public officials receive training in Oregon Government Ethics law. Those that fail to provide this training do a disservice to the public officials who they employ or who represent them.

One provision, which is the cornerstone of Oregon Government Ethics law, prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses they are associated with through opportunities that would not otherwise be available but for the position or office held.

Public officials are allowed to receive salary and reimbursed expenses from their own government agencies. Under specific conditions public officials may also accept gifts. This guide will discuss those provisions.

Another provision that frequently applies to public officials when engaged in official actions of their official positions or offices is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest and describe the methods a public official must follow when met with a conflict of interest.

There is a requirement for some public officials who are elected to offices or hold other select positions to file an Annual Verified Statement of Economic Interest form. This guide

will discuss that filing requirement.

It is important for both public officials and members of the general public served by public officials to know that the provisions in Oregon Government Ethics law apply to the actions and conduct of individual public officials and not the actions of state and local governing bodies or government agencies. Each individual public official is personally responsible for complying with provisions in ORS Chapter 244. The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. When a public official is anticipating an official action or participation in an official event they must make a personal judgment as to the propriety of the action or the participation. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

Oregon Government Ethics law addresses a wide range of actions, situations or events which a public official may encounter while serving a state or local government. This guide provides a discussion of the provisions that apply to circumstances that most public officials may encounter.

*****

A PUBLIC OFFICIAL

Are you a public official?

"Public official" is defined in ORS 244.020(14) as any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health & Science University.

The Commission has adopted, by rule, additional language used to clarify the use of "agent in the definition of "public official." The following is OAR 199-005-0035(7):

> "As defined in ORS 244.020(14), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990)."

If I am a volunteer, does that make me a public official?

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, "irrespective of whether" you are "compensated" you are a public official. It is difficult to determine how many public officials are volunteers, but the number may approach 50,000. Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer, there are elected or appointed members of

governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. This guide provides criteria to identify volunteers who will be considered public officials when applying the provisions in ORS Chapter 244.

<u>If any one of the following elements apply to a volunteer position, the person holding that volunteer position will be defined as a "public official"</u>:

- Elected or appointed to a governing body of a public body

- Appointed or selected for a position with a governing body or a government agency with responsibilities that include deciding or voting on matters that could have a pecuniary impact on the governing body, agency or other persons

- The volunteer position includes all of the following:

    1. Responsible for specific duties
    2. The duties are performed at a scheduled time and designated place.
    3. Volunteer is provided with the use of the public agency's resources and equipment.
    4. The duties performed would have a pecuniary impact on any person, business or organization served by the public agency.

For purposes of ORS Chapter 244, volunteers are not public officials if they perform such tasks as picking up litter on public lands, participating in a scheduled community cleanup of buildings or grounds, participating in locating and eradicating invasive plants from public lands and other such occasional or seasonal events.

How are relatives of public officials affected by Oregon Government Ethics law?

Public officials must always comply with state law when participating in official actions that could result in personal financial benefits and also when participating in official actions that could result in financial benefits for a relative. Public officials should also know there may be limits and restrictions on gifts their relatives may accept when offered.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using or attempting to use official actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. These provisions are discussed more comprehensively in the use of

position or office section starting on page 9, the gifts section starting on page 26 and the conflicts of interest section starting on page 21.

Who is a relative?

Public officials need to know how Oregon Government Ethics law defines who a "relative" is. In everyday conversation the use of "relative" is applied to a broader spectrum of individuals with "family ties" than those defined as relatives in ORS 244.020(15). When a provision in ORS Chapter 244 refers to "relative" it means one of the following:

- **Spouse** of a public official or candidate
- **Children** of a public official or candidate
- **Children of the spouse** of a public official or candidate
- **Siblings** of a public official or candidate
- **Siblings of the spouse** of a public official or candidate
- **Spouse of siblings** of a public official or candidate
- **Spouse of siblings of the spouse** of a public official or candidate
- **Parents** of the of public official or candidate
- **Parents of the spouse** of a public official or candidate
- **Person** for whom the public official or candidate has a **legal support obligation**
- **Person benefiting from a public official** when benefits are from the public official's public employment
- **Person who provides benefits to a public official** or candidate when benefits are from the person's employment

For purposes of "relatives" defined by the last two bulleted items, examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

How do the laws apply to a public official who either owns or is employed by a private business?

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a "business" is or what a "business with which the person is associated is." The same sound judgment a public official exercises when participating in actions that could result in a financial benefit to the public official or a relative of the public official should be used when participating in actions that could result in a financial benefit to a business with which the public official or the relative is associated.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a business with which the public official or a relative is associated. The provisions may also require the public official to disclose the nature of a conflict of interest when a business may receive a financial benefit.

ORS 244.020(2) provides the definition of a **"business,"** paraphrased as follows:

A “business” is a legal entity that has been formed for the purpose of producing income.

- Excluded from this definition are income-producing organizations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public official or a relative of the public official holds membership or an unpaid position as a member of the board of directors.

- It is important to remember that state and local government or special district entities are not formed for the purpose of producing income, which means they are not businesses.

ORS 244.020(3) provides the definition of a **“business with which the person is associated,”** paraphrased as follows:

In brief, a public official or the relative of the public official is associated with a business in the following circumstances:

- When, during the preceding calendar year, a public official or relative has held a position as director, officer, owner, employee or agent of a private business or a closely held corporation in which the public official or relative held or currently holds stock, stock options, equity interest or debt instrument over $1,000.

- When, during the preceding calendar year, the public official or relative has owned or currently owns stock, equity interest, stock options or debt instruments of $100,000 or more in a publicly held corporation.

- When the public official or relative is a director or officer of a publicly held corporation.

- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest form and the business is listed as a source of household income.

*****

USE OF POSITION OR OFFICE

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?

As defined earlier, public officials become public officials through employment, appointment, election or volunteering. **ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available <u>but for</u> the position held by the public official.** The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which the public official, a relative, or a member of the public official's household is associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. **ORS 244.040(4) specifically prohibits public officials from attempting to use confidential information** gained because of the position held or by carrying out assigned duties to further the public official's personal gain. **ORS 244.040(5) also prohibits a former public official from attempting to use confidential information for personal gain** if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

ORS 244.040(6) also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firm, may encounter circumstances in which this provision may apply. For example, a member of a city council who is an architect has a developer as a client of the architect's business. If the developer has a proposed subdivision to be approved by the city council, the architect may not appear before the city council on behalf of the client developer. Another person representing the client developer on behalf of the architect's business may appear, but not the councilor/architect.

There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government

agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

The following examples are offered to illustrate what may constitute prohibited use or attempted use:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by a relative of the mayor.
- A city treasurer signs a city check payable to an office supply business that is owned by a relative.
- A city billing clerk alters water use records so that the amount billed to the clerk's parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.
- A county public works employee stores a motor home that is owned by the employee's parents in a county building used for storing heavy equipment.
- An employee of a state agency has a private business and uses the agency's computer to advance the business by promoting, corresponding and managing the activities of the private business.
- A school district superintendent approves and signs her own request for reimbursement of personal expenses the superintendent incurred when conducting official business.

NOTE: While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the practices in the examples may also illustrate occasions where a public official may be met with a conflict of interest as defined in ORS 244.020(1) and (12). There are circumstances when a public official may comply with provisions in ORS 244.040(1) while violating conflict of interest provisions in ORS 244.120 or the reverse [ORS 244.040(7)]. Refer to the detailed discussion of conflicts of interest starting on page 21.

Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available <u>but for</u> holding the position as a public official?

Yes, ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official and some may also be accepted by a public official's relative or member of the public official's household:

<u>Official Compensation</u>: Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package." [ORS 244.040(2)(a)]

OAR 199-005-0035(3) provides a definition of "official compensation package:"

> An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package", the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. "Official compensation package" also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

The Commission often receives complaints that allege that a public official is using or attempting to the position held to gain financial benefits prohibited by ORS 244.040(1). Occasionally the financial benefits in these complaints are gained through the use of the public body's resources. Some examples are use of a vehicle for personal transportation, use of a computer for a personal private business enterprise or use of telecommunications equipment for personal business. Some respondents to complaints that involve the use a public body's resources will defend their use as being consistent with an informal longstanding practice. The financial benefit to a public official, from the use of a public body's resources, from what may be understood as an informal and longstanding practice does not meet the definition of part of an "official compensation package." This is because the practice has not been specifically approved by the public body in a formal manner.

Reimbursement of Expenses: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4):

> The "'reimbursement of expenses' means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment."

There are occasions when someone will refer to the payment of a public official's expenses by a person or entity other than the public official's public body as a reimbursement of expenses. That is not the reimbursement of expenses as used in ORS 244.040(2)(c) and defined in OAR 199-005-0035(4). If the payment of a public official's personal expenses does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

There are occasions when public officials are reimbursed for travel expenses the public official has paid while conducting official duties on behalf of the public official's public body. Sometimes the public body will prearrange for a public official's travel and pay the expenses in advance. Such advance payments are also viewed by the Commission

as the reimbursement of expenses allowed by ORS 244.040(2)(c).

Some public officials hold positions identified in ORS 244.050 as having a requirement to file the Annual Verified Statement of Economic Interest (SEI) form in April of each year. This requirement will be discussed elsewhere in this guide, but some who must submit the SEI forms believe that travel related expenses paid by the public official's public body must be listed in the SEI form. That is not true. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060 [OAR 199-005-0035(4)].

Honorarium: Public officials are allowed to accept honorarium by ORS 244.040(2)(b) as it is defined in ORS 244.020(7). A public official must know how honorarium is defined because there are many occasions when someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium in ORS 244.020(7).

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event. A public official may not accept honorarium if the value exceeds $50 [ORS 244.042(3)(a)].

In brief, for a payment or something of economic value to be defined as an honorarium, several conditions must be met:

- The offer of a payment or something of economic value cannot be arranged or agreed to before the public official provides services.
- The services provided by the public official must precede the offer of payment or something of economic value.
- The payment or something of economic value must be delivered in return for and following the delivery of services.

Public officials may accept honorarium for services performed in relation to the private profession of the public official, although public officials must be sure, when they are offered a payment or something of economic value and it is referred to as an honorarium, that it does meet the definition in ORS 244.020(7). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize a professional achievement of the public official [ORS 244.040(2)(d)].

Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(6)(b)(C), honorarium allowed by ORS 244.040(2)(b), or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for an achievement. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or may hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards regulated by ORS 244.040(2)(d).

Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials who have become a respondent to a complaint under Oregon Government Ethics law to establish a legal expense trust fund. ORS 244.040(2)(h) allows a public official who has established this trust fund to solicit, accept and be the trustee for contributions to the established fund.

Gifts: Public officials may accept gifts [ORS 244.040(2)(e),(f) and (g)]. There are circumstances in which there are no limits on the quantity or aggregate value of gifts that can be accepted by a public official. On the other hand, there are circumstances when the aggregate value of gifts accepted by a public official is restricted. There may also be reporting requirements that apply to public officials who accept gifts and to sources that provide the gifts. Refer to the detailed discussion of issues related to gifts starting on page 26.

*****

NEPOTISM

Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?

No. Public officials who are relatives can be employed by the same public body employer at the same time, or serve on the same governing body of a public body at the same time.

However, ORS Chapter 244 does address the issue of "nepotism." Nepotism, as used in ORS Chapter 244, is based on the relative relationship alone. The definition of "relative" in ORS Chapter 244 [ORS 244.175(4)] takes on a broader meaning when applying ORS 244.175 through ORS 244.179:

- **Spouse** of a public official
- **Children** of the public official or spouse
- **Parents** of the public official or spouse
- **Stepparents** of the public official or spouse
- **Stepchildren** of the public official or spouse
- **Brothers** of the public official or spouse
- **Sisters** of the public official or spouse
- **Half-brothers** of the public official or spouse
- **Half-sisters** of the public official or spouse
- **Brothers-in-law** of the public official or spouse
- **Sisters-in-law** of the public official or spouse
- **Sons-in-law** of the public official or spouse
- **Daughters-in-law** of the public official or spouse
- **Mothers-in-law** of the public official or spouse
- **Fathers-in-law** of the public official or spouse
- **Aunts** of the public official or spouse
- **Uncles** of the public official or spouse
- **Nieces** of the public official or spouse
- **Nephews** of the public official or spouse

What are the provisions that address nepotism?

After complying with the conflict of interest provisions in ORS 244.120, public officials cannot participate in any personnel action taken by the public agency that would impact the employment of a relative or member of the public official's household. A public official may not participate in the following [ORS 244.177(1)]:

- Appointing, employing or promoting
- Discharging, firing or demoting
- Interviewing
- Discussing or debating the appointment, employment, promotion, discharge, firing or demotion

NOTE: Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions taken on positions held by relatives of the member's personal staff [ORS 244.177(2)].

A public official who is assigned duties that include performing "ministerial acts" related to any stage of a relative's employment is not prohibited from performing such acts. "Ministerial acts" would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings.

A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion or is subject to any personnel action.

If a public official has a relative or a member of the public official's household who has applied to be or serves as an unpaid volunteer, the public official may participate in any personnel action that involves the relative or member of the household. This provision only applies to unpaid volunteers who provide services to the public body and does not apply to unpaid volunteers who serve or seek appointment to a governing body of a public body. [ORS 244.177(3)(a) and (b)]

A public official may not directly **supervise** a person who is a relative or member of the public official's household [ORS 244.179], except when:

- The public official is an elected member of the Oregon Legislative Assembly
- The public official is supervising an unpaid volunteer for the public body

Volunteers who are relatives or members of the household of a public official may be supervised by the public official. However, this would not apply if the volunteer position is as a member of the governing body of the public body. [ORS 244.179(3)]

ORS 244.179(4) allows a public body to adopt policies that specify when a public official, acting in an official capacity for the public body, may directly supervise a person who is a relative or member of the public official's household.

*****

PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?

No. As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation, but choose to seek additional sources of income. Some work for a private business and others establish a private business of their own. **NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.**

ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also ensure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
    - Employees of governmental agencies must give written notice to their appointing authority.
    - Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

*****

EMPLOYMENT OF FORMER PUBLIC OFFICIALS

How would Oregon Government Ethics law apply when a former public official is employed by a business that has a contract with the public body previously represented by the former public official?

For two years after a public official ceases holding or being employed in a position as a public official, that public official may not have a direct beneficial financial interest in a public contract when one of the parties to the contract is the public official's former public body if the contract was authorized by [ORS 244.047(2) and (3)]:

- The former public official, who authorized the contract while acting in the capacity previously held as a public official.

- The former public official, as a member of a governing body [board, commission, council, bureau, committee], participated in official action to approve the contract.

"Authorized by" is defined in OAR 199-005-0035(6) as meaning that the former public official had a significant role in the contracting process to include participating on a selection committee, recommending approval, voting, giving final authorization or signing a contract. The definition in the rule is as follows:

> "As used in ORS 244.047, a public contract is "authorized by" a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

What are the restrictions on employment after I resign, retire or leave my public official position?

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; otherwise, most former public officials may enter the private work force with few restrictions.

- ORS 244.040(5) prohibits a former public official from attempting to use confidential information for personal gain if the confidential information was obtained while holding the position as a public official.

- Oregon Government Ethics law restricts the subsequent employment of certain public officials. The restrictions apply to positions listed below:

  ORS 244.045(1)
  State Agencies:

  Director of Department of Consumer and Business Services

Administrator of Division of Finance and Corporate Securities
Administrator of Insurance Division
Administrator of Oregon Liquor Control Commission
Director of Oregon State Lottery
Public Utility Commissioner

1. One year restriction on gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.

2. Two year restriction on lobbying or appearing as a representative before the agency on behalf of the activity, occupation or industry regulated by the agency for which the public official was the Director, Administrator or Commissioner.

3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

ORS 244.045(2)
Oregon Department of Justice:

Deputy Attorney General
Assistant Attorney General

1. Restricted for two years from lobbying or appearing before an agency that they represented while with the Department of Justice.

ORS 244.045(3)
Office of the Treasurer:

State Treasurer
Chief Deputy State Treasurer

1. Restricted for one year from accepting financial benefit from a private entity with which there was negotiation or contract awarding $25,000 in one year by the State Treasurer or Oregon Investment Council.

2. Restricted for one year from accepting financial benefit from a private entity with which there was investment of $50,000 in one year by the State Treasurer or Oregon Investment Council.

3. Restricted for one year from being a lobbyist for an investment institution, manager or consultant or from appearing as a representative of an investment institution, manager or consultant before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4)
Public Officials who invested public funds:

1. Restricted for two years from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.

2. Restricted for two years from influencing or trying to influence the agency, board or commission.

3. Restricted for two years from disclosing confidential information gained through employment.

ORS 244.047
Public Officials who authorized a public contract:

1. A public official who authorized or had a significant role in a contract while acting in an official capacity may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.

2. A member of a board, commission, council, bureau, committee or other governing body who has participated in the authorization of a public contract may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.

   OAR 199-005-0035(6) indicates that "authorized by" means that public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval of a contract, serving on a selection committee or team, having the final authorizing authority or signing a contract.

ORS 244.045(5)
Department of State Police

Supervising programs related to Native American tribal gaming
Supervising programs related to Oregon State Lottery

1. Restricted for one year from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.

2. Restricted for one year from gaining financial benefit from a private employer who sells gaming equipment or services.

3. Restricted for one year from trying to influence the Department of State Police or from disclosing confidential information.

   Exceptions include subsequent employment with the state police,

appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6)
Legislative Assembly

Representative
Senator

After a legislator's membership in the Legislative Assembly ends, a legislator may not become a compensated lobbyist until adjournment of the next regularly scheduled session of the Legislative Assembly following the end of membership in the Legislative Assembly. *[Note: In 2008 and 2010, the first special sessions are considered to be regular sessions.]*

*****

CONFLICTS OF INTEREST

How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(12). In brief, a public official is met with a conflict of interest when participating in official action which could or would result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could." A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest:

> A city councilor is employed by a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who is employed by the building supply business, while participating in a meeting, would be met with an **actual conflict of interest** when the request to pay the invoice from the business that employs the councilor is presented to the city council for official action.
>
> A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, would be met with a **potential conflict of interest** when the members discuss or act on the invitation for bids on the sheetrock installation.

<u>What if I am met with a conflict of interest</u>?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Legislative Assembly:

Members must announce the nature of the conflict of interest in a manner pursuant

to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120(1)(a). [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

Judges:

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

Public Employees:

Public officials in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met. [ORS 244.120(1)(c)]

Elected Officials or Appointed Members of Boards and Commissions:

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)]

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.

- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)] These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite

for holding the public official position. [ORS 244.020(12)(a)] For example, if a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.

- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or "class". The Commission has the authority to identify a group or class and determine the minimum size of that "class." [ORS 244.020(12)(b) and ORS 244.290(3)(a)] For example, if a county commissioner votes to approve a contract to improve or maintain a county road that leads to the property the commissioner owns, but the improvements would also benefit many other property owners to the same degree, the commissioner would be exempt from the conflict of interest disclosure requirements and participation restrictions. The number of persons affected to the same degree as the public official will help to determine whether this exception applies.

- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)] For example, a city councilor is also an unpaid board member or member at the local YMCA. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure requirements and participation restrictions.

How is the public announcement of the nature of a conflict of interest recorded?

- The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records (minutes, audio/video recording) of the public body. [ORS 244.130(1)]

Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?

- The announcement needs to be made on each occasion when the public official is met with the conflict of interest. Each time a public official is met with a conflict of interest the nature must be disclosed. For example, an elected member of the city council would have to make the public announcement one time when met with the conflict of interest, but only one time in each meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. Another example would involve an employee in a city planning department who would have to give a separate written notice before each occasion they encounter a matter that gives rise to a conflict of interest. [ORS 244.120(3)]

If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?

- No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest [ORS 244.130(2)]. However, the public official faces the potential of personal liability for the violation.

*****

LEGAL EXPENSE TRUST FUND

If a public official is the respondent to a complaint, can the public official solicit funds in order to pay for the cost of a legal defense?

The Oregon Government Ethics Commission can authorize a public official to establish a trust fund to be used to defray expenses incurred for a legal defense in any civil, criminal or other legal proceeding that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221. If a public official is considering the need to establish a legal expense trust fund, these provisions should be reviewed. The Commission staff is available to provide guidance on the procedures. The following are some of the significant elements of a legal expense trust fund:

- A public official may only have one trust fund at any one time [ORS 244.205(4)].
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209 details what information and documents must accompany the application.
- The public official may act as the public official's fund trustee [ORS 244.211(2)].
- Once authorized and established, any person may contribute to the fund [ORS 244.213].
- Contributions from a principal campaign committee are not allowed [ORS 244.213(3)].
- Funds must be maintained in a single exclusive account [ORS 244.215].
- Quarterly reports of contributions and expenditures from the fund are required [ORS 244.217].
- The fund must be terminated within six months after the legal proceeding for which the fund was established has been concluded [ORS 244.219].
- When terminated, funds must be used to pay legal expenses, returned to contributors or donated to an organization exempt from taxation under section 501(c)(3) of the internal Revenue Code [ORS 244.221].

*****

GIFTS

When Oregon Government Ethics law uses the word "gift" it has the meaning in ORS 244.020(6)(a):

> "'Gift' means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:
>
> > (A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to "others" who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or
> >
> > (B) For valuable consideration less than that required from "others" who are not public officials or candidates."

The Commission interprets "others" to indicate a significant portion of the general public in Oregon who are not public officials or candidates.

In other words, a "gift" is something of economic value that is offered to,

- A public official or candidate or to relatives or members of the household of a public official or candidate,
- Without cost or at a discount or as forgiven debt and,
- The same offer is not made or available to the general public who are not public officials or candidates.

[NOTE: In the following discussion, references to candidates are omitted to simplify the discussion. In most of the discussion, if you are a candidate, read the references to public official to mean "public official or candidate, if elected."]

Oregon Government Ethics law establishes a framework of conditions for public officials to apply when they, their relatives or members of their households are offered gifts. If offered a gift, the public official must analyze the offer and decide if "something of value" can be accepted with or without restrictions.

There are restrictions on the value of gifts accepted by a public official, if the source of the gift has a legislative or administrative interest in decisions or votes the public official makes when acting in the capacity of a public official.

Legislative or administrative interest is defined in ORS 244.020(9) and is used, primarily, when applying the law to gifts accepted by public officials. Whether there is a legislative or administrative interest is pivotal to any decision a public official makes on accepting gifts. It

will mean the difference between being allowed to accept gifts without limits, accepting gifts with a limit of $50 on the aggregate value, or accepting gifts under specific conditions and within specific parameters. As will be apparent in the following discussion, the burden of any decision on accepting a gift rests solely with the individual public official.

What does a public official need to know about a "Legislative or Administrative Interest"?

Beginning in 2010, the change to the definition of what a legislative or administrative interest is represents one of the most significant changes made in Oregon Government Ethics law during the 2009 session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift has a legislative or administrative interest will help determine whether the gift offered can be accepted without limits or with restrictions. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in official actions of the public official's governmental agency. Now the focus is on the votes or decisions of each individual public official. The change places greater responsibility on the individual public official to decide if a gift can be accepted without limits or with restrictions imposed by ORS Chapter 244. Not every public official makes decisions or casts votes, as those actions are used in defining a legislative or administrative interest. This means that when gifts are offered to two or more public officials, in the same setting, one public official may be allowed to accept the offer without limits and another public official may be able to accept the offer, but it would be limited as to value or restricted by conditions that must be met when accepting.

The definition of a legislative or administrative interest as set forth in ORS 244.020(9) as follows:

> "'Legislative or administrative interest' means an economic interest, distinct from that of the general public, in:
>
> (a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or
>
> (b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official."

In the context of gifts accepted by a public official, the public official must determine if the source of the offered gift has a legislative or administrative interest in the decisions or votes of the public official. When analyzing a set of circumstances and applying "legislative or administrative interest", there are several factors to consider:

> Source: The Commission adopted a rule that identifies the source of a gift as the person or entity that makes the ultimate and final payment of the gift's expense. OAR 199-005-0030 places two burdens on a public official who accepts gifts. The

public official must know the identity of the source and, if applicable, avoid exceeding the limit on the aggregate value of gifts accepted from that source. [OAR 199-005-0030(2)]

Distinct from that of the general public: With regard to gifts, this phrase refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift would realize a financial gain or detriment from a vote or decision of a public official, that source has an economic interest in that public official. That economic interest is "distinct from that of the general public", if the potential financial gain or detriment is distinct from the financial impact that would be realized by members of the general public from the votes or decisions of that same public official.

There are decisions or votes that have an economic impact on single individuals or individuals from specific businesses or groups that are distinct from the economic impact on members of the general public. On the other hand, there are many votes or decisions made by public officials that have the same general economic impact on individuals, businesses, organizations and members of the general public. Some examples of decisions or votes that would have an economic impact on the general public would be those that change water usage rates, fees for licenses or permits or fines for parking violations.

To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.

To further illustrate, real estate developers have an economic interest in any public official who has the authority to decide or vote to approve their land use applications or building permits. The economic interest of these developers is distinct from the economic interest held by members of the general public in those decisions or votes.

Vote: This has the common meaning of to vote as an elected member of a governing body of a public body or as an appointed member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly or the Office of the Governor.

Decision: The Commission adopted OAR 199-005-0003 and defines "decision" in OAR 199-005-0003(2). A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

The change to the definition of a legislative or administrative interest places the focus on

the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts from that same source. This is because not all public officials in the same public body have the same authority, responsibilities or duties. Some may vote and make decisions, others may do one but not the other and many will not vote or make decisions, as "decision" is used in legislative or administrative interest.

There are public officials who, because they hold positions specified in ORS 244.050, must file the Annual Verified Statement of Economic Interest (SEI) form with the Commission on April 15 of each year. Some information listed in that form is required when certain financial interests, assets or liabilities, are related to a source with a legislative or administrative interest in the votes or decisions of the public official submitting the form. Refer to the table of contents to find the discussion of the SEI form in this guide.

Any discussion of gifts must begin with the reminder that if the source of the offer of a gift to a public official does not have a legislative or administrative interest in the decisions or votes of the public official, the public official can accept unlimited gifts from that source. [ORS 244.040(2)(f)]

If the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed $50 in a calendar year. [ORS 244.025]

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official have a $50 limit, there are some gifts that are excluded from the definition of a "gift." If the offer of a gift is excluded from the definition of a "gift," the offer may be accepted by a public official. The value of gifts that are allowed as exclusions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year. [ORS 244.020(6)(b)]

Sources who offer gifts or other financial benefits to public officials must also be aware of the provisions in ORS Chapter 244. While the specific gift of paid expenses may be allowed by ORS 244.020(6)(b)(F), ORS 244.100(1) requires the source of this gift, if over $50, to notify the public official in writing of the aggregate value of the paid expenses. There is also a notice requirement in ORS 244.100(2) for the source of an honorarium when the value exceeds $15. Lobbyists, clients or employers of lobbyist and others who provide gifts or financial benefits to public officials should also familiarize themselves with the provisions in ORS 171.725 through ORS 171.992 and Divisions 5 and 10 of Chapter 199 in the Oregon Administrative Rules. The Commission has published a "Guide to Lobbying in Oregon" that provides a summary of these regulations and rules.

As previously mentioned, there are gifts that are allowed because they are excluded from the definition of a "gift" when offered under specific conditions or when prerequisites are

met. Although some gifts are allowed, it should be remembered that a source may have a notice requirement or there may be reporting requirements for the public official or the source. If you are a public official accepting gifts or a source offering gifts, it is important you become familiar with the requirements that may apply to you.

ORS 244.020(6)(b) provides a description of the **GIFTS THAT ARE ALLOWED** as exclusions to the definition of a "gift":

[NOTE: Not all of these exclusions apply to gifts offered to candidates.]

- Campaign contributions as defined in ORS 260.005. *[ORS 244.020(6)(b)(A)]*

- Contributions to a legal expense trust fund established under ORS 244.209. *[ORS 244.020(6)(b)(G)]*

- Gifts from relatives or members of the household of public officials or candidates. *[ORS 244.020(6)(b)(B)]*

- Anything of economic value received by a public official or candidate, their relatives or members of their household when; [ORS 244.020(6)(b)(O)]

  The receiving is part of the usual and customary practice of the person's business, employment, or volunteer position with any legal non-profit or for-profit entity. [ORS 244.020(6)(b)(O)(i)]

  The receiving bears no relationship to the person's holding the official position or public office. [ORS 244.020(6)(b)(O)(ii)]

- Unsolicited gifts with a resale value of less than $25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. *[ORS 244.020(6)(b)(C) and see resale value discussed in OAR199-005-0010]*

- Publications, subscriptions or other informational material related to the public official's duties. *[ORS 244.020(6)(b)(D)]*

- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. *[ORS 244.020(6)(b)(J)]*

- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event. *[ORS 244.020(6)(b)(M) and see OAR 199-005-0001(3) and OAR 199-005-0025(1) for meaning of "incidental"]*

- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and

representing a governing agency for a ceremonial purpose. *[ORS 244.020(6)(b)(N) and see "ceremonial" defined in OAR 199-005-0025(2)]*

- Cost of admission or food and beverage consumed by the public official, a member of the public official's household or staff when they are accompanying the public official, who is representing government, state, local or special district, at a reception, meal or meeting held by an organization. *[ORS 244.020(6)(b)(E) and see this exception discussed in OAR 199-005-0015]*

- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. *[ORS 244.020(6)(b)(L) and OAR 199-005-0025(1) also see OAR 199-005-0001(3) and (8)]*

- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. *[ORS 244.020(6)(b)(K)]*

- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3). *[ORS 244.020(6)(b)(F) and see definition of terms for this exception in OAR 199-005-0020]*

- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following: *[ORS 244.020(6)(b)(H) and see definition of terms for this exception in OAR 199-005-0020]*

    - Officially sanctioned trade promotion or fact-finding mission; [*ORS 244.020(6)(b)(H)(i)]*

    - Officially designated negotiation or economic development activity when receipt has been approved in advance. [*ORS 244.020(6)(b)(H)(ii)]*

  [**NOTE:** How and who may officially sanction and officially designate these events is addressed in OAR 199-005-0020(2)(b).]

- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip. [ORS 244.020(6)(b)(P)]

- Food and beverage when acting in an official capacity in the following circumstances: *[ORS 244.020(6)(b)(I)]*

    - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction; *[ORS 244.020(6)(b)(I)(i)]*

    - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; *[ORS 244.020(6)(b)(I)(ii)]*

    - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money. *[ORS 244.020(6)(b)(I)(iii)]*

*****

GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

Since ORS 244.040 was amended in 2007, the acceptance of gifts that comply with ORS 244.020(6) and ORS 244.025 is excluded from the prohibition on public officials' use or attempted use of an official position to gain financial benefits. If a public official or relative accepts a lawful gift, or a lawful financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit the acceptance.

The discussion below is intended to assist public officials in understanding this distinction. There are more focused discussions of gifts starting on page 26 and the use of position or office starting on page 9. It should be understood this section may paraphrase information discussed more comprehensively in those areas of this guide. Also, the application of the gift provisions to candidates is not part of this discussion because, unless the candidate also qualifies as a public official on another basis, candidates are not public officials; therefore, the use of an official position prohibited by ORS 244.040(1) would not apply to a candidate who is not also a public official.

Oregon Government Ethics law does not prohibit public officials from accepting gifts [ORS 244.040(2)(e), (f) and (g)], but it does place on each individual public official the direct and personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. Public officials are also prohibited from using or attempting to use a position held by the public official to obtain a prohibited financial benefit. These provisions of Oregon Government Ethics law often converge and require public officials to analyze and determine whether the opportunity to obtain financial benefits represents the use of an official position prohibited by ORS 244.040(1) or a gift addressed with other provisions in ORS Chapter 244 [ORS 244.020(6), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].

Is it a gift?

Public officials must understand the operative definition of a "gift" when deciding whether a gift may be accepted by a public official or candidate. The following is a paraphrase of the definition taken from ORS 244.020(6)(a):

> **Gift: "Something of economic value" given** to a public official, a relative of the public official or a member of the public official's household for which the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions as** those that apply to the gift offered to **the public official**, the relative or a member of the household.

If something of economic value is received by a public official from the government agency employer or the public body represented by the public official, that financial benefit is not considered a gift, it is a financial benefit addressed by ORS 244.040 and it is either allowed or prohibited.

Sources of gifts are private individuals, businesses, organizations or government agencies, but **not the agency represented by or employing the public official**. Sources may also be co-workers or representatives of the same public body who have purchased a gift with their **personal** resources.

Gifts may be accepted by a public official, if the source does not have a legislative or administrative interest in the votes or decisions of the public official. Specific gifts may be accepted, if the conditions of the offer exclude the gift from being defined as a gift [ORS 244.020(6)(b)(A) through (P)]. Gifts that are not excluded from the definition may be accepted from a source as long as the aggregate value of gifts from that source does not exceed $50 in a calendar year. For additional assistance, see the discussion beginning on page 37 titled, "What if I am offered a gift?"

Is it a prohibited use of position?

Unlike gifts, which come from outside sources, ORS 244.040(1) focuses on the public official's own actions. ORS 244.040(1) prohibits the **use or attempted use of the position** held by the public official to obtain benefits which are only available because of that position.

The prohibited financial benefits might take several forms. A public employee might have access to job related resources, business opportunities, or information, and might want to take financial advantage of this access. The financial benefit might be the avoidance of a personal expense, acquiring something of economic value, gaining extra income from private employment, or creating a new employment opportunity.

Although this "use of position" applies to situations where something of value is obtained, or there is an attempt to obtain something of value, **the Commission applies Oregon Government Ethics law to "something of economic value" offered to a public official that meets the definition of "gift," it will be addressed as a gift in the analysis and application of the law.** The following are some examples to illustrate the Commission's approach:

NOTE THAT IN THE FOLLOWING EXAMPLES, THE SOURCES OF THE FINANCIAL BENEFITS <u>HAVE A LEGISLATIVE OR ADMINISTRATIVE INTEREST</u> IN THE DECISIONS OR VOTES OF THE PUBLIC OFFICIALS. That is important to remember because if there were no legislative or administrative interest the public officials may be allowed to accept the offers without restrictions. [ORS 244.040(2)(f)]

- A salesperson from a software company offers to take the county's information technology manager out to lunch. Because the manager has purchasing authority, the salesperson has an administrative interest in the manager. The meal would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed $50 from a single source in one calendar year. *[ORS 244.025(1)]* If the meal cost less than $50, the manager may accept it, but should

keep a record of the gift and should be careful in future situations not to accept additional gifts from this source if the value would exceed $50 total for the year. Of course, if the lunch costs more than $50, the manager may not accept it in any case.

- A city manager attends a work-related conference paid for by the city. When the city manager checks out of the hotel, she is offered a coupon for two nights of free lodging at any hotel in the nationwide chain. Because the city manager is in charge of her own travel arrangements, the hotel has an administrative interest in her future hotel-booking decisions. If accepted and used for personal lodging, it would be a gift and the value would be included in the aggregate value of gifts, which cannot exceed $50 from a single source in one calendar year. *[ORS 244.025(1)]* Note that if the city had adopted an official compensation package (as defined in OAR 199-005-0035) that included a provision allowing the city manager to use "loyalty program" benefits for personal use, the coupon could have been accepted.

- A county finance officer attends a work-related conference paid for by the county. When arriving at the conference the finance officer, as with others in attendance, is offered a gift basket containing assorted goods from the organization hosting the conference. Because the organization sells goods or services the finance officer has the authority to purchase, the source of the gift has an administrative interest in the finance officer. Typically, such a gift basket would be a "gift" and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed $50 from a single source in one calendar year. *[ORS 244.025(1)]* However, the law does not prohibit accepting things that are made available to a significant portion of the general public under the same terms and conditions. If the conference was open to members of the general public, and the attendees included a wide range of public and private participants, the baskets would not be considered gifts.

- A state employee is sent by his agency to attend a two-day training conference. A salesperson is near the conference registration table and offers a collection of gifts valued at over $100 to all registrants. As in the last example, because the employee has the authority to purchase goods or services sold by the salesperson, the source of the gifts has an administrative interest in the state employee. Let's also assume that the conference is only open to government employees. Under these circumstances the offered items would be gifts and any accepted could not exceed the $50 limit on aggregate value from a single source in one calendar year. *[ORS 244.025(1)]*

- During the same conference, the state employee is going out to dinner after the conference adjourns for the day. While passing through the hotel lobby, he stops to speak with the salesperson who offered the gifts during the conference registration. The salesperson asks to join the state employee for dinner and offers to pay for the meal. The value of the meal would be included with the value of any gifts accepted earlier in the aggregate value of gifts, which cannot exceed $50 in one calendar year. *[ORS 244.025(1)]*

- A city mayor goes out to lunch in a local city restaurant. During lunch a well known developer approaches the mayor and offers to pay for the mayor's meal. The developer has a legislative or administrative interest in decisions the mayor could make on his construction projects. The value of the meal, if accepted, would be included in the aggregate value of gifts from a source, which cannot exceed $50 from a single source in one calendar year. *[ORS 244.025(1)]*

- A chief deputy who manages procurement for a county sheriff's office attends a conference on newly developed equipment for law enforcement agencies. Upon arrival, the deputy purchases with personal funds several "raffle tickets" each representing a chance to win a shotgun from the manufacturer valued at $500. The opportunity to buy the tickets is only available to those attending the conference. During the final session of the conference the "raffle" ticket drawing is held and the chief deputy wins the shotgun. As explained above, if the conference was only open to public officials, or if few non-public employees were in attendance, the shotgun would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed $50 from a single source in one calendar year. *[ORS 244.025(1)]*

When the Commission applies Oregon Government Ethics law to a financial benefit obtained by a public official by using or attempting to use an opportunity that would not otherwise be available but for the position or office held, ORS 244.040(1) will be used in the analysis and application of the law. The following are some examples to illustrate the Commission's approach:

- A city recorder has overseen the installation and implementation of a new software program to manage the city's financial records. The distributor of this software has a training event scheduled for employees who work for other cities' governments. The city recorder has been asked to participate as a trainer at the events and the distributor has offered to provide compensation and pay any expenses for food, lodging and travel. If the city recorder accepted this offer, it could constitute the use of the official position to gain a financial benefit because the opportunity for the compensation and paid expenses would not be available but for holding the position and performing the duties as the city recorder. [ORS 244.040(1)]

- A deputy fire chief, who is in charge of procuring equipment for fire stations in the district, locates a vendor that offers the make and model of an extension ladder to replace obsolete ladders in the district's stations. To increase the fire district's discount on each ladder, the deputy fire chief adds several extra ladders to the order. The deputy fire chief and two relatives take personal possession of the extra ladders and pay the fire district the amount the district paid for the ladders. The deputy fire chief would violate ORS 244.040(1) because the discounted price to the deputy fire chief and the relatives represents the use of position to avoid a financial detriment (discount) that is prohibited.

- A city council has scheduled a public council meeting in a room at a local restaurant. Before the scheduled meeting the councilors plan to use city funds to purchase dinner for councilors, the councilor's spouses and members of the city's staff attending the scheduled meeting. The councilors, who are accompanied by a spouse, would violate ORS 244.040(1) because the cost of the meal for the spouse would represent the use of position to avoid a financial detriment that is prohibited.

The responsibility for judgments and decisions made in order to comply with the various provisions in Oregon Government Ethics law rests with the individual public official who faces the circumstances that require a judgment or decision. That is true of questions regarding gifts, use of an official position, announcing the nature of conflicts of interest and the many situations addressed in ORS Chapter 244.

What if I am offered a gift?

First, insure you know the identity of the source of the gift. Remember, the source of a gift is the person or entity that made the ultimate payment for the gift's expense [See page 27].

Second, determine if the source of the gift has an economic interest in decisions or votes you make in your official capacity as a public official. If that economic interest is distinct from the interest held by members of the general public it is a legislative or administrative interest [See page 27].

- If the source does not have a legislative or administrative interest, gifts from that source are not prohibited or limited as to value or quantity.

- If the source has a legislative or administrative interest, you must answer the following questions:

    1. Is the gift offered under the conditions that would allow you to accept the gift because it is excluded from what is defined as a "gift"? These exclusions are found in ORS 244.020(6)(b) and described on pages 30 - 32 of this guide.

    2. What is the value of the gift? Remember, you can accept gifts [not excluded from the definition of "gift".] from a single source when the aggregate value of gifts from that source does not exceed $50 in a calendar year. [ORS 244.025]

*****

ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** form with the Oregon Government Ethics Commission by **April 15 of each calendar year**.

The **public officials who are required to file reports are specified in ORS 244.050**. Please refer to that section of the law to see if your specific position requires you to file these forms. In general, public officials who hold the following positions are required to file:

- State public officials who hold elected or appointed executive, legislative or judicial positions. This includes those who have been appointed to positions on certain boards or commissions.

- In counties, elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file, as do planning commission members and the county's principal administrator.

- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file.

- Administrative and financial officers in school districts, education service districts and community college districts must file.

- Some members of the board of directors for certain special districts must file.

- Candidates for some elected public offices are also required to file.

The Commission staff has identified the positions held by public officials who must file the SEI form and has them listed by jurisdiction. Each jurisdiction [city, county, executive department, board or commission, etc.] has a person who acts as the Commission's point of contact for that jurisdiction [OAR 199-020-0005(1)].

The **contact person** for each jurisdiction has an important role in the annual filing of the SEI forms. It is through the contact person that the Commission obtains the current name and address of each public official who is required to file. When there is a change, through resignation, appointment or election, in who holds a position, the contact person notifies the Commission. If there is a change in the filer's mailing address, it is the contact person who notifies the Commission.

As with other provisions in Oregon Government Ethics law, it is each public official's personal responsibility to ensure they comply with the requirement to complete and submit the SEI form by April 15. Those public officials who must file a SEI form are well served if the contact person ensures that the Commission has the correct name and address of the public official.

Beginning in January of each year the Commission prepares a list by jurisdiction of each public official required to file the SEI form. A list for each jurisdiction is sent to the contact person. The contact person is required to review the list for accuracy. After entering the necessary changes, the contact person must return the list that has been reviewed and corrected to the Commission by February 15. [OAR 199-020-0005(2)]

The contact person from each jurisdiction should ensure that each filer has been advised of the reporting requirements. Each filer should also receive information as to the procedures the jurisdiction follows to assist the filer in meeting the SEI filing requirement.

Based on the information provided by each of the jurisdictions' contacts, the Commission sends an annual SEI form directly to each individual public official required to file the form.

Again, the requirement to file the SEI is the personal responsibility of each public official. Each public official should comply and file timely, as the civil penalties for late filing are $10 for each of the first 14 days after the filing deadline and $50 for each day thereafter until the aggregate penalty reaches the maximum of $5,000. *[ORS 244.350(4)(c)]*

SEI Form

When the forms are distributed in March of each year, the instructions and definitions are also included to assist the filer in completing the forms. The information needed to complete the form pertains to the previous calendar year.

NOTE: Only public officials who hold a position that is required to file, and who holds the position on April 15 of the year the SEI is due, must complete the form.

The following is a brief description of the information requested in the SEI form:

- Name and address of each business in which a position as officer or director was held by the filer or member of the household. *[ORS 244.060(1)]*

- Name and address of each business through which the filer or member of the household did business. *[ORS 244.060(2)]*

- Name and address and brief description of the sources of income for the filer and members of the household that represent 10 percent or more of the annual household income. *[ORS 244.060(3)]*

- Ownership interests held by the filer or members of the household in real property, except for the principal residence, located within the geographic boundaries of the governmental agency in which the filer holds the position or seeks to hold. *[ORS 244.060(4)(a) and (b)*

- Honoraria or other items allowed by ORS 244.042 that exceed $15 in value given to the filer or members of the filer's household. Include a description of the honoraria or item

and the date and time of the event when the item was received *[ORS 244.060(7)].* Remember that honorarium cannot exceed $50. [ORS 244.042(3)(a)]

- Name of each lobbyist associated with any business the filer or a member of the household is associated, unless the association is through stock held in publicly traded corporations. *[ORS 244.090]*

- If the public official received over $50 from an entity to participate in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(6)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid, purpose for participation a copy of the notice of aggregate value paid. *[ORS 244.060(5) and ORS 244.100(1)]* [Not required for candidates]

- If the public official received over $50 from an entity to participate in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(6)(b)(H), list the name and address of the person that paid the expenses. Include the event date, aggregate expenses paid and nature of the event. *[ORS 244.060(6)]* [Not required for candidates]

The following is required if the information requested relates to an individual or business that has been or could reasonably be expected to do business with the filer's governmental agency or has a legislative or administrative interest in the filer's governmental agency:

- Name, address and description of each source of income (taxable or not) that exceeds $1,000 for the filer or a member of the filer's household. [ORS 244.060(8)]

- Name of each person the filer or member of the filer's household has owed $1,000 or more. Include the date of the loan and the interest rate. Debts on retail contracts or with regulated financial institutions are excluded. *[ORS 244.070(1)]*

- Business name, address and nature of beneficial interest over $1,000, or investment held by the filer or a member of the household in stocks or securities over $1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. *[ORS 244.070(2)]*

- Name of each person from whom the filer received a fee of over $1,000 for services, unless disclosure is prohibited by a professional code of ethics. *[ORS 244.070(3)]*

*****

OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all seven members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended as follows [ORS 244.250]:

1	Recommended by the Senate Democratic leadership
1	Recommended by the Senate Republican leadership
1	Recommended by the House Democratic leadership
1	Recommended by the House Republican leadership
3	Recommended by the Governor

No more than four commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The Commission members select a chairperson and vice chairperson annually. The Commission is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice.

The Commission staff provides administration, training, guidance, issues written opinions, and conducts investigations when complaints are filed with the Commission.

Training:

The Commission has designated training as one of its highest priorities. It has two staff positions to provide training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, iLearnOregon, informational links on the website, topical handouts and guidance offered when inquiries are received.

Advice:

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions. The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.

- Written opinions on specific circumstances can also be requested.

Requests for written opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The facts and circumstances may define a proposed transaction and may be hypothetical or actual. If the circumstances indicate that a violation may have occurred, the staff cannot provide an opinion because to do so could compromise the Commission's objectivity if a complaint were to be filed. The written opinions will be in one of the following formats, as requested:

Staff Advice

ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as in person, by telephone, e-mail or letter. In a letter of advice, the proposed, hypothetical or actual facts are restated as presented in the request and the relevant laws or regulations are applied. The answer will conclude whether a particular action by a public official comports with the law.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received staff advice offered under the authority of ORS 244.284, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advice [ORS 244.284(2)].

For staff advice to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advice. The Commission is not prevented from finding a violation in these circumstances, but the sanction imposed could be affected.

Staff Advisory Opinion

ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes. The letter will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received a staff advisory opinion under the authority of ORS 244.282, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advisory opinion [ORS 244.282(3)].

For the staff advisory opinion to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advisory opinion. The Commission is not prevented from finding a violation in these circumstances, but whether the sanction is imposed or its severity could be affected.

Commission Advisory Opinion

ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. This formal written opinion also restates the proposed, hypothetical or actual facts presented in a written request for a formal opinion by the Commission. The opinion will identify the relevant statutes and discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. These formal advisory opinions are reviewed by legal counsel before the Commission adopts them. The Commission must respond to any request for a Commission Advisory Opinion within 60 days, unless the Commission extends the deadline by an additional 60 days [ORS 244.280(1) and (2)].

The Commission may not impose a penalty on a person for any good faith action taken by the person while relying on a Commission Advisory Opinion, unless it is determined that the person who requested the opinion omitted or misstated material facts in the opinion request [ORS 244.280(3)].

For the Commission Advisory Opinion to be a factor in preventing the imposition of a penalty, it is important to understand that the circumstances described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the Commission Advisory Opinion. The Commission is not prevented from finding a violation in these circumstances, but could be prevented from imposing a sanction.

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as "safe harbor" protection from becoming a respondent to a complaint filed with or initiated by the Commission?

There is no "safe harbor," if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint, from being found in violation of laws within the jurisdiction of the Commission, or from receiving a penalty for a violation.

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff. The conditions and protection is as follows:

- The fact circumstances described in the request must not misrepresent, misstate or omit material facts.

- Reliance on the advice or opinion means that the action or transactions of the person were those described or suggested in the advice or opinion.

- The protection applies only during the penalty phase, after the Commission has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase. If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

Any person who has not requested advice or an opinion must be cautious when trying to apply advice or opinions offered to others. The advice and opinions given are based on and tailored to the specific fact circumstances presented in a request. Fact circumstances vary from one situation to another and they vary from one public official to another. If a person reviews an opinion or advice issued to another for circumstances the person believes similar to those now met and relies on that advice, the person must ensure the similarity is sufficient for the application of law to be the same.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction, the law may have a different application for one public official than for other public officials.

Compliance:

The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 2,000 lobbyists and employers of lobbyists who file quarterly lobbying activity expense reports. Each of the nearly 1,000 lobbyists must file or renew their lobbying registrations every two years. There are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest form each April 15.

Complaint Review Procedures:

Investigations are initiated through a complaint procedure *[ORS 244.260]*. Any person may file a signed, written complaint alleging that there may have been a violation of Oregon Government Ethics law, Lobbying Regulation or the executive session provisions of Oregon Public Meetings law. The complaint must state the person's reason for believing that a violation may have occurred and must include any evidence that supports that belief. The executive director reviews the complaint and if additional information is needed, the complainant is asked to provide that information.

If there is reason to believe that there has been a violation of laws within the jurisdiction of

the Commission, an investigation will be initiated. The Commission may also initiate an investigation on its own complaint by motion and vote. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed or acted upon.

When a complaint is accepted, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the Commission procedure is called the Preliminary Review Phase. The time allowed for this phase is limited to 135 days and the Commission must act on the complaint within that period.

If there is a pending criminal matter related to the same circumstances or actions to be addressed in the Preliminary Review, the time period is suspended until the criminal matter is concluded.

There may be a variety of reasons for a respondent to ask for additional time before the Commission determines whether there is cause to investigate the issues raised in the complaint. With the consent of the Commission, a respondent may request a waiver of the 135 day time limit. If a complaint is made against a candidate within 61 days of an election, the candidate may request a delay.

During the Preliminary Review Phase, the Commissioners and staff can make no public comment on the matter other than acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission ends the Preliminary Review Phase. Under most circumstances, the Commission will end the Preliminary Review Phase by either dismissing the complaint or finding cause to conduct an investigation. The Commission meets in executive session to conduct deliberations and vote on the finding of cause or to dismiss. After the close of the Preliminary Review Phase, the case file is open to public inspection.

If the complaint is dismissed, the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an Investigatory Phase begins. The investigatory phase is limited to 180 days.

During each phase, information and documents are solicited from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, the Commission will consider the results of the investigation. Normally, the Commission will either dismiss the complaint or make a preliminary finding that a violation of Oregon Government Ethics law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance or sufficient evidence to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, the respondent is also encouraged to

negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement described in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of reprimand to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation is $5,000, except for violations of the executive session provisions in ORS 192.660 where the maximum is $1,000. Any financial gain that a respondent realized from a violation is subject to a forfeiture of twice the gain. Any monetary sanctions imposed and paid are deposited into the State of Oregon General Fund.

*****

INDEX

T

U

V

HEALTH EVIDENCE REVIEW COMMISSION
By-Laws

ARTICLE I

The Commission and its Members

The CommissionHealth Evidence Review Commission (hereinafter "HERC" or "CommissionCommission") is created pursuant to House Bill 2100 (2011 Oregon Legislative Assembly) within the Oregon Health Authority. The Commission's function as outlined in HB 2100 is to:

- Develop and maintain a list of health services ranked by priority, from the most important to the least important, representing the comparative benefits of each service to the population to be served
- Develop or identify and shall disseminate evidence-based health care guidelines for use by providers, consumers and purchasers of health care in Oregon
- Conduct comparative effectiveness research of health technologies

The Office for Oregon Health Policy and Research (OHPR) and other state agencies will support the work of the Commission in a manner mutually agreed upon by the Director and the respective entity(ies).

The Members of the Commission shall be appointed by the Governor and confirmed by the Oregon State Senate in accordance with HB 2100. Commission Members shall serve four-year terms (initially staggered). A Member whose term has expired, but whose successor has not been appointed and confirmed, may continue to serve until replaced. A Member may be serve a second four-year term assuming reappointment by the Governor and Senate confirmation.

Members of the Commission are not entitled to compensation for services as a Member, but are entitled to expenses as provided in ORS 292.495.

ARTICLE II

Commission Officers and Duties

The Commission shall select a Chair and a Vice Chair from among its Members. The terms of office shall be 24 months.

• Duties of the Chair are:
- o Preside at all meetings of the Commission.
- o Coordinate meeting agendas after consultation with the Director.
- o Review all draft Commission meeting minutes prior to the meeting at which they are to be approved.
- o Be advised of all presentations or appearances of the Director or staff before the Legislature, Oregon Health Policy Board, or Executive committees or subcommittees within the Oregon Health Authority or other agencies that relate to the work of the Commission.
- o The Chair may designate, in the absence of the Vice-Chair or when expedient to Commission business, other Commission Members to perform duties related to Commission business such as, but not limited to, attending other agency or public meetings, representing the Commission at Legislative hearings or before the media, and approval and review of documents that require action of the Chair. In such cases, the Commission Member assigned the responsibility will be entitled to expenses as provided in ORS 292.495.

• Duties of the Vice Chair are:
- Perform all of the Chair's duties in his/her absence or inability to perform; and
- Perform any other duties assigned by the Chair after consultation with the Commission.

ARTICLE III
Commission Subcommittees

The Commission may establish subcommittees to undertake work chartered by the Commission. The subcommittees may include Commission Members and other persons with particular expertise and interest in the work of the subcommittee. A subcommittee shall cease to exist upon a majority vote of the Commission to disband the subcommittee. Subcommittee membership and the designation of a chair shall be made by majority of Members of the Commission.

ARTICLE IV
Commission Meetings

The Commission shall meet at the call of the Chair in consultation with the Commission Members and staff or at the call of the majority of the Members. The Commission shall meet at least quarterly.

The Commission and subcommittees established by the Commission shall conduct all business meetings in public and in conformity with Oregon Public Meetings Laws.

The preliminary agenda will be available from the Commission staff and posted on the Commission website [*www.oregon.gov/OHA/OHPR/HERC*] at least two working days prior to the meeting. The final agenda will be established at the beginning of each Commission meeting.

Seven (7) Commission Members shall constitute a quorum for the transaction of business.

All actions of the Commission shall be expressed by motion or resolution. Official action by the Commission requires the approval of a majority of the Members of the Commission.

On motions, resolutions, or other matters a voice vote may be used. At the discretion of the Chair, or upon the request of a Commission Member, a roll call vote may be conducted. Proxy votes are not permitted.

If a Commission Member is unable to attend a meeting in person, the Member may participate by conference telephone or internet conferencing provided that the absent Commission Member can be identified when speaking, all participants can hear each other and members of the public attending the meeting can hear any Member of the Commission who speaks during the meeting. A Commission Member participating by such electronic means shall be considered in constituting a quorum.

Commission Members shall inform the Director with as much notice as possible if unable to attend a scheduled Commission meeting. Commission staff preparing the minutes shall record the attendance of Commission Members at the meeting for the minutes.

The Commission will conduct its business through discussion, consensus building and informal meeting procedures. The Chair may, from time to time, establish procedural processes to assure the orderly, timely and fair conduct of business.

ARTICLE V

Amendments to the By-Law and Rules of Construction

These By-laws may be amended upon the affirmative vote of nine (9) Members of the Commission.

All rules and procedures in these By-laws shall be liberally construed so that the public's health, safety and welfare shall be secured in accordance with the intents and purposes of applicable State laws and regulations.

Background: Transition from the Health Resources Commission and Health Services Commission to the new Health Evidence Review Commission

HB 2100 created the Health Evidence Review Commission (HERC) which combines two existing commissions, the Health Services Commission (HSC) and Health Resources Commission (HRC). The HERC will continue almost two decades of work, as both of the original commissions began their work in the early 1990's at the start of the Oregon Health Plan.

The combined commission will streamline the HSC's work of maintaining the Prioritized List of Health Services. It will also assume the HRC's work on providing unbiased non-pharmaceutical technology assessments, with the HRC's pharmaceutical work now undertaken by the OHA's Pharmacy and Therapeutics Committee. The HERC will also operationalize the HB 2009 (2009) directive to develop evidence-based guidelines in strengthening the use of evidence to make purchasing decisions and education of providers and the public through collaboration with the private sector.

Closing out the HEALTH RESOURCES COMMISSION (HRC)

- The HRC held its final meeting in August 2011, completing its active reports at that time.
- The new Pharmacy and Therapeutics Committee of the OHA has taken on the pharmaceutical drug evidence reviews as part of its work.
- The new HERC will assume ongoing work related to medical and other health-related technology, honoring the recent HRC agreements with the med tech industry to have OHPR/OHA develop rules for a robust and transparent public input process around gathering information for the medical technology assessments.

Detailed information and the past work of the Health Resources Commission is available at: www.oregon.gov/OHA/OHPR/HRC

Closing out the HEALTH SERVICES COMMISSION (HSC)

- The HSC held its final meeting on Thursday, December 8, 2011. The majority of the active issues that the Commission were working on were resolved during this meeting.
- This includes the review and placement of 2012 CPT & HCPCS codes on the Prioritized List. This will allow for the finalization of the April 1, 2012 list by the new HERC at their January 2012 meeting.
- Other work of the HSC, including the conversion of the Prioritized List to the new ICD-10 codes and it's regular updating and maintenance, value-based benefit work including updating the sets of value-based services, and clinical guidelines development and collaboration will be assumed by the HERC. In the transition interim, staff have continued the following activities:
    - Continue meetings with specialty groups on ICD-10 conversion of the Prioritized List (30 three-hour sessions underway to be completed).

- Participated in the ongoing collaborative efforts with the Center for Evidence-based Policy, Oregon Health Leadership Council and the Oregon Quality Corp on low back pain, CHF and COPD related guidelines, including consumer and provider outreach for the completed Statewide Low Back Pain Guidelines (Approved by the HSC in October 2011).
- Collaborate with DCBS and HIX staff to plan needed clinical evidence assessments of state benefit mandates in anticipation of federal essential benefits package requirements and potential impacts to benefit design and budget implications for upcoming 2014 Medicaid and HIX expansions.
- Efforts underway to align staff across the OHA to support the HERC, ensure coordination with other involved entities and meet agency-wide program and statewide needs.

Detailed information and the past work of the Health Services Commission is available at: www.oregon.gov/OHA/OHPR/HSC

Overview of the Biennial Review of the Prioritized List of Health Services

Background on the Health Services Commission

The Oregon Legislative Assembly, led by then Senate President John Kitzhaber, created the Health Services Commission (HSC) through the passage of Senate Bill 27 in 1989 in the creation of the Oregon Health Plan. The HSC is made up of eleven volunteer members, who are appointed by the Governor and confirmed by the Senate for four-year terms. The members include five physicians (one of whom must be a doctor of osteopathy), one public health nurse, one social services worker, and four consumer representatives. The HSC's charge is to provide a biennial report to the Governor and Legislature to include a list of health services "ranked by priority, from the most important to the least important, representing the comparative benefits to the entire population to be served." The Prioritized List of Health Services developed by the HSC is priced at various levels of coverage by an independent actuarial firm and then the Oregon legislature draws a line on the list to indicate what services will be reimbursed under the OHP Medicaid Demonstration (those services appearing above the funding line on the list) and those that will not (those appearing below the funding line).

Background on the Prioritized List of Health Services

The Prioritized List of Health Services represents a rank ordering of condition-treatment pairs using ICD-9-CM, CPT, and HCPCS medical codes to define the services on each of the line item on the list. The list assumes that all diagnostic services necessary to determine a diagnosis are covered. Ancillary services necessary for the successful treatment of the condition are to be presumed to be a part of the line items. This means that codes for prescription drugs, durable medical equipment and supplies, laboratory services, and most imaging services are not included on the prioritized list but are still reimbursed as long as the condition for which they are being used to treat appears in the funded region. As of January 1, 2012 the state covers lines 1-498 of the 692 line items on the list.

The 2006 Biennial Review of the Prioritized List

In the summer of 2005, as the HSC began to prepare for the biennial review of the list. The Commission was encouraged to ask themselves whether the basic structure of the list represented what they truly considered to be the most important to the least important. It was suggested that a higher emphasis on preventive services and chronic disease management would ensure a benefit package that provides the services necessary to best keep a population healthy, not waiting until an individual gets sick before higher cost services are offered to try to restore good health again.

The HSC believed that placing a higher value on prevention and chronic disease management was a good idea on its face and could be crucial in maintaining a sustainable program as we face an aging population. The Commission put together a task force that included HSC members, stakeholders, and health policy experts to study the issue further. This task force reviewed the principles on which the OHP was based, the values expressed in the four sets of public forums held by the HSC since 1990, and the results of the biennial public surveys on health care conducted by Oregon Health Decisions. The task force found evidence in all of these sources that supported such a shift in health care priorities and recommended the HSC pursue a reprioritization of the list to reflect this new emphasis.

NEW METHODOLOGY

In December 2005 the HSC embarked on the developing a new prioritization methodology for the first time since the list was first implemented in February 1994. First the HSC developed the framework of what they thought the new list should look like by defining a rank ordered list of nine broad categories of health care (see Table 1).

Next, each of the 710 on the 2005-07 list were assigned to one of the nine health care categories (note that two subsequent biennial reviews of the list have resulted in a list that is 692 lines long). During this process, as has occurred with all biennial reviews, lines were merged or split in an attempt to where appropriate. For example, all superficial abscesses where combined into one line as outcomes and costs are similar regardless of where the abscess is located. In contrast, the Commission found relatively minor birth traumas lumped together with imminently life-threatening conditions and split these into two separate lines. As more lines were merged together than split, the new list was reduced by about lines compared to the previous list of 710.

Once the condition treatment pairs were assigned to one of the nine health care categories, a list of criteria was developed to sort the line items within the categories (see Table 2). These measures were felt to best capture the impacts on both the individual's health and the population health that HSC thought were essential in determining the relative importance of a condition-treatment pair. The HSC Medical Director and HSC Director worked with two HSC physician members to established ratings for the criteria for over 100 lines in order to establish a general scale to follow for each of the criteria. The HSC Medical Director (and in most cases HSC Director) then met with individual HSC physician members and other volunteer physicians

Table 1
Rank Order of Health Care Categories

1) Maternity & Newborn Care (100) - Obstetrical care for pregnancy. *Prenatal care; delivery services; postpartum care; newborn care for conditions intrinsic to the pregnancy.*
2) Primary Prevention and Secondary Prevention (95) - Effective preventive services used prior to the presence of disease and screenings for the detection of diseases at an early stage. *Immunizations; fluoride treatment in children; mammograms; pap smears; blood pressure screening; well child visits; routine dental exams.*
3) Chronic Disease Management (75) - Predominant role of treatment in the presence of an established disease is to prevent an exacerbation or a secondary illness. *Medical therapy for diabetes mellitus, asthma, and hypertension. Medical/psychotherapy for schizophrenia.*
4) Reproductive Services (70) - Excludes maternity and infertility services. *Contraceptive management; vasectomy; tubal occlusion; tubal ligation.*
5) Comfort Care (65) - Palliative therapy for conditions in which death is imminent. *Hospice care; pain management.*
6) Fatal Conditions, Where Treatment is Aimed at Disease Modification or Cure (40) - *Appendectomy for appendicitis; medical & surgical treatment for treatable cancers; dialysis for end-stage renal disease; medical therapy for stroke; medical/psychotherapy for single episode major depression.*
7) Nonfatal Conditions, Where Treatment is Aimed at Disease Modification or Cure (20) - *Treatment of closed fractures; medical/psychotherapy for obsessive-compulsive disorders; medical therapy for chronic sinusitis.*
8) Self-limiting conditions (5) - Treatment expedites recovery for conditions that will resolve on their own whether treated or not. *Medical therapy for diaper rash, acute conjunctivitis and acute pharyngitis.*
9) Inconsequential care (1) - Services that have little or no impact on health status due to the nature of the condition or the ineffectiveness of the treatment. *Repair fingertip avulsion that does not include fingernail; medical therapy for gallstones without cholecystitis, medical therapy for viral warts.*

Table 2
Population and Individual Impact Measures

Impact on Health Life Years - to what degree will the condition impact the health of the individual if left untreated, considering the median age of onset (i.e., does the condition affect mainly children, where the impacts could potentially be experienced over a person's entire lifespan)? *Range of 0 (no impact) to 10 (high impact).*

Impact on Suffering - to what degree does the condition result in pain and suffering? Effect on family members (e.g. dealing with a loved one with Alzheimer's disease or needing to care for a person with a life-long disability) should also be factored in here. *Range of 0 (no impact) to 5 (high impact).*

Population Effects - the degree to which individuals other than the person with the illness will be affected. Examples include public health concerns due the spread of untreated tuberculosis or public safety concerns resulting from untreated severe mental illness. *Range of 0 (no effects) to 5 (widespread effects).*

Vulnerability of Population Affected - to what degree does the condition affect vulnerable populations such as those of certain racial/ethnic decent or those afflicted by certain debilitating illnesses such as HIV disease or alcohol & drug dependence? *Range of 0 (no vulnerability) to 5 (high vulnerability).*

Tertiary Prevention - in considering the ranking of services within new categories 6 and 7, to what degree does early treatment prevent complications of the disease (not including death)? *Range of 0 (doesn't prevent complications) to 5 (prevents severe complications).*

Effectiveness - to what degree does the treatment achieve its intended purpose? *Range of 0 (no effectiveness) to 5 (high effectiveness).*

Need for Medical Services - the percentage of time in which medical services would be required after the diagnosis has been established. *Percentage from 0 (services never required) to 1 (services always required).*

Net Cost - the cost of treatment for the typical case (including lifetime costs associated with chronic diseases) minus the expected costs if treatment is not provided -- including costs incurred through safety net providers (e.g., emergency departments) for urgent or emergent care related to the injury/illness or resulting complications. *Range of 0 (high net cost) to 5 (cost saving).*

with OHP experience. After ratings were established for all 710 lines, they were reviewed by the HSC Medical Director and HSC physician members for accuracy and consistency. A total score was then calculated for each line using the following formula to sort all line items within each of the health care categories, with the lowest net cost used to break any ties:

Impact on Healthy Life Years + Impact on Suffering + Population Effects + Vulnerable of Population Affected + Tertiary Prevention (categories 6 & 7 only)	X	Effectiveness	X	Need for Service

A workgroup of the HSC members then met to explore the best method for intermixing condition-treatment pairs across health care categories. While the nine health care categories were meant to establish the framework of the new list it was always clear that not every service in Category 1 was more important than every service in Category 2 and so on. In the methodology used to develop the initial prioritized list implemented in February 1994, approximately 75% of the line items where hand adjusted after an initial computer sort on the

treatment's prevention of death and cost of the treatment. The workgroup found that applying a weight to each category that was then multiplied by the total criteria score for each condition-treatment pair achieved an appropriate adjustment in the majority of the cases. The full commission agreed with the conclusions of the workgroup and approved the weights shown in parentheses after the title for each category in Table 1. Hand adjustments were applied where the application of this methodology did not result in a ranking that reflected the importance of the service, which was the case in fewer than 5% of the line items.

The following two examples illustrate line items that were given a very high score and a very low score as a result of this process.

Schizophrenic Disorders	Grade I Sprains of Joints and Muscles
(Old line: 159, New line: 27)	(Old line: 626, New line: 628)
Impact on Healthy Life Years: 8	Impact on Healthy Life Years: 1
Impact on Suffering: 4	Impact on Suffering: 1
Effects on Population: 4	Effects on Population: 0
Vulnerability of Population Affected: 0	Vulnerability of Population Affected: 0
Effectiveness: 3	**Effectiveness: 2**
Need for Service: 1	Need for Service: 0.1
Net Cost: 5	*Net Cost: 4*
Category 3 Weight: 75	Category 8 Weight: 5
Total Score: 3600	Total Score: 2
[(8+4+4+0) x 3 x 1] x 75 = 3600	[(1+1+0+0) x 2 x 0.1 x 5 = 2

Some of the services moving towards the top of the list as a result of this reprioritization include maternity care and newborn services, preventive services found to be effective by the US Preventive Services Task Force, and treatments for chronic diseases such as diabetes, major depression, asthma, and hypertension, where ongoing maintenance therapy can prevent exacerbations of the disease that lead to avoidable high-intensity service utilization, morbidity, and death.

PUBLIC INPUT

The HSC solicited public and stakeholder input throughout the process. As always, all commission meetings are open to the public and time is set aside for public testimony. When the HSC was initially considering reprioritizing the list, they sent out a survey to over 200 stakeholders. This included physicians randomly selected from the Board of Medical Examiners mailing list, specialty societies, hospitals, safety net clinics and school-based health centers. Thirty-one responses were received and, of these, thirty were supportive of a new emphasis on prevention and chronic disease management.

After the methodology had taken shape, the HSC conducted five focus groups with specialty society presidents, members of the Oregon Academy of Family Practice, representatives from service providers (hospitals, physicians, OHP managed care plans, mental health, chemical dependency, dentistry and home health), consumers, and consumer advocates. There was no objection to the direction that the HSC was taking.

Medical directors and administrators for the contracted managed care plans were kept up to date on the HSC's work and also were supportive of the reprioritization effort.

Oregon's Value-Based Benefits Package

Office for Oregon Health Policy and Research

January 2012

Essential Benefits for Universal Coverage in Oregon

- State originally directed by legislature in 2007 to "develop recommendations for defining a set of essential health services that would be available to all Oregonians under a comprehensive reform plan."
- Legislature recommended using Oregon's Prioritized List of Health Services as the basis for developing an essential benefits package

Prioritized List of Health Services

- Evidence-based benefits package used for Oregon Health Plan (Medicaid) since 1994
  - Developed and maintained by the Health Services Commission (HSC)
    - Health professionals and patient advocates
  - Services are prioritized according to impact on individual and population health, and effectiveness
  - Services necessary to determine a diagnosis are covered; list is used to determine coverage of services for specific diagnoses
  - Ancillary services such a prescription drugs and durable medical equipment are covered for conditions in the funded region
  - Legislature determines funding level (about 70% of lines are covered)

The Prioritized List

Line Number	Examples of Services	Coverage
1	Maternity care	
101	Treatment of moderate to severe head injury	
201	Medical therapy for acute pancreatitis	
301	Treatment for rheumatic heart disease	
401	Laser therapy to prevent retinal tear	
501	Treatment for benign breast disorders	Covered
551	Treatment for plantar fasciitis	Not Covered
651	Treatment for acute viral conjunctivitis	

Oregon's Value-Based Benefits Package

- 2007 - used the Prioritized List as platform for value-based benefits package for statewide use
  - Starting with state plans and commercial insurers participating in a state exchange
- Tiered coinsurance/copays
  - Four tiers based on evidence methodology of Prioritized List
  - Lower cost sharing for primary care outpatient services
- Little or no cost sharing for:
  - Preventive and chronic illness management services
  - Basic diagnostic services
  - Comfort care

Oregon's Value-Based Benefits Package

Service Tier	Examples of Services	Cost Sharing
Value-Based	Routine vaccinations, prenatal care, chronic illness management, smoking cessation treatment	0-5%
Tier 1 (Lines 1-112)	Highly effective care for severe chronic disease and life-threatening illness & injury *(e.g., rheumatoid arthritis, heart attack, low birth weight)*	Low
Tier 2 (Lines 113-311)	Effective care of other chronic disease and life-threatening illness & injury *(e.g., glaucoma, breast cancer, ADHD)*	Moderate
Tier 3 (Lines 312-502)	Effective care for non-life-threatening illness & injury *(e.g., ear/sinus infections, herniated disk, reflux, dentures)*	High
Tier 4 (Lines 503-679)	Less effective care and care for self-limited illness and minor illness & injury *(e.g., chronic low back pain, viral sore throat, seasonal allergies, acne)*	Highest

20 Sets of Value-Based Services in Oregon's Value-Based Benefit Package

- Value-based services are tests or treatments that are highly effective, low cost, with strong evidence supporting their use
- Most of these services should be provided via outpatient care – ideally in a patient-centered primary care home
- These services should be offered at no cost (or minimal cost) to patients in order to encourage use, given their high level of benefit

Remove Barriers to Care: Examples of Value-Based Services

Diabetes

- Meds: Insulin, oral glucose lowering drugs
- Labs: Hba1c (blood test to check diabetes control)
- Other services: Eye exams

Congestive Heart Failure (CHF)

- Meds: Generic blood pressure meds (beta-blocker, ACE inhibitor, diuretic)
- Labs: Annual blood count (CBC), metabolic panel (CMP), cholesterol/lipid profile, urine test; thyroid test (TSH), once
- Other tests: EKG, echocardiogram
- Other services: Nurse case management (for selected patients)

Hypothetical Example—Silver Level Plan

Robert is single, earns $20,000 per year

- He purchases insurance through an insurance exchange
- He will get tax credits to assist with his premium
- He chooses a VBBP with 10%/30%/50%/70% tiered coinsurance
- His deductible is $300; out-of-pocket max is $1,600 – amounts limited due to his income level
- Plan uses an evidence-based formulary for medications
  - $10 for generic,
  - $30 for preferred,
  - 50% for nonpreferred

Robert Has Type 2 Diabetes

- His insulin, eye exams, and diabetic labs/supplies are covered with little or no cost sharing since part of value-based services
- His doctor finds a diabetic foot ulcer, and refers him to a surgeon and prescribes a generic antibiotic
  - No cost sharing for preventive service visit
  - For the antibiotic, Robert pays a $10 copay based on an evidence-based formulary
- The surgeon treats the ulcer; cost: $2,000
  - This Tier I service has 10% coinsurance
  - $300 applies to deductible, and Robert pays 10% of the remaining $1,700 for a total out-of-pocket cost of $470

Note: Today, in a typical commercial plan out-of pocket costs would be $810 plus exams, diabetic meds and supplies copays

Preliminary Actuarial Analysis

- Initial pricing model developed based on Medicaid PMPM data
- Applied for first time to 2009 commercial data set
- Judgment, rules of thumb, and many assumptions made to tease out first estimates for value-based services and diagnostic services
- Initial analysis suggests 3-5% savings possible
- Work recently completed to convert to more robust unit cost model to allow for modeling reimbursement by tier

Distribution of Sample Commercial Costs Using Initial Model

- VBS – 4%
- Tier I – 19%
- Tier II – 20%
- Tier III – 23%
- Tier IV – 8%
- Rx (no Dx code) – 13%
- Diagnostic services – 8%
- Ambulance/ED – 4%

Expected Utilization Offset Due to Change in Cost Sharing

- VBS – moderate increase (10-20%)
- Tier I – modest increase (5-10%)
- Tier II – None
- Tier III – modest decrease
- Tier IV – moderate decrease
- Rx – moderate decrease
- Diagnostic services – varies
- Ambulance/ED – None*

Focus Group Findings

Conducted focus groups for insurers, agents/ producers, providers, hospitals, large and small employers, consumers (insured and uninsured), and consumer advocates

- Value-based/low or no cost-sharing services are appealing
- Wellness must have an even greater emphasis
- Levels and tiers are complicated

Focus Group Findings

- Concern that benefit design is “one-size fits all” approach
- Amount of education and communication required to introduce this benefits design is daunting
- Concern about who decides what’s important and in what tiers
- Benefit design has some inherent inequities
- Premiums must be significantly lower to be attractive

Oregon's Value-Based Benefit Package: Summary

- Furthers Oregon's Triple Aim by incenting the most effective services
- Furthers value-based design plans in use by health care purchasers now (including state employees and school districts)
- Oregon is considering how to couple VBBP with payment reform
- Preliminary review shows that the Oregon's VBBP cost sharing could be adjusted to fit federal reform limits
- Flexibility allowed through federal regulations on value-based benefit design would be helpful

Value-Based Services

The Health Services Commission has identified 20 sets of health care services, known as value-based services (VBS), which can be used right away by insurance companies and purchasers both in the private and public sectors. Value-based services are medications, tests, or treatments that are highly effective, low cost, and have lots of evidence supporting their use. The Commission recommends these services have no cost sharing (copays or coinsurance) to patients in order to encourage the use of these services, given their high level of benefit.

The VBS concept is based on the work of the Oregon Health Fund Board Benefits Committee, refined through a series of public workgroup and Health Services Commission meetings. Removing barriers to these effective services and treatments should help reduce higher cost interventions (like hospital admissions), leading to lower health care costs and a healthier population.

Services had to meet the following criteria for inclusion:

- Ambulatory services (i.e. outpatient), and include medications, diagnostic tests, procedures, and some office visits
- Primarily offered in the medical home
- Primarily focused on chronic illness management, preventive care, and/or maternity care
- Of clear benefit, strongly supported by evidence
- Cost-effective
- Reduce hospitalizations or Emergency Department visits, reduce future exacerbations or illness progression, or improve quality of life
- Low cost up front
- High utilization desired
- Low risk of inappropriate utilization

Some examples of value-based services include: insulin and certain medications for diabetic patients; generic blood pressure medications and nurse case management for congestive heart failure patients; and certain generic medications and lab tests for patients with coronary artery disease.

The Commission has established VBS separate from the Prioritized List of Health Services so that this tool can be used immediately. While the VBS concept can be applied to the Oregon Health Plan (OHP), many OHP recipients already receive these services with little or no cost-sharing. Instead, it is expected that the VBS concept could have a more significant impact in the commercial health insurance market, where these services could explicitly be offered without the considerable copays or coinsurance often required now.

Similar proposals from the Health Leadership Council and the American Heart Association were examined and incorporated where applicable. The inclusion of specific health care services required high-quality supporting evidence such as Cochrane systematic reviews of randomized controlled clinical trials and evidence-based guidelines. In the future, other services will likely be reviewed, and the VBS updated annually to ensure that the most current evidence is used for designing coverage.

Value-Based Services

Proposed "Barrier-Free" services for use within a value-based benefit package

Diagnosis	Medications	Labs	Imaging/Ancillary	Other
Asthma	Medications according to NICE 2008 stepwise treatment protocol	None	Diagnostic spirometry	None
Bipolar Disorder	Lithium, valproate	Lithium – lithium level (q3 months); creatinine and TSH (q6 months) Valproate -LFTs and CBC (q6 months)	None	Medication management
Cancer Screening	None	Pap smears Fecal occult blood testing	Mammography Colonoscopy/Flexible sigmoidoscopy	Per USPSTF recommendations, "A" and "B" recommendations only
Chemical Dependency Treatment	Buprenorphine for opioid dependence Acampromsate for alcohol dependence	None	None	Brief behavioral intervention to reduce hazardous drinking (SBIRT) Methadone maintenance treatment
Chronic Obstructive Pulmonary Disease(COPD)	Short-acting inhaled bronchodilator	None	None	None
Congestive Heart Failure (CHF)	Beta-blockers, ACE inhibitors, diuretics	CBC, CMP, lipid profile, urinalysis (annually) TSH once	EKG, Diagnostic echocardiogram	Nurse case management
Coronary Artery Disease (CAD)	Aspirin, statins, beta blockers	Lipid profile (annually)	EKG	Cardiac rehabilitation for post-myocardial infarction (MI) patients

Value-Based Services

Diagnosis	Medications	Labs	Imaging/Ancillary	Other
Dental Care, Preventive	Fluoride supplements (age 6 months to age 16), if indicated Professionally applied fluoride varnish (twice yearly in children aged 12 months to16 years old who are at high risk), if indicated	None	Pit and fissure sealants in permanent molars of children and adolescents	None
Depression, Major in Adults (Severe Only)	SSRIs	None	None	Cognitive Behavioral Therapy (CBT) or Interpersonal Therapy (subject to limit, e.g. 10 per year) in conjunction with an antidepressant Medication management
Depression, Major in Children and Adolescents (Moderate to Severe)	None	None	None	Psychotherapy (CBT, interpersonal, or shorter term family therapy)
Diabetes – Type I	Insulin (NPH and regular only), insulin supplies, ace inhibitors	HgA1c (annually)	None	Diabetic retinal exam for adults (annually)
Diabetes – Type II	Metformin, sulfonyureas, ACE inhibitors, insulin (NPH and regular only), insulin supplies	HgA1c, lipid profile (annually)	None	Diabetic retinal exam for adults (annually)

Value-Based Services

Diagnosis	Medications	Labs	Imaging/Ancillary	Other
Hypertension	Diuretics, ACE inhibitors, Calcium channel blockers, Beta blockers	Fasting glucose, fasting lipids (annually)	None	None
Immunizations	Routine childhood and adult vaccinations	None	None	Follow ACIP recommendations for non-travel vaccinations
Maternity Care	Folic acid, Rh immunoglobulin (when indicated)	Screening for hepatitis B, Rh status, syphilis, chlamydia, HIV, iron deficiency anemia, asymptomatic bactiuria, rubella immunity, screening for genetic disorders	None	None
Newborn Care	Ophthalmologic gonococcal prophylaxis, Vitamin K prophylaxis	Sickle cell, congenital hypothyroidism, PKU (cost borne by the state)	None	None
Reproductive Services	Condoms, combined oral contraceptives, intrauterine devices, vaginal rings, Implanon, progesterone injections, female sterilization, male sterilization	See STI screening and maternity care	None	None
Sexually Transmitted Infections	Syphilis – Penicillin IM or doxycycline Chlamydia – azithromycin or doxycycline Gonorrhea – ceftriaxone IM or cefixime po	In certain populations: chlamydia, gonorrhea, HIV, syphilis	None	According to USPSTF guidelines for appropriate populations to screen (A and B recommendations only)

Value-Based Services

Diagnosis	Medications	Labs	Imaging/Ancillary	Other
Tobacco Dependence	Nicotine replacement therapy, nortryptiline, and buproprion	None	None	None
Tuberculosis (TB)	Per CDC guidelines – standard drug treatment for latent and active TB	Screening and diagnostic algorithm according to CDC guidelines	Chest x-ray per CDC guidelines	None

Guidelines based on empirical evidence (systematic reviews and health technology assessments), from trusted sources such as:
ACIP, AHRQ, Cochrane Collaboration, CDC, OHSU Center for Evidence-Based Policy, NICE, NIH, Ontario, SIGN, USPSTF, WHO

General principles

For medications

1) Generics unless no equivalent available
2) Medications for ≤ $4 per month are preferred to more expensive medications

Glossary

ACE: angiotension converting enzyme
ACIP: Advisory Committee on Immunization Practices
AHRQ: Agency for Healthcare Research and Quality
CBC: complete blood count
CDC: Centers for Disease Control and Prevention
CMP: complete metabolic panel
EKG: electrocardiogram
HgA1c: hemoglobin A1c
HIV: human immunodeficiency virus
IM: intramuscularly
LFTs: liver function tests
NICE: National Institute for Health and Clinical Excellence (England)
NIH: National Institutes of Health
OHSU: Oregon Health & Science University
PKU: phenoketonuria
SIGN: Scottish Intercollegiate Guidelines Network
SBIRT: screening, brief intervention, and referral to treatment
SSRIs: serotonin specific reuptake inhibitors
STI: sexually transmitted infection
TSH: thyroid stimulating hormone
USPSTF: US Preventive Services Taskforce
WHO: World Health Organization

Proposed Health Evidence Review Commission (HERC)
Work Plan - Year 1

The HERC will serve as the state's focal point for building consensus on the use of comparative effectiveness research, technology assessment and evidence-based guidance and best practices as it also takes over the work of the Health Services Commission (HSC) and Health Resources Commission (HRC). It is a vital aspect of the state's efforts on Health System Transformation to achieve the triple aim of better health, better health care and lower health care costs.

The HERC will complete its work with the assistance of subcommittees, with the HERC identifying the focused topics for clinical guidance development and technology assessment. Staff of the Oregon Health Authority, particularly the Clinical Services Improvement Unit in the Office for Oregon Health Policy and Research (OHPR) and the OHA health care programs, will assist the HERC and will work closely with the OHA's Health Analytics Unit to use data from the All Payer/All Claims (APAC) database and other data sources to identify where to direct their work efforts most effectively, and to assess the potential impact on health care quality, outcomes, utilization and cost of technology assessments , best practices and guidance, and benefit design.

The HERC's work will engage a broad range of stakeholders, including solicitation of public comment at all stages of the work processes. They will also establish principles and otherwise direct work on the Prioritized List, Value-based Services and other value-based benefit packages for use by OHA programs. The HERC and its subcommittees can also serve as a technical resource to the staff of the Oregon Health Insurance Exchange in their benefit design work.

In order to be most efficient with limited resources and complete its work, the HERC and its subcommittees will build on OHA's existing relationship with the Center for Evidence-based Policy (CEBP) to conduct evidence searches and assess the quality of studies (including systematic reviews and technology assessments), guidelines and other forms of evidence. The Center can assist in producing a catalogue of topics from which to develop OHA specific and statewide evidence-based guidance and best practices that will address the utilization trends of the different lines of coverage in the OHA and/or of importance to Oregon's delivery system and transformation goals.

The HERC will establish three subcommittees to conduct its work. They will need to work closely together to coordinate efforts to best assist the HERC's work. They are as follows:

- Value-based Benefits Subcommittee (VbBS): Reviews and makes recommendations on all work related to the :
    - Prioritized List of Health Services (code placement and line ranking)
    - Sets of Value-Based Services (those services that should be encouraged without barriers)
    - Potential design of value-based benefit packages

- Evidence-based Guidelines Subcommittee (EbGS): Develop and promote evidence-based guidelines and guidance of emerging best practices in the following context:
    - New Statewide Evidence-based Guidelines and related documents, based on the highest utilization areas with an aim of 25 by August 2012. These would be a mixture of:
        - Continued work on the initial set of 10 guidelines already underway in partnership with the Center for Evidence-Based Policy
        - Updating and any needed revisions to existing guidelines currently in place with the Prioritized List that could then be used across OHA and statewide
        - Review and adoption of existing MED Project guidelines not yet adopted in Oregon
        - Additional areas of needed guidance based on current utilization data across OHA programs
    - Updates to existing Statewide Evidence-based Guidelines (beginning 2014)

- Ongoing work with CEBP on above guidance and others in preparation for the HERC's need to address 20-30 best practice, evidence-based guidelines and/or quality improvement products in their first 6 months, assess cost/contracting issues needed for CEBP.

- Health Technology Assessment Subcommittee (HTAS): Conduct technology assessments and comparative effectiveness reviews of health technologies includingmedical, surgical and other health treatments and devices for use across OHA programs and beyond. They will work closely with the Evidence-based Guideline Subcommittee and the Value-based Benefits Subcommittee as specific health technologies arise in those groups' work.

- Behavioral Health, Oral Health, other Ad-hoc Advisory Panels: The VbBS, EbGS and HTAS will be assisted by advisory panels on behavioral health, oral health and others as identified, who will meet as directed by the subcommittees or by the HERC. The HERC will have mental health/substance abuse and oral health experts represented on the other committees routinely as well. This will allow for optimal integration of behavioral physical health and oral health across all of the areas of work, rather than operating separate subcommittees as the HSC had done in the past, but there will be times where a separate advisory panel will be the most efficient means of completing certain aspects of the work.

The subcommittees will include one or more HERC members, with one acting as the liaison between each subcommittee and full commission. The subcommittees will be made up of 7-9 members, with representation consisting of a broad mix of health care specialties, particularly those without representation on the HERC. The HERC, its subcommittees and advisory panels will be staffed by OHPR's Clinical Services Improvement Unit in partnership with OHA program staff, with primary responsibility based on current available staff.

HERC Timeline January-August 2012

HERC meetings

January:

- Orientation, Chair & Vice-Chair selection, Subcommittee & advisory panel formation; Establish work plan for 2012.
- Updates on current statewide guidelines work to date, needed next steps,
- Initial identification of topics for achieving aim of 20-30 guidelines in first 6 months.
- Review Prioritized List update process/timelines

February:

- Finalize initial list of topics for at least 15 statewide guidelines or health technology assessments (including those already identified for HSC, MED Project topics and Prioritized List guidelines amenable to updating for statewide use) that the Center can find appropriate materials for review by subcommittee.
- Update on value-based benefits work to date, relationship to federal essential benefits plan and work plan on alignment with needs of Medicaid and HIX for upcoming 2014 expansions.

March: Do not schedule HERC to allow subcommittees to complete initial deliverables

April:

- Finalize identifying next set of 15 topics for statewide guidelines or health technology assessments in partnership with the Center and correlated with APAC data on utilization;
- Approve guidelines on imaging for chronic back pain and subcutaneous procedures for spinal pain and the first set of completed guidelines for Statewide and Prioritized List use. (Aim: total of 6 approved)

May: May not meet, unless needed if adequate number of reports from subcommittee ready, or if need for Essential Benefits update if federal regulations are available

June:

- Approve next 6 sets of guidelines for use statewide and with Prioritized List;
- Identify 8 more guideline topics for use statewide and with Prioritized List to develop/revise;
- Finalize biennial review and draft 10/1/13 Prioritized List.

August:

- Approve 12 guidelines for use statewide and with Prioritized List; (total of 24 finished)
- Identify 8 more guideline topics for use statewide and with Prioritized List to develop/revise;
- Approve 10/1/12 Prioritized List.

Onward: Aim to approve (or eventually update) 4-6 guidelines or health assessment reports at each meeting, in addition to required Prioritized List approvals/updates.

Value-based Benefits Subcommittee (VbBS)

- **February**: Orientation; Develop 2012 work plan; Review ICD-10 reports from meetings with specialty groups; Background on value-based benefits work to date.
- **March**: Review ICD-10 reports from meetings with specialty groups; Any updates on Federal Essential Health Benefits Package and its implications, alignment with 2014 Medicaid and HIX coverage expansions.
- **April:** Review remaining ICD-10 reports from meetings with specialty groups
- **May:** Review initial draft biennial list resulting from ICD-10 conversion
- **June:** Formulate final recommendations for draft 10/1/13 Prioritized List
- **August**: Review and make recommendations on placement of new ICD-9 codes and other technical changes for 10/1/12 Prioritized List

Evidence-based Guideline Subcommittee (EbGS)

- **February:** Orientation; Develop 2012 work plan based on HERC overall work plan. Review and revise guideline development process; Continue work on guidelines on imaging for chronic low back pain and subcutaneous procedures for spinal pain.
- **March:** Complete work on guidelines on imaging for chronic low back pain and subcutaneous procedures for spinal pain. Begin work on next guidelines/best practices with a focus on existing MEDS project guidelines and those already in place with Prioritized List if topics are relevant to Oregon's/OHA's utilization in order to expedite the work over the next six months. Identify where technology assessments are needed to synchronize work with the Health Technology Assessment subcommittee.
- **April-August and onward:** Continue to work through guidelines/best practices to deliver report documents to the HERC as they are finished for input and approval.

Health Technology Assessment Subcommittee (HTAS)

- **February:** Orientation on evidence review process, develop 2012 work plan based on HERC overall work plan. Convene as Rules Advisory Committee to review and revise draft temporary rules so can initiate formal rules process for med tech assessment review process.
- **March:** Review HERC's proposed initial topics and available materials for prioritization, identifying initial topic for April's meeting.
- **April:** Finalize initial set and order of topics based on available materials, initial utilization review data from APAC, and initial set of HERC statewide guidelines' needs. Begin work on first medical technology assessment
- **May onward**: Ongoing med tech assessment work, aligned with the Clinical guidelines work to deliver report documents to the HERC as they are finished for input and approval

Behavioral Health Advisory Panel

- Meet at the call of the VbBS, EbGS, MTAS or HERC

Oral Health Advisory Panel

- Meet at the call of the VbBS, EbGS, MTAS or HERC

Posterior Composite Restorations

Question: Should the Prioritized List be modified to include the coverage of single-surface posterior composite restorations on occlusal surfaces and class V surfaces in the esthetic zone?

Question source: James Tyack, DMD

Issue: At the last meeting of the HSC's Dental Services Subcommittee in May 2011 in which final modifications were made to the new dental lines appearing on the January 1, 2012 Prioritized List, a recommendation was developed for HSC consideration to move all posterior composites to a non-funded line. Do to a technical issue, it was brought back to the December meeting. However, simultaneously there were parallel communication with DMAP that had modified the recommendation to allow posterior composites to be covered in certain circumstances.

There are a number of reasons for recommending coverage of HCPCS code D2391 (Resin-based composite - one surface, posterior) in certain patients. It is a highly successful treatment that often does not require the administration of a local anesthetic to children The limited coverage of this code for adult teeth in the esthetic zone would be in line with the coverage of composite restorations for anterior teeth and would follow the strong public input heard in multiple public forums by the HSC advocating for help to clients in their ability to obtain gainful employment. Reimbursement for these services would continue to be at the same rate as amalgam fillings.

Current List Status

Line: 372
Condition: DENTAL CONDITIONS (EG. CARIES, FRACTURED TOOTH)
Treatment: BASIC RESTORATIVE (E.G. COMPOSITE RESTORATIONS FOR ANTERIOR TEETH, AMALGAM RESTORATIONS FOR POSTERIOR TEETH)
ICD-9: 521.0,521.3
HCPCS: D2140-D2335,**D2390**,D2930-D2933,D2950,D2951,D2954,D2957,D2980,D6970-D6973,D6977,D6980

Line: 676
Condition: DENTAL CONDITIONS WHERE TREATMENT RESULTS IN MARGINAL IMPROVEMENT
Treatment: ELECTIVE DENTAL SERVICES
ICD-9: 520.7
CPT: 98966-98969,99051,99060,99201-99215,99241-99255,99366,99441-99444,99605-99607
HCPCS: **D2391-D2394**,D3470,D3920,D3950,D4263,D4264,D5225,D5226,D7272,D7950,D7953,D7972,D7998,D9910,D9911,D9940-D9942,D9952

Recommendation:

1) Move HCPCS code D2391 (Resin-based composite - one surface, posterior) from Line 676, DENTAL CONDITIONS WHERE TREATMENT RESULTS IN MARGINAL IMPROVEMENT, to Line 372, DENTAL CONDITIONS (EG. CARIES, FRACTURED TOOTH).
2) Adopt the following clarifying guideline to Line 372:

GUIDELINE NOTE 88, ONE SURFACE POSTERIOR COMPOSITE RESTORATIONS

Posterior Composite Restorations

Lines 372

HCPCS code D2391 is only included on this line for one surface posterior composite restorations on occlusal surfaces and class V surfaces in the esthetic zone (buccal surfaces of teeth 3,4,5,12,13,14,19,20,21,28,29,30,A,B,I,J,K,L,S,T).

Potential Initial Oregon State Guidelines Project Topics
Previously Considered By Health Services Commission

Advanced imaging:

- Chronic back pain (MRI, CT and discograms) **UNDER DEVELOPMENT**
- Cardiac disease (coronary CT for calcium score, MR Angiogram, Spectroscopy)
- Chronic pain/dysfunction in peripheral joints (MRI for shoulders, knees, hips)
- PET scans for cancers

Coronary Artery Disease

- Cardiac treatment (Stents versus optimal medical therapy, Stent types: drug eluting versus bare metal)

Maternity Care

- Contraception
- Ultrasound in low risk pregnancy
- Elective induction of labor (less than 39 weeks? And/or include 39-41 wks?)

Musculoskeletal and joint disease

- Management of low back pain **COMPLETED**
- Hip arthroplasty (Indications, Comparison of prostheses)
- Knee arthroplasty (Indications, Comparison of prostheses)
- Spinal injections (epidural, facet, other?) **UNDER DEVELOPMENT**
- Spinal fusion (Foraminal v. central stenosis, Instrumented fusion (fusion cage) versus not (grafting) **UNDER DEVELOPMENT**

Other

- Upper Endoscopy (Indications GERD and dyspepsia)
- Preventing readmission for CHF in the first 30 days after hospitalization **UNDER DEVELOPMENT**
- Preventing readmission for COPD in the first 30 days after hospitalization **UNDER DEVELOPMENT**
- Crowns
- Laser based treatment for venous disease

State of Oregon Evidence-based Clinical Guidelines Project

Evaluation and Management of Low Back Pain

A Clinical Practice Guideline Based on the Joint Practice Guideline of the American College of Physicians and the American Pain Society (Diagnosis and Treatment of Low Back Pain)

Objective

This guideline was developed by a collaborative group of public and private partners to provide up-to-date evidence-based guidance on the evaluation and management of low back pain. The purpose of this guideline is to assist licensed clinicians, working within their scope of practice in the State of Oregon, in the assessment and management of low back pain among non-pregnant adults. Implementation of recommendations in this guideline will be determined by individual health plans and providers.

Background

In June 2009, the Oregon legislature passed health reform legislation, HB 2009, which created the Oregon Health Policy Board and charged it with creating a comprehensive health reform plan for our state. In December 2010, the Board released *Oregon's Action Plan for Health*, which lays out "strategies that reflect the urgency of the health care crisis and a timeline for actions that will lead Oregon to a more affordable, world-class health care system." They outlined eight foundational strategies, one of which is to "set standards for safe and effective care." To accomplish this, the plan directs the state to "Identify and develop 10 sets of Oregon-based best practice guidelines and standards that can be uniformly applied across public and private health care to drive down costs and reduce unnecessary care. This work will be conducted by the Health Services Commission and Health Resources Commission in close collaboration with providers, the Center for Evidence-Based Practice, and other key stakeholders." [1]

During the same time period when this guideline was under development by the State of Oregon, the Oregon Healthcare Leadership Council and the Oregon Health Care Quality Corporation both independently began pursuing the development of practice guidelines that could be used across the state, and the value of collaboration became apparent. The three entities agreed to develop the first guideline together, and in the fall of 2010, selected Evaluation and Management of Low Back Pain as their first guideline topic. Representatives from the three organizations formed the Guideline Development Group (GDG), while clinical evidence specialists from the Center for Evidence-based Policy provided expertise and research to support guideline development.

[1] Effective January 1, 2012, House Bill 2100 (2011) terminates the Health Services Commission and Health Resources Commission and transfers their duties related to evidence-based guideline development to a new Health Evidence Review Commission.

Methods

The GDG was guided in developing this guideline by the ADAPTÉ[2] framework which is a systematic approach to the endorsement or modification of guideline(s) produced in one cultural context or organization setting for application in another context. Guideline adaptation is used as an alternative to wholly new guideline development, which is time consuming, expensive and an inefficient use of resources, when quality guidelines are available.

The process for developing this guideline began by searching 17 different databases and other sources for guidelines related to Acute Low Back Pain (see appendix A). Candidate guidelines were required to be evidence-based (recommendations based on a systematic review of the literature), address the comprehensive clinical management of adults with an acute episode of low back pain, be published in English and be widely available. By "comprehensive," the GDG meant that the guideline would include recommendations on the initial assessment of a patient with a new episode of low back pain, the use of both pharmacologic and nonpharmacologic therapies and the appropriate ongoing management of people who experience continuing low back pain. The GDG required that evidence-based recommendations be made on the basis of both the quality and strength of the underlying data from the guideline's systematic reviews.

Thirteen candidate guidelines were identified, of which 10 were sufficiently comprehensive to address most management issues (Appendix B). Those 10 guidelines were then assessed for methodologic quality using a modified AGREE (Appraisal of Guidelines Research and Evaluation) II[3] instrument (Appendix C) by two different guideline quality assessors from the Center for Evidence-based Policy. Five of those guidelines were rated either Good quality, or Fair quality with Good rigor of development according to the modified AGREE rating tool. These five guidelines were then examined further for scope and clarity of presentation.

After considering guideline age, source, specific treatment elements addressed and presentation, the GDG selected the two guidelines of highest quality that were most comprehensive. The two selected were both good quality and completed in the last five years, whereas the other three were more than 5 years old and were rated fair quality. Of the two selected, the American College of Physicians/ American Pain Society (ACP/APS) guideline was preferred as the base guideline, primarily because it had recommendations concerning the early care of acute low back pain and contained algorithms that were felt to be useful implementation tools.

The ACP/APS guideline in its entirety can be found at the following link: http://www.annals.org/content/147/7/478.long. The ACP/APS guideline is accompanied by full systematic reviews on nonpharmacologic therapies for low back pain (http://www.annals.org/content/147/7/492.full.pdf+html) and the use of medications for low back pain (http://www.annals.org/content/147/7/505.full.pdf+html). Comparison was then made to the other high quality, comprehensive guideline, which was produced by the National Institute for Health and Clinical Excellence (NICE). The full NICE guideline and reviews of the evidence are available at the following link: http://www.nice.org.uk/CG88. There were two significant areas of difference. First, the NICE guideline does not address treatment in the first six weeks. Second, the NICE guideline excludes patients with leg pain or radiculopathy. However, there were no significant differences in other assessment or treatment recommendations between the two guidelines.

[2] http://www.adapte.org/www/
[3] http://www.agreecollaboration.org/

The GDG found no guidelines that focused exclusively on acute low back pain during the first 12 weeks of the episode of back pain. This is primarily because many of the studies in the field include people with back pain of longer duration. The GDG felt that the ACP/APS guideline concentrated on acute low back pain and was also able to contribute guidance toward those patients experiencing more persistent or recurrent back pain. For this reason, the GDG decided to change the focus of the guideline to the evaluation and management of low back pain, regardless of duration. Figure 1 & 2 of the guideline are an algorithm that addresses the initial assessment and management of low back pain, as well as provides management options including both pharmacologic and nonpharmacologic interventions.

The ACP/APS guideline used the ACP's guideline grading system that was adapted from the Grading of Recommendations, Assessment, Development, and Evaluation (GRADE) working group. Guideline recommendations were rated as either strong or weak. Strong recommendations were required to have clear evidence of benefit or harm. Weak recommendations were based on finely balanced benefits, risks and burdens. The overall strength of evidence for each intervention was rated based on factors such as the quality, quantity, consistency, generalizability and directness of the evidence. The ACP/APS guideline panel considered interventions to have "proven" benefit if there was at least fair quality evidence of moderate or substantial benefit (or of small benefit with no significant harms, costs or burdens).

Updating

The ACP/APS guideline was published in 2007. The authors of the guideline were contacted in March 2011 and stated that there had been no new published evidence which would change the recommendations of the guideline and that it was considered current. The GDG recommends that this guideline be reevaluated if the ACP/APS issues an updated guideline and at least every two years for currency if the original guideline is not updated.

Recommendations

Below are the recommendations of the ACP/APS clinical practice guideline. The GDG found that all of these recommendations apply to the objectives and purposes stated above. The recommendations relate to the algorithm which follows (Figure 1 and Figure 2 from the guideline publication) and the algorithm makes reference to the specific numbered guideline recommendations below. Recommendations 2, 3 and 4 are further supported by a systematic review and meta-analysis of imaging strategies published in 2009[4], as well as Best Practice Advice from the American College of Physicians published in 2011[5].

Table A: State of Oregon Evidence-based Clinical Guideline Recommendations for the Management of Low Back Pain

Recommendations		
Recommendation	**Content**	**Strength of Recommendation & Evidence Grade**
1. Focused History & Physical	Clinicians should conduct a focused history and physical examination, including a neurological exam, to help place patients with low back pain into 1 of 3 broad categories: nonspecific low back pain, back pain potentially associated with radiculopathy or spinal stenosis or back pain potentially associated with another specific spinal cause. The history should include assessment of psychosocial risk factors, which predict risk for chronic disabling back pain. *Appropriate referrals for management of potentially serious conditions (see Table B) could be considered at this time.*[6]	Recommendation: Strong Grade: Moderate-quality evidence
2. Routine Imaging for non-specific pain (X-ray, CT, MRI)	Clinicians ***should not*** routinely obtain imaging or other diagnostic tests in patients with nonspecific low back pain.	Recommendation: Strong Grade: Moderate-quality evidence
3. Imaging for underlying conditions present or suspected (X-ray, CT, MRI)	Clinicians should perform diagnostic imaging and testing for patients with low back pain when severe or progressive neurologic deficits are present or when serious underlying conditions are suspected on the basis of history and physical examination. (See Table B for a list of potentially serious conditions)	Recommendation: Strong Grade: Moderate-quality evidence
4. Advanced Imaging (CT, MRI)	Clinicians should evaluate patients with persistent low back pain and signs or symptoms of radiculopathy or spinal stenosis with magnetic resonance imaging (preferred) or computed tomography only if they are potential candidates for surgery or epidural steroid injection (for suspected radiculopathy).	Recommendation: Strong Grade: Moderate-quality evidence

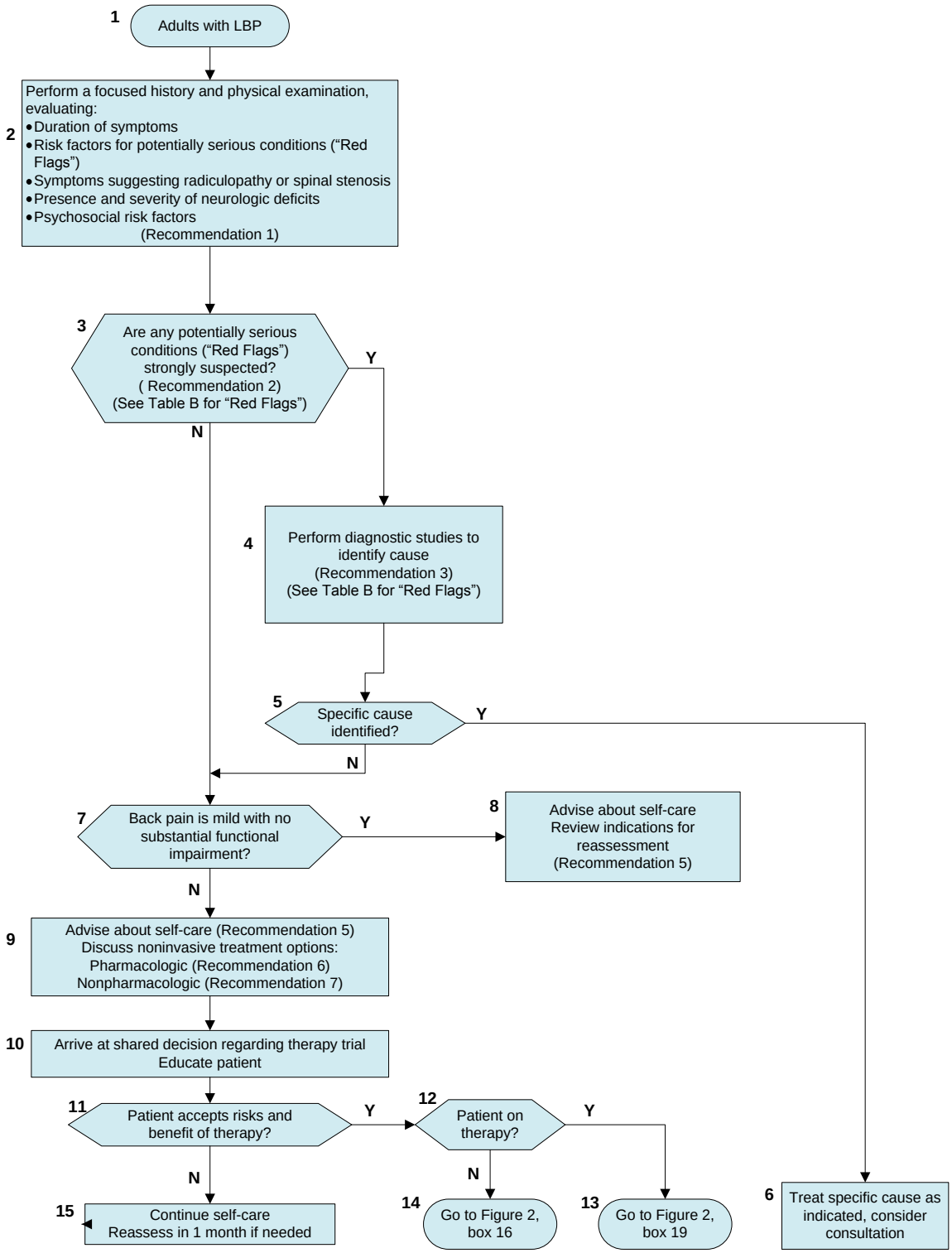
[4] Chou, R, Fu, R, Carrino, J & Deyo, R. (2009). Imaging strategies for low-back pain: systematic review and meta-analysis. *The Lancet,* 373(9662): 463-72.

[5] Chou, R, Qaseem, A, Owens, D, Shekelle, P for the Clinical Guidelines Committee of the American College of Physicians. (2011). Diagnostic imaging for low back pain: Advice for high-value health care from the American College of Physicians. *Annals of Internal Medicine,* 154(3), 181-189.

[6] Making referrals for management of psychosocial risk factors predictive of chronic disabling back pain are not supported by evidence at this time.

Recommendations		
Recommendation	**Content**	**Strength of Recommendation & Evidence Grade**
5. Patient Education	Clinicians should provide patients with evidence-based information on low back pain with regard to their expected course, advise patients to remain active, and provide information about effective self-care options.	Recommendation: Strong Grade: Moderate-quality evidence
6. Pharmacologic therapy	For patients with low back pain, clinicians should consider the use of medications with proven benefits in conjunction with back care information and self-care. Clinicians should assess severity of baseline pain and functional deficits, potential benefits, risks, and relative lack of long-term efficacy and safety data before initiating therapy. Note: For most patients, first-line medication options are acetaminophen or non-steroidal anti-inflammatory drugs	Recommendation: Strong Grade: Moderate-quality evidence
7. Non-pharmacologic therapy	For patients who do not improve with self-care options, clinicians should consider the addition of nonpharmacologic therapy with proven benefits—for acute low back pain, spinal manipulation; for chronic or subacute low back pain, intensive interdisciplinary rehabilitation, exercise therapy, acupuncture, massage therapy, spinal manipulation, yoga, cognitive-behavioral therapy, or progressive relaxation.	Recommendation: Weak Grade: Moderate-quality evidence

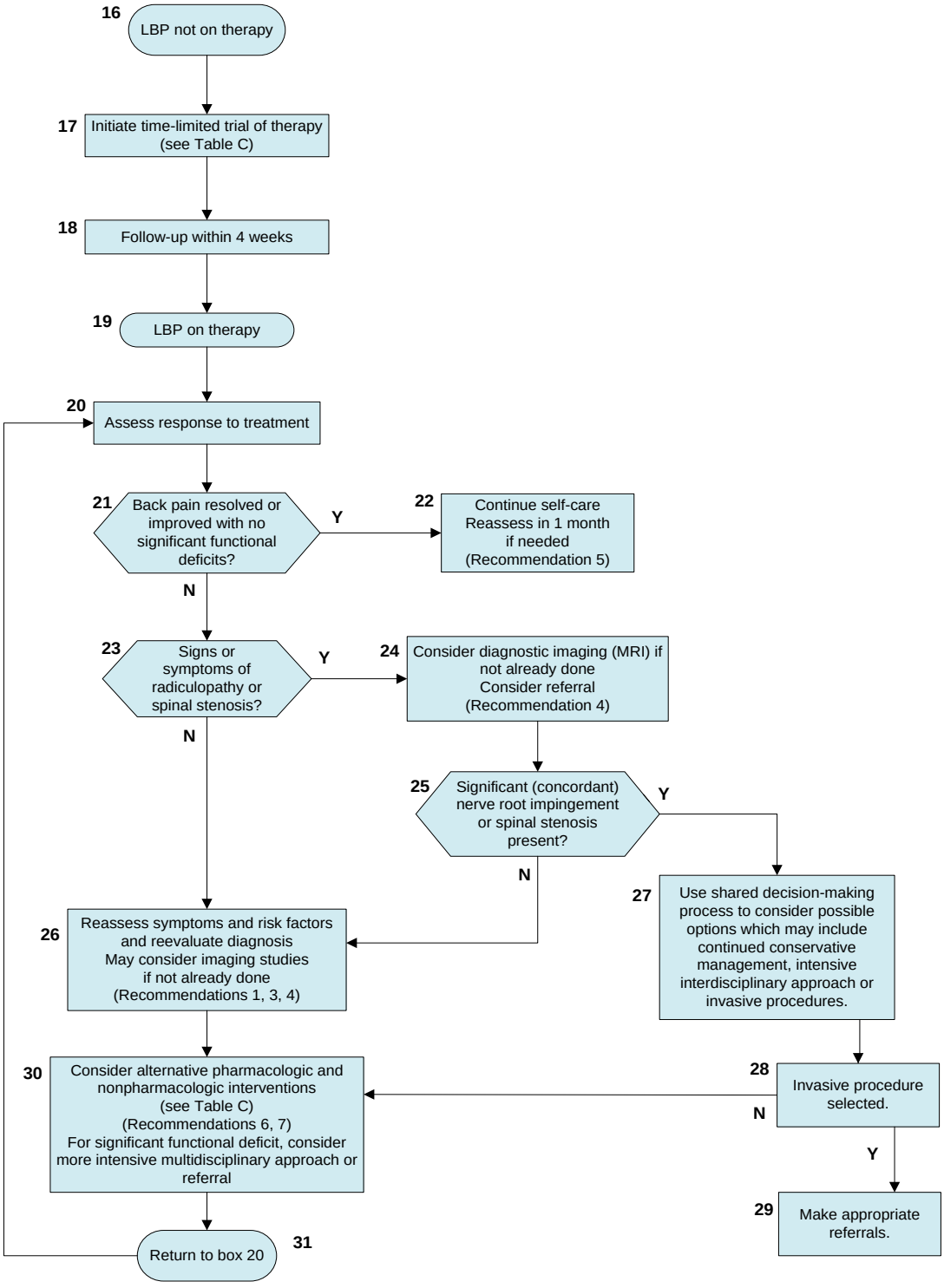
Figure 1. **Initial evaluation & management of low back pain (LBP).**



This algorithm should not be used for back pain associated with major trauma, nonspinal back pain, or back pain due to systemic illness.

Extracted and modified from Chou R, Qaseem A, Snow V, et al: Diagnosis and Treatment of Low Back Pain: A Joint Clinical Practice Guideline from the American College of Physicians and the American Pain Society. Ann Intern Med. 2007;147:478-491.

***Figure 2*. Management of low back pain (LBP).**



Extracted and modified from Chou R, Qaseem A, Snow V, et al: Diagnosis and Treatment of Low Back Pain: A Joint Clinical Practice Guideline from the American College of Physicians and the American Pain Society. Ann Intern Med. 2007;147:478-491.

Table B: Potentially Serious Conditions ("Red Flags") and Recommendations for Initial Diagnostic Work-up (Addresses Recommendations 1-4)

Possible cause	Key features on history or physical examination	Imaging*	Additional studies*
Cancer	History of cancer with new onset of LBP	MRI	ESR
	• Unexplained weight loss • Failure to improve after 1 month • Age >50 years	Lumbosacral plain radiography	
	Multiple risk factors present	Plain radiography or MRI	
Spinal column infection	• Fever • Intravenous drug use • Recent infection	MRI	ESR and/or CRP
Cauda equina syndrome	• Urinary retention • Motor deficits at multiple levels • Fecal incontinence • Saddle anesthesia	MRI	None
Vertebral compression fracture	• History of osteoporosis • Use of corticosteroids • Older age	Lumbosacral plain radiography	None
Ankylosing spondylitis	• Morning stiffness • Improvement with exercise • Alternating buttock pain • Awakening due to back pain during the second part of the night • Younger age	Anterior-posterior pelvis plain radiography	ESR and/or CRP, HLA-B27
Nerve compression /disorders (e.g. herniated disc with radiculopathy) (Recommendation 4)	• Back pain with leg pain in an L4, L5, or S1 nerve root distribution • Positive straight-leg-raise test or crossed straight-leg-raise test	None	None
	• Radiculopathic symptoms present >1 month • Severe/progressive neurologic deficits, progressive motor weakness	MRI**	Consider EMG/NCV
Spinal stenosis (Recommendation 4)	• Radiating leg pain • Older age • Pain usually relieved with sitting • (Pseudoclaudication a weak predictor)	None	None
	Spinal stenosis symptoms present >1 month	MRI**	Consider EMG/NCV

* Level of evidence for diagnostic evaluation is variable

** Only if patient is a potential candidate for surgery or epidural steroid injection

Red Flag: Red flags are findings from the history and physical examination that may be associated with a higher risk of serious disorders. CRP = C-reactive protein; EMG = electromyography; ESR = erythrocyte sedimentation rate; MRI = magnetic resonance imaging; NCV = nerve conduction velocity.

Extracted and modified from Chou R, Qaseem A, Snow V, et al: Diagnosis and Treatment of Low Back Pain: A Joint Clinical Practice Guideline from the American College of Physicians and the American Pain Society. Ann Intern Med. 2007; 147:478-491.

Table C: Interventions (Addresses Recommendations 5-7)

Intervention Category*	Intervention	Acute < 4 Weeks	Subacute & Chronic > 4 Weeks
Self-care	Advice to remain active	●	●
	Books, handout	●	●
	Application of superficial heat	●	
Nonpharmacologic therapy	Spinal manipulation	●	●
	Exercise therapy		●
	Massage		●
	Acupuncture		●
	Yoga		●
	Cognitive-behavioral therapy		●
	Progressive relaxation		●
Pharmacologic therapy (Carefully consider risks/harms)	Acetaminophen	●	●
	NSAIDs	●(▲)	●(▲)
	Skeletal muscle relaxants	●	
	Antidepressants (TCA)		●
	*Benzodiazepines***	●(▲)	●(▲)
	*Tramadol, opioids***	●(▲)	●(▲)
Interdisciplinary therapy	Intensive interdisciplinary rehabilitation		●

- Interventions supported by grade B evidence (at least fair-quality evidence of moderate benefit, or small benefit but no significant harms, costs, or burdens). No intervention was supported by grade "A" evidence (good-quality evidence of substantial benefit).

▲ *Carries greater risk of harms than other agents in table*.

NSAIDs = nonsteroidal anti-inflammatory drugs; TCA = tricyclic antidepressants.

*These are general categories only. Individual care plans need to be developed on a case by case basis. For more detailed information please see: http://www.annals.org/content/147/7/478.full.pdf

**Associated with significant risks related to potential for abuse, addiction and tolerance. This evidence evaluates effectiveness of these agents with relatively short term use studies. Chronic use of these agents may result in significant harms.

Extracted and modified from Chou R, Qaseem A, Snow V, et al: Diagnosis and Treatment of Low Back Pain: A Joint Clinical Practice Guideline from the American College of Physicians and the American Pain Society. Ann Intern Med. 2007; 147:478-491.

Appendix A. Sources Searched for Low Back Pain Guidelines

1. British Medical Journal – Clinical Evidence
2. Cochrane Library
3. Agency for Healthcare Research and Quality
4. ECRI
5. Hayes, Inc
6. Veterans Administration – Technology Assessment Program (VA TAP)
7. Blue Cross Blue Shield HTA
8. Centers for Medicare and Medicaid
9. CADTH
10. Washington HTA Program
11. US Preventive Services Task Force
12. ICSI
13. Guidelines.gov
14. American College of Physicians AND American Pain Society
15. American Physical Therapy Association
16. PEDro.org.au (evidence-based physiotherapy database)
17. GIN Guidelines Database

Appendix B. Low Back Pain Guidelines Identified

Methods Summary:
Initially, 17 databases and other sources for guidelines related to Acute Low Back Pain were searched. Candidate guidelines were required to:

- be evidence-based (recommendations based on a full systematic review)
- be comprehensive
- be published in English
- be freely available to the public

Thirteen pertinent guidelines were identified, of which 10 were sufficiently comprehensive and were assessed by two clinical epidemiologists for methodologic quality using a modified AGREE (Appraisal of Guidelines Research and Evaluation) II[7] instrument.
Candidate guidelines were then assessed considering:

- age
- source
- specific treatment elements addressed
- presentation

The GDG selected the two guidelines of highest quality that were most comprehensive. (See guideline text for comprehensive Methods discussion)

Low Back Pain Guidelines Identified in Search – Selected for Quality Assessment

American College of Occupational and Environmental Medicine (ACOEM). (2007). Low back disorders. Occupational medicine practice guidelines: Evaluation and management of common health problems and functional recovery in workers. 2nd ed. Elk Grove Village, IL: ACOEM.
Overall quality rating: Fair

Chou, R., Qaseem, A., Snow, V., Casey, D., Cross, J.T. Jr., Shekelle, P., Owens, D.K., Clinical Efficacy Assessment Subcommittee of the American College of Physicians, American College of Physicians, American Pain Society Low Back Pain Guidelines Panel. (2007).Diagnosis and treatment of low back pain: A joint clinical practice guideline from the American College of Physicians and the American Pain Society. *Ann Intern Med, 147*(7), 478-91.
Overall quality rating: Good

Institute for Clinical Systems Improvement (ICSI). (2010). Adult low back pain. Fourteenth edition. Bloomington, MN: ICSI.
Overall quality rating: Poor

Michigan Quality Improvement Consortium. (2008). Management of acute low back pain. Southfield, MI: Michigan Quality Improvement Consortium.
Overall quality rating: Poor

National Health and Medical Research Council. Australian Acute Musculoskeletal Pain Guidelines Group. (2003). Evidence-based management of acute musculoskeletal pain. (Website states that status is "current"). [Chapter 4 of document is on Acute Low Back Pain.]
http://www.nhmrc.gov.au/_files_nhmrc/file/publications/synopses /cp94.pdf
Overall quality rating: Fair

[7] http://www.agreecollaboration.org/

National Institute for Health and Clinical Excellence (NICE). (2009). Low back pain: Early management of persistent non-specific low back pain. London, UK: National Institute for Health and Clinical Excellence. Retrieved September 30, 2010, from http://www.nice.org.uk/nicemedia/live/11887/44343/44343.pdf
Overall quality rating: Good

New Zealand Guidelines Group. (2004). New Zealand acute low back pain guide. Wellington, NZ: New Zealand Guidelines Group. Retrieved December 13, 2010, from http://www.nzgg.org.nz/guidelines/0072/acc1038_col.pdf
Overall quality rating: Fair

Philadelphia Panel. (2001). Philadelphia Panel evidence-based clinical practice guidelines on selected rehabilitation interventions for low back pain. *Physical Therapy, 81*(10), 1641-74.
Overall quality rating: Fair

Towards Optimized Practice. (2009). Management of low back pain. Edmonton, AB: Towards Optimized Practice Program.
Overall quality rating: Fair

University of Michigan Health System. (2010). Acute low back pain. Ann Arbor, MI: University of Michigan Health System.
Overall quality rating: Poor

Low Back Pain Guidelines Identified in Search– Not Selected for Quality Assessment

Burton, A.K., Müller, G., Balagué, F., Gardon, G., Eriksen, H.R., Hänninen, O., et al. (2004). European guidelines for prevention in low back pain. Retrieved November 22, 2010, from http://www.backpaineurope.org/web/files/WG3_Guidelines.pdf
Reason for exclusion: Age of underlying evidence review

Davis, P.C., Wippold, F.J. II, Brunberg, J.A., Cornelius, R.S., De La Paz, R.L., Dormont, D., Gray, L, Jordan, J.E., Mukherji, S.K., Seidenwurm, D.J., Turski, P.A., Zimmerman, R.D., Sloan, M.A., Expert Panel on Neurologic Imaging. (2008). ACR Appropriateness Criteria ® low back pain. Reston, VA: American College of Radiology (ACR).
Reason for exclusion: Specific treatment elements not addressed

Globe, G.A., Morris, C.E., Whalen, W.M., Farabaugh, R.J., Hawk, C, Council on Chiropractic Guidelines and Practice Parameter. (2008) Chiropractic management of low back disorders: Report from a consensus process. *Journal of Manipulative Physiological Therapy, 31*(9), 651-8.
Reason for exclusion: Specific treatment elements not addressed

McIntosh, G., & Hall, H. (2007). Low back pain (acute). *BMJ Clinical Evidence, 10*, 1102-1131.
Reason for exclusion: Not a guideline

Resnick, D.K., Choudhri, T.F., Dailey, A.T., Groff, M.W., Khoo, L., Matz, P.G., Mummaneni, P., Watters, W.C. 3rd, Wang, J., Walters, B.C., Hadley, M.N., American Association of Neurological Surgeons/Congress of Neurological Surgeons. (2005). Guidelines for the performance of fusion procedures for degenerative disease of the lumbar spine. Part 2: Assessment of functional outcome. *Journal of Neurosurgery: Spine, 2*(6), 639-46.
Reason for exclusion: Specific treatment elements not addressed

US Preventive Services Task Force (USPSTF). (2004). Primary care interventions to prevent low back pain in adults. Rockville, MD: USPSTF.
Reason for exclusion: Recommendations pertain to prevention, not diagnosis or management

Work Loss Data Institute (WLDI). (2008). Low back - lumbar & thoracic (acute & chronic). Corpus Christi, TX: WLDI. Retrieved November 22, 2010, from http://guidelines.gov/content.aspx?id=12674 [Full version for purchase only]
Reason for exclusion: Not freely available to the public

Appendix C: Methodology Checklist Adapted from the AGREE II materials

Methodology Checklist: Guidelines			
Guideline citation *(Include name of organization, title, year of publication, journal title, pages)*			
Guideline Topic:			
Checklist completed by:		Date:	
SECTION 1: PRIMARY CRITERIA			
To what extent is there		***Assessment/Comments:***	
1.1	**RIGOR OF DEVELOPMENT: Evidence** • Systematic literature search • Study selection criteria clearly described • Quality of individual studies and overall strength of the evidence assessed • Explicit link between evidence & recommendations *(If any of the above are missing, rate as poor)*	GOOD	FAIR POOR
1.2	**RIGOR OF DEVELOPMENT: Recommendations** • Methods for developing recommendations clearly described • Strengths and limitations of evidence clearly described • Benefits/side effects/risks considered • External review	GOOD	FAIR POOR
1.3	**EDITORIAL INDEPENDENCE**[8] • Views of funding body have not influenced the content of the guideline • Competing interests of members have been recorded and addressed	GOOD	FAIR POOR
If any of three primary criteria are rated poor, the entire guideline should be rated poor.			
SECTION 2: SECONDARY CRITERIA			
2.1	**SCOPE AND PURPOSE** • Objectives described • Health question(s) specifically described • Population (patients, public, etc.) specified	GOOD	FAIR POOR

[8] Editorial Independence is a critical domain. However, it is often very poorly reported in guidelines. The assessor should not rate the domain, but write "unable to assess" in the comment section. If the editorial independence is rated as "poor", indicating a high likelihood of bias, the entire guideline should be assessed as poor.

SECTION 2: SECONDARY CRITERIA, Cont.		
2.2	**STAKEHOLDER INVOLVEMENT** • Relevant professional groups represented • Views and preferences of target population sought • Target users defined	GOOD FAIR POOR
2.3	**CLARITY AND PRESENTATION** • Recommendations specific, unambiguous • Management options clearly presented • Key recommendations identifiable • Application tools available • Updating procedure specified	GOOD FAIR POOR
2.4	**APPLICABILITY** • Provides advice and/or tools on how the recommendation(s) can be put into practice • Description of facilitators and barriers to its application • Potential resource implications considered • Monitoring/audit/review criteria presented	GOOD FAIR POOR
SECTION 3: OVERALL ASSESSMENT OF THE GUIDELINE		
3.1	How well done is this guideline?	GOOD FAIR POOR
3.2	Other reviewer comments:	

Description of Ratings: Methodology Checklist for Guidelines

The checklist for rating guidelines is organized to emphasize the use of evidence in developing guidelines and the philosophy that "evidence is global, guidelines are local." This philosophy recognizes the unique situations (e.g., differences in resources, populations) that different organizations may face in developing guidelines for their constituents. The second area of emphasis is transparency. Guideline developers should be clear about how they arrived at a recommendation and to what extent there was potential for bias in their recommendations. For these reasons, rating descriptions are only provided for the primary criteria in section one. There may be variation in how individuals might apply the good, fair, and poor ratings in section two based on their needs, resources, organizations, etc.

Section 1. Primary Criteria (rigor of development and editorial independence) ratings:

Good: All items listed are present, well described, and well executed (e.g., key research references are included for each recommendation).
Fair: All items are present, but may not be well described or well executed.
Poor: One or more items are absent or are poorly conducted

Appendix D. List of External Reviewers

Invited: Accepted & Reviewed

Susan Bamberger, PT, DIP MDT
President
Oregon Physical Therapy Association

Roger Chou, MD
Scientific Director
Oregon Evidence-based Practice Center
Oregon Health & Science University

Rick Deyo, MD, MPH
Kaiser Permanente Professor of Evidence-Based Family Medicine
Director, KL2 Multidisciplinary Clinical Research Career Development Program
Director, OCTRI Community and Practice-based Research Program
Departments of Family Medicine and Internal Medicine
Oregon Health & Science University

Dorothy Epstein, DPT, OCS
Physical Therapist
Legacy Good Samaritan Pain Management Center
Legacy Good Samaritan Outpatient Rehabilitation

Marc Gosselin, MD
Associate Professor
Director, Thoracic Imaging
Department of Diagnostic Radiology
Oregon Health & Science University

Mitch Haas, DC, MA
Associate Vice President of Research
University of Western States

Luci Kovacevic, MD, MPH
Occupational Medicine Physician
Cascade Medical Associates

Invited: Declined/Did Not Respond/Did Not Review

Thirteen additional reviewers were invited but either declined, did not respond, missed the deadline or did not return the review. Areas of professional expertise for invited reviewers included:

Behavioral Health
Complementary and Alternative Medicine
Family Medicine
Internal Medicine
Occupational Medicine
Orthopedic Surgery
Neurosurgery
Pain Advocacy
Physical Therapy
Physical Medicine and Rehabilitation
Sports Medicine
Worker's Compensation