

Advisory Opinion  
IECDB AO 2016-08

September 1, 2016

J. Bradley Horn  
Assistant Attorney General  
Iowa Department of Justice  
1305 E. Walnut Street  
Des Moines, Iowa 50319

Dear Mr. Horn,

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure Board. We issue this opinion regarding the application of Iowa's gift law. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that you request this opinion on behalf of Iowa Medicaid, which is a division of the Department of Human Services (DHS). A health plan company is seeking to contract with DHS so that it can become a second dental benefits manager for Iowa Medicaid populations. Before Iowa Medicaid can approve the contractor, state employees must conduct an on-site visit to the out-of-state contractor's facilities as part of a federally required "readiness review" of the proposed benefits manager. Because this is a federal obligation of the benefits manager to show readiness, Iowa Medicaid would like the proposed benefits manager to pay for the state employees' transportation and lodging.

QUESTION:

Would it be permissible for Iowa Medicaid to require a proposed contractor to pay for the transportation and lodging costs of state employees who conduct a federally required on-site "readiness review?"

OPINION:

Iowa Code section 68B.22 is commonly known as Iowa's gift law. It prohibits a public official, public employee, or candidate or that person's immediate family member from "directly or indirectly, accept[ing] or receiv[ing] any gift or series of gifts from a restricted donor" unless one of nineteen exceptions to the gift law applies.<sup>i</sup> A gift is "a rendering of anything of value in return for which legal

consideration of equal or greater value is not given or received.”<sup>ii</sup> A “restricted donor” includes a person or entity that “is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.”<sup>iii</sup>

It is undisputed the persons traveling for the “readiness review” are state employees. Moreover, the proposed benefits manager is the state employees’ restricted donor because the proposed benefits manager is seeking a contract with the state employees’ agency. However, we don’t believe transportation and lodging costs would be a gift to the state employees under these circumstances. A gift is “a rendering of anything of value in return for which legal consideration of equal or greater value is not given or received.”<sup>iv</sup> Here, the proposed benefits manager is not offering a gratuity in an attempt to curry favor or gain influence. Rather, the “readiness review” is mandatory for the application process. DHS is simply trying to recoup the costs associated with reviewing the contractor’s application to be a benefits manager. The legal consideration for the payment of the transportation and lodging costs is DHS conducting the “readiness review,” which is federally required before the proposed benefits manager’s application can be approved by DHS. Since we do not believe the payment of transportation and lodging costs would be a gift under these circumstances, the gift law does not apply.

#### CONCLUSION:

Iowa’s gift law does not prohibit DHS from requiring a proposed benefits manager to pay the transportation and lodging costs associated with state employees conducting a federally required “readiness review” of the proposed benefits manager as part of an application to be a second dental benefits manager for Iowa Medicaid.

#### BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair  
Jonathan Roos, Vice Chair  
John Walsh  
Carole Tillotson  
Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

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<sup>i</sup> Iowa Code §68B.22.

<sup>ii</sup> *Id.* § 68B.2(9).

<sup>iii</sup> *Id.* §68B.2(24)(a).

<sup>iv</sup> *Id.* § 68B.2(9).