

**OPINION NO. 87-060****Syllabus**

1. The retirement systems governing boards are authorized, pursuant to R.C. 145.58(A), R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A), to enter into long term care contracts with an insurance provider for the benefit of member retirees. Upon written authorization from a member retiree, the retirement systems may deduct from the member's monthly benefit check the amount of the premium agreed to be paid by the member for the coverage provided by the long term care contract. Further, the retirement systems governing boards may, in the reasonable exercise of their discretion, determine that certain administrative costs associated with such long term care contracts shall be assumed by the retirement systems as an incident of making long term care coverage available to member retirees.

2. The retirement systems governing boards may, pursuant to R.C. 145.58(A), R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A), enter into a long term care contract for the benefit of member retirees with a single insurance provider.

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**To: William S. McLaughlin, Executive Director, Public Employees Retirement System, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, August 20, 1987**

You have requested my opinion regarding the authority of the Public Employees Retirement System (PERS), the Police and Firemen's Disability and Pension Fund (PFDPF), the School Employees Retirement System (SERS), and the Highway Patrol Retirement System (HPRS) to contract with an insurance company to provide long term care insurance for member retirees and their dependent beneficiaries. R.C. 145.58, R.C. 742.45, R.C. 3309.69, and R.C. 5505.202 generally authorize the governing boards of PERS, PFDPF, SERS, and HPRS respectively to enter into agreements with insurance companies and other providers to procure policies or contracts of health care and medical benefits for member retirees and their dependent beneficiaries. R.C. 145.58(A), for example, states, in pertinent part, as follows:

The public employees retirement board may enter into agreements with insurance companies, hospital service associations, medical or health care corporations, health maintenance organizations, or government agencies authorized to do business in the state for issuance of a policy or contract of health, medical, hospital, or surgical benefits, or any combination thereof, for those persons receiving age and service, disability, or survivor benefits subscribing to the plan.

Notwithstanding any other provision of this chapter, the policy or contract may also include coverage for any eligible person's spouse and dependent children and for such of his sponsored dependents as the board determines appropriate. If all or any portion of the policy or contract premium is to be paid by any person receiving a service, disability, or survivor benefit, the person shall, by written authorization, instruct the board to deduct from his benefit the premium agreed to be paid by him to the company, association, corporation, or agency. (Emphasis added.)

Provisions substantially identical to the foregoing appear in R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A) in the case of PFDPF, SERS, and HPRS. These four sections further provide that the governing boards of PERS, PFDPF, SERS, and HPRS "may contract for such coverage on the basis of part or all of the cost of the premium for the coverage to be paid from appropriate funds" of the retirement systems.

You state in your letter that, in accordance with the terms of these sections, PERS, PFDPF, SERS, and HPRS currently contract with an insurance company for their primary health care plan, and with several health maintenance organizations for optional health care plans, which provide group health and medical benefits for member retirees and their dependent beneficiaries. Each retirement system pays, from its funds, the full premium for coverage of the primary beneficiary under

the primary group plan. The premium for coverage of dependent beneficiaries under the primary group plan, and for coverage of both primary and dependent beneficiaries under the optional plans, is paid by the member retiree by way of a deduction from the monthly benefit check and from matching retirement system funds, which the retirement systems then forward to the provider.

You note in your letter, however, that these group health care insurance plans offer coverage primarily for acute, short term health care, and that neither these group plans nor Medicare provide extended benefits for long term maintenance or custodial care associated with certain chronic diseases or disabilities. Thus, you wish to know whether PERS, PFDPF, SERS, and HPRS may contract with an insurance company for such coverage for member retirees, to be provided on an optional basis, with the premium therefor to be paid by each member, which would be deducted from the member's monthly benefit check and forwarded directly to the insurer. In this regard, your specific questions are as follows:

1. Do the Systems have the authority to contract with an insurance company to provide long-term care coverage for their retiree group on an optional basis with participating retirees paying the full premium cost?
  - 1a. If PERS, PFDPF, SERS, and HPRS have such authority, do they have the authority to assume the administrative costs associated with the program, including provision of information and deduction of premium payments from benefit checks?
2. In the alternative, would the Systems, by agreement with the insurer or otherwise, have the authority to provide plan information to retirees and deduct and forward plan premiums at the retirees' direction, were the insurer to contract directly with individual retirees for provision of coverage, rather than with the Systems for the benefit of the retirees?
  - 2a. In this case, would the Systems, by agreement with the insurer or otherwise, have the authority to assume the administrative costs associated with the program, including provision of information and deduction of premium payments from benefit checks?
3. If the Systems have the authority to enter into contracts or arrangements as described in either Questions Nos. 1 or 2 above, would the Systems be legally required to enter into similar contracts or arrangements with other providers who offer the same or similar coverage?

In your first question you ask whether PERS, PFDPF, SERS, and HPRS are authorized to contract with an insurance company to provide long term care coverage for member retirees, on an optional basis, with the participating retirees paying the full premium for such coverage. The answer to this question may be discerned from the language of R.C. 145.58(A), R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A), which states that the governing boards of these retirement systems may enter into agreements with insurance companies "for issuance of a policy

or contract of health, medical, hospital, or surgical benefits, or any combination thereof, for those persons receiving age and service, disability, or survivor benefits subscribing" to the plan. Black's Law Dictionary 722 (5th ed. 1979) defines "[h]ealth insurance," as a "contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being." The long term care contract described in your letter has as its purpose the provision of benefits to member retirees who experience chronic diseases or disabilities. As you state in your letter, such benefits are intended to cover the cost of whatever extended care may be required by member retirees as a result of their illnesses or disabilities, including medical and custodial care. Thus, insofar as those benefits are clearly intended to cover costs associated with the maintenance of member retirees' health, the long term care contract may properly be characterized as a "policy or contract of health [or] medical...benefits." Such a contract, therefore, may be entered into by the governing boards of PERS, PFDPF, SERS, and HPRS, pursuant to R.C. 145.58, R.C. 742.45, R.C. 3309.69, and R.C. 5505.202, for the benefit of member retirees. Participation in the plan may also be offered as an option, and, in accordance with the plain language of those sections, the governing boards of PERS, PFDPF, SERS, and HPRS may require that participating member retirees pay all or a portion of the premium for the coverage afforded them by the long term care contract.

You have also asked whether PERS, PFDPF, SERS, and HPRS may assume, in connection with such long term care contract, administrative costs associated with the program, including provision of information about participation in the plan and the deduction of premium payments from the monthly benefit checks of participating member retirees. Again, the plain language of R.C. 145.58(A), R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A) makes it clear that the governing boards of PERS, PFDPF, SERS, and HPRS, upon written authorization from a member retiree, are empowered to deduct the premium from the member's monthly benefit check. R.C. 145.58, R.C. 742.45, R.C. 3309.69, and R.C. 5505.202 do not expressly address the apportionment of administrative costs that may be associated with the various medical and health care contracts and policies entered into thereunder by the governing boards of PERS, PFDPF, SERS, and HPRS. It is a well-established principle, however, that where statutory authority to perform an act is granted, and there is no provision governing the manner in which that authority shall be exercised, the act may be performed in any reasonable manner. Jewett v. Valley Railway Co., 34 Ohio St. 601 (1878); 1984 Op. Att'y Gen. No. 84-080; 1984 Op. Att'y Gen. No. 84-047; 1984 Op. Att'y Gen. No. 84-036. See also State ex rel. Hunt v. Hildebrand, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), affirmed, 241 U.S. 565 (1916)(where no direction has been given, an officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method" of performing his duties); 1986 Op. Att'y Gen. No. 86-092; 1986 Op. Att'y Gen. No. 86-064; 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-075.

As I have already concluded, R.C. 145.58, R.C. 742.45, R.C. 3309.69, and R.C. 5505.202 authorize the governing boards of PERS, PFDPF, SERS, and HPRS to enter into long term care contracts for the benefit of member retirees. In their exercise of such authority, the governing boards of PERS,

PFDPF, SERS, and HPRS, employing a fair and impartial discretion, may determine that the assumption by the systems of certain administrative costs associated with such long term care contracts is a reasonable and necessary concomitant thereof. They may determine, for example, that providing information to prospective participants about how the plan will operate and be managed, and the specific benefits it will offer, is necessary to ensure that the number of member retirees who elect to participate is sufficient to guarantee the plan's financial success. In such instance, therefore, the governing boards may reasonably determine that the cost of disseminating such information should properly be assumed by the retirement systems themselves, as an incident of making long term care coverage available to member retirees under R.C. 145.58, R.C. 742.45, R.C. 3309.69, and R.C. 5505.202. See generally State ex rel. Corrigan v. Seminatore, 66 Ohio St. 2d 459, 469-70, 423 N.E.2d 105, 112-13, n.8 (1981)(the expenditure of public funds by a public agency for the dissemination of information about the agency and its operation serves a valid public purpose, notwithstanding the absence of express statutory authority for such an expenditure; further, it is "within the implied power of a public agency to disseminate information both to those who are directly affected by its operation and the general public," and thus, such a function "may be fairly implied where it is reasonably related to the duties of the public agency"); 1986 Op. Att'y Gen. No. 86-086. Such a determination, therefore, would be consistent with the authority conferred upon the boards by R.C. 145.58, R.C. 742.45, R.C. 3309.69, and R.C. 5505.202 to enter into long term care contracts for the benefit of member retirees.

Having answered your first question in the affirmative, a response to your second set of questions is unnecessary. Thus, I direct my attention to your third question. You ask whether the governing boards of PERS, PFDPF, SERS, and HPRS are legally required to enter into long term care contracts with other providers who offer similar coverage in the event the boards decide to initially obtain such coverage for member retirees from a particular primary insurer. Clearly, no provision in R.C. 145.58, R.C. 742.45, R.C. 3309.69, or R.C. 5505.202 imposes such a requirement on the boards. Further, I am unaware of any other provisions in R.C. Chapters 145, 742, 3309, or 5505 that impose such a requirement on the boards. Cf., e.g., R.C. 145.09; R.C. 742.10; R.C. 3309.03 (these sections stating generally that the governing boards of PERS, PFDPF, and SERS are authorized, without limitation, to contract and be contracted with). It appears, therefore, that the boards may, if they so decide, enter into a long term care contract for the benefit of member retirees under R.C. 145.58, R.C. 742.45, R.C. 3309.69, or R.C. 5505.202 with a single provider of such coverage.

Accordingly, based upon the foregoing it is my opinion, and you are advised that:

1. The retirement systems governing boards are authorized, pursuant to R.C. 145.58(A), R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A), to enter into long term care contracts with an insurance provider for the benefit of member retirees. Upon written authorization from a member retiree, the retirement systems may deduct from the member's monthly benefit check the amount of the premium agreed to be paid by the

member for the coverage provided by the long term care contract. Further, the retirement systems governing boards may, in the reasonable exercise of their discretion, determine that certain administrative costs associated with such long term care contracts shall be assumed by the retirement systems as an incident of making long term care coverage available to member retirees.

2. The retirement systems governing boards may, pursuant to R.C. 145.58(A), R.C. 742.45(A), R.C. 3309.69(A), and R.C. 5505.202(A), enter into a long term care contract for the benefit of member retirees with a single insurance provider.