

July 27, 2022

TO: American Hospital Association
FROM: Perkins Coie LLP
RE: **Soliciting for AHAPAC**

AHA may solicit certain individuals affiliated with its members and the members of its affiliated state associations for contributions to its federal PAC. Affiliated state associations may assist AHA in certain ways with its solicitations and with collecting and transmitting contributions to AHA.

We summarize the federal rules governing these activities and discuss some other issues that have arisen in connection with federal PAC political activity below.

1. AHA May Solicit the Following for PAC Contributions:

- AHA's own management and their families.
- AHA's individual members and their families.
- Hospital trustees.
- The executive and administrative personnel of a for-profit corporate member, if:
 - AHA receives the corporation's written permission to solicit its executive and administrative personnel.
- The executive and administrative personnel of a 501(c)(3) corporate member, if:
 - AHA receives the hospital's written permission to solicit its executive and administrative personnel; and
 - The member's activity is consistent with IRS rules on nonprofit member solicitation.
- The individual members of its affiliated state associations, and their families, even if some of those members are not also members of AHA.
- The executive and administrative personnel of a corporate member of an affiliated state association, as long as the solicitation is undertaken consistent with the prior approval and IRS rules referenced above and discussed further below.

- The executive and administrative personnel of affiliated state hospital associations.
- The executive and administrative personnel of a hospital system, as long as the system itself (as opposed to the system’s individual hospitals) is a member of AHA or an affiliated state association in its own right. Note, though, that a system may not grant prior approval for an individual hospital in its system to be solicited. Rather, when a hospital grants prior approval, it must be done by a management representative of that hospital (as discussed below).

For purposes of these rules, “executive and administrative personnel” means those salaried, management employees with policymaking or managerial responsibilities.

Note that AHAPAC may not solicit contributions from any PAC (federal, state, or local). The law prohibits PAC-to-PAC solicitations.

2. Solicitation Process

A. What is a “solicitation”?

Federal law construes the term “solicitation” broadly, to include any favorable mention of a political committee, encouragement to participate, or description of how to contribute. A basic report on PAC activities will not constitute a solicitation, but any promotion of the PAC and the opportunities it affords for effective political participation would. While AHAPAC may accept unsolicited contributions, merely telling someone of that right is, itself, a solicitation.

B. Prior approval to solicit employees of a corporate entity

In order for hospital employees to be solicited for AHAPAC, the hospital must grant prior approval to AHA for AHA to solicit its employees, and it may only grant such approval to one trade association per calendar year. Often the state associations acting on AHA’s behalf collect the prior approval forms. AHA must direct the request for permission to solicit to the representative of the hospital with whom the AHA normally deals. This description may fit a number of individuals; it may be any individual within the management structure of the hospital who has the authority to work with AHA on these PAC matters. It does not have to be the President or CEO of the hospital but must be someone with the delegated authority to bind the hospital with a decision on the permission to solicit.

The request for permission by AHA must request in clear terms the opportunity to solicit the executives of a solicitable entity for contributions for particular years -- that is, the current or immediately following year, or future years. The request must also state that the hospital may not approve solicitations by more than one trade association in the same calendar year.

If AHA does request permission to solicit for several years, that request must clearly identify each of the years for which solicitation permission is sought and provide that the approving

corporate representative approve with a separate signature for each such year. Electronic signatures may be accepted as written authorization under certain limited circumstances.

C. Special Rules for Engaging Employees of 501(c)(3) Hospitals

A 501(c)(3) hospital is prohibited from explicitly or implicitly endorsing any particular PAC. It may, however, provide ways for its employees to engage in the political process in a manner of the employees' choosing. Once prior approval is granted, a 501(c)(3) hospital may permit AHA to solicit its executive and management personnel, and these personnel may contribute from personal funds. The hospital may want to make clear it is not taking a position one way or another on whether eligible executives should contribute and that it is merely affording opportunities for individual employees to participate, if they choose, in the political process. In addition, the 501(c)(3) hospital should follow these guidelines:

- The hospital should not allow anyone to use its resources, such as stationery, inside mail, or conference rooms, to conduct any PAC solicitation or PAC education efforts. A limited exception permits a hospital to allow a PAC to use its facilities if the hospital permits private or outside use of the facilities for other non-hospital sponsored activities on an equal basis, including the activities of other political organizations.
- Individual employees of a 501(c)(3) hospital may voluntarily participate in AHA's solicitation efforts in their individual capacities and not on behalf of the hospital, including by encouraging other employees to contribute to the PAC through oral or written communications. Any 501(c)(3) employees assisting with the solicitation must do so in their individual volunteer capacities (not on behalf of the hospital), on their own time, using their own resources. They should avoid any suggestion that they are acting on behalf of the hospital or that the hospital is encouraging support of the PAC. A hospital should avoid the monitoring and gathering of information regarding contributions by individual employees.
- Meetings to conduct solicitations or provide information on the PAC should not be part of any hospital-sponsored meeting (such as a staff meeting). PAC information should never be presented during a hospital function or in hospital facilities. Solicitation or education efforts should be done during after-work hours or during other personal time such as over the lunch hour or during breaks. There is a significant risk that providing even basic PAC information at hospital functions or in hospital facilities would be treated by the IRS as prohibited political activity for a 501(c)(3) hospital.
- Solicitations should be directed to executives and management personnel at their home addresses or personal email addresses. Office addresses should not be used. The hospital may provide home mailing lists or personal email addresses if permitted by hospital policies and such lists are made available to other organizations on a reasonable and consistent basis. If employee home mailing

addresses or personal email addresses are generally not provided to third parties, a volunteer representative of the PAC may email or mail a request to a hospital employee for a home mailing address or personal email address that does not include any solicitation for funds or information regarding the PAC. The hospital may not bear the cost of preparing and sending this request (e.g., postage). If the volunteer is a hospital employee, that person should make such a request during non-work hours and use their own personal email address and personal computer. If the request is being sent to a home mailing address, hospital stationery may not be used. In the request, the volunteer can explain that they are reaching out in their personal capacity, as a volunteer for the PAC, with the permission of the hospital.

- Employees assisting with the solicitation efforts should be doing so voluntarily, consistent with hospital policy, and not as part of their job responsibilities with the hospital. Administrative office support staff should not be asked to help their superiors with these efforts.
- In general, a rule of reason should apply. While the hospital itself should avoid appearing to encourage, or actually encouraging, participation in the PAC, it should not act to disfavor private individual political activity if it allows other private activity that meets the needs or addresses the interests of employees of the hospital acting in their individual capacities.

D. Timing

The solicitation may begin immediately following the receipt of approval in writing by the representative of the hospital whose permission was sought. Once permission is granted, and if the hospital granting permission does not seek to limit the number of solicitations, AHA (or state associations or members soliciting on behalf of AHA) may solicit management as many times as it wishes in the year.

Any solicitation must indicate the political purpose for which the contributions are solicited and must state also that all contributions are voluntary and will in no way affect the status, terms or conditions of the executive's employment. If guidelines for contributions are suggested, such as the amount generally expected from executives at certain salary levels, the solicitation must state that the guidelines are only suggestions, and that executives may contribute more, less or not at all, without fear of reprisal or other disadvantage. The solicitation must also inform the contributor that contributions are not deductible for federal income tax purposes. See below for more information about the required disclaimers.

3. Assistance by State Associations

- State associations may solicit hospital employees on behalf of AHAPAC as long as they follow the guidelines discussed above that apply to AHA.

- All encouragement to contribute must be accompanied by the assurances required also of AHA -- that the decision to contribute is voluntary and that the decision to contribute or not to contribute will have no effect on employment.
- The state associations and/or their PACs also may and do play a role in the process as “collecting agents” -- a term used in the federal law to describe affiliates of a trade association that act as agents in “collecting” contributions and forwarding them to the national association. When the associations solicit contributions for their own PAC activity, or bill members for dues, they may also solicit contributions from certain individual employees of those hospitals that have approved AHA solicitations and transmit the contributions they receive to AHA.
- In assisting AHA with fundraising, the state associations and/or their PACs must meet certain legal requirements. These are:
 1. to transmit the contributions to AHA in a timely manner (federal law requires that a contribution received should be forwarded to AHA within 30 days if the amount is \$50 or less and within 10 days if the amount is more than \$50);
 2. to report to AHA in detail the identity of the contributors whose contributions are included in any amount transferred to AHA;
 3. to maintain records of contribution deposits and transmittals for three years; and
 4. to follow certain procedures for the collection of the contributions prior to transmittal to AHA. Prior to transmittal to AHA, state associations may deposit the money collected for AHAPAC in a special transmittal account, in the state association’s account, or in a nonfederal political account. In each case, the state association must maintain separate records of the contributions collected for and transmitted to AHAPAC.
- The moneys collected may be transmitted to AHA by contributor checks or in a lump sum (in a single check) but, in this case, the check must be accompanied by a letter or statement detailing the contributors whose moneys make up the amount of the transfer. The detail should include the name and address of each contributor where contribution exceeds \$50 and the date of receipt of the contribution. For any contribution exceeding \$200, the detail should include the occupation of the contributor and name of his or her employer.
- A state association may use payroll deduction for contributions by its own executive and administrative personnel to AHAPAC.

4. Disclaimers

All solicitations, whether via mail or email, must include a disclaimer. A standard disclaimer is:

Contributions or gifts to the AHAPAC are not deductible as charitable contributions for federal income tax purposes. Your contribution is important to us, but we want to emphasize that all contributions are voluntary and have no impact on your job status, performance review, compensation or employment. Any giving guideline is merely a suggestion. You are free to give more or less than the guidelines suggest, up to the permitted \$5,000 per year. Any amount given or the decision not to give will not advantage or disadvantage you. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year (January-December). Contributions to AHAPAC will be used for a political purpose.

5. Payroll Deduction by Hospitals

A for-profit hospital may use payroll deduction to collect and transmit contributions to AHAPAC.

A 501(c)(3) hospital may use payroll deduction to collect and transmit contributions to AHA PAC under certain limited circumstances. The hospital must permit employees to take payroll deductions for contributions to political organizations of their choice; the payroll deduction option may not be limited to contributions to AHAPAC.

6. State Association PAC Activity

A state association with its own federal PAC must keep AHA informed about the contributions it makes separately to federal candidates so that the contribution limits shared by the AHA and state association PACs are not exceeded for any candidate by their respective activities. The state association and AHA federal PACs are affiliated, which means that contributions made to one of them count also as contributions to the other and contributions made by one count also as contributions made by the other. AHA's operation of its PAC does not otherwise affect the ability of a state association to operate its own federal PAC.

State law governs the activities of a state association's state PAC.

7. Use of State Association or Hospital Website and Email

Any information about AHAPAC that is placed on a website is considered a communication to the public. A state association or hospital must be careful not to promote AHAPAC on its website or include information that would constitute a solicitation.

Email messages soliciting for AHAPAC may only be sent to those individual executive or administrative employees who work for a hospital that has approved solicitation by AHA (or state associations or members soliciting on behalf of AHA). If the hospital is a 501(c)(3), those emails should only be sent to personal email accounts, which the hospital may provide for

AHAPAC solicitations so long as it makes employee personal emails available on a reasonable and consistent basis to other organizations that request them. As noted above, if the hospital does not make these addresses available to third parties, a volunteer for the PAC may send a request to the hospital's solicitable employees for that information as long as the request does not include a solicitation for funds or any information regarding the PAC (other than identifying the individual as a volunteer for the PAC). The hospital may not bear the costs of preparing or sending any such request.

Last Updated: 7/2022

THIS MEMORANDUM IS NOT INTENDED TO BE LEGAL ADVICE AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE.