Suggested Guidelines for Children’s Hospitals to Advocate for Public Policy on Social Media

These guidelines are designed to give 501(c)3 organizations, such as children’s hospitals, a framework to engage audiences and accomplish their mission by using social media to advocate for public policy.

**Using Social Media for Advocating Public Policy**

Social media provides ample opportunities for hospitals to influence public policy. Using social media to engage in lobbying activity likely will count against your hospital’s lobbying limits, even if it totals a minimal amount of time.

- **Rules for Using Section 501(h):** The low cost of social media tools means a children’s hospital may send numerous email alerts, Facebook status updates, or other efforts without exceeding the limits on its lobbying activities under the 501(h) expenditure test. For hospitals that have made the 501(h) election, communications on Facebook, Twitter, or other publicly accessible websites that express a view about specific legislation and include a “call to action” likely will be considered grassroots lobbying by the IRS.

  Additionally, it would be direct lobbying to send a tweet with a “call to action” to a legislator's Twitter handle. (e.g., "Vote to #ExtendCHIP, @SenCoryGardner."). However, using the CHIP extension vote example, a tweet about the importance of passing a CHIP funding extension without a call to action would not be lobbying under 501(h). A hospital staff member who tweets or shares a lobbying communication on the organization’s social media would count as lobbying for staff time spent drafting and posting the communication, even if this takes only a few minutes.

- **Rules for Using Insubstantial Part Test:** For hospitals that have not made the 501(h) election, communications that attempt to influence legislation on social media will be considered lobbying under the insubstantial part test, regardless of whether the communication contains a call to action.

- **Supporter Communications for Hospitals Using Section 501(h):** For hospitals that have made the 501(h) election, communications with hospital supporters are treated more favorably. For example, a communication that normally would be grassroots lobbying can be classified as direct lobbying if sent only to hospital supporters. The IRS defines a member/supporter as anyone who contributes more than a
nominal amount of time or money to the organization. Twitter followers, email blast recipients, and users who have liked a hospital’s Facebook page are not likely to be “members” by the IRS definition, unless they also have contributed more than a nominal amount of time or money.

Children’s Hospital Cannot Use Social Media for Partisan Political Activities

A children’s hospital or other 501(c)3 organizations can discuss officeholders and candidates in tweets and status updates only to the extent they could legally do so through other communications channels. They may use social media to discuss public officials, as long as those messages do not suggest support for, or opposition to, those public officials as candidates for office.

For example, a children’s hospital could use Twitter and Facebook to rally its supporters to contact specific legislators with views about specific legislation, but only if such activity is truly lobbying in nature and is not a veiled attempt to intervene in the election.

Children’s Hospital Responsible for Content It Maintains

Although there may be exceptions, a good rule of thumb is that your children’s hospital will be responsible for content over which it maintains editorial control and likely will not be responsible where it does not maintain editorial control. Your children’s hospital should consider the following general rules about content it maintains or distributes:

- Liking, Retweeting and Amplifying the Content of Others. A children’s hospital may be responsible for any content it “likes” or “retweets” or whenever it in some way shares or amplifies the content of others. The hospital needs to think about why it is liking, retweeting or amplifying others’ content, since these tools cannot be used to do indirectly what a hospital cannot do directly.

If a children’s hospital communicates via its own pages on social media platforms (e.g., Facebook, Twitter, Instagram), which carry its name and goodwill, the hospital is responsible for content appearing on these pages. This may even include when the hospital starts a discussion on a social media platform. If a children’s hospital shares or retweets a call to action posted by another organization or re-posts a photo from a political candidate’s Facebook page, the activity could be negatively attributable to the hospital – and, in the case of lobbying, it would count against the hospital’s lobbying time limit.
• **Staff Posts May Be Attributed to the Hospital.** To the extent a children’s hospital is paying staff members to post work-related information on social networks, the activity likely will be attributed to the hospital and must comply with the hospital’s tax-exempt status. As such, if employees post information on any social media profile (even if not in the name of the organization) only because they are employees, the post may be viewed by the IRS as part of their work and should comply with the hospital’s tax status.

• **Creating a Public Forum.** If the hospital is providing a forum for public discourse without asserting any editorial control, communications made by outside commenters are less likely to be attributed to the hospital. While the IRS has never specifically addressed this issue, two likely important factors are whether the hospital asserts editorial control over content (e.g., by moderating the forum) or whether the hospital is simply providing a public forum for political discourse.

• **Use Caution When Responding to Comments.** As described below, a children’s hospital should be cautious in the way it handles user comments on social media, blogs, and other platforms for discussion that carry the hospital’s name.

• **Safest Approach is to Delete or Distance Organization from Comments.** If a member of the general public posts a partisan message on a hospital’s Facebook wall or in response to the hospital’s status update, the safest approach is either to delete that message or to post a follow-up comment explaining that statements expressed by others on the platform do not necessarily reflect the hospital’s views and that the hospital does not support or oppose candidates. There may be circumstances where it would be appropriate (in consultation with an attorney) for the hospital not to respond to partisan comments made on its social media platforms.

• **Take a Consistent Approach.** Your children’s hospital should take a consistent approach by either deleting all partisan comments entirely, responding to them with a follow-up statement posted by an organizational representative, or (as noted above) ignore them. Your hospital may delete any comments that contain statements that conflict with the organization’s disclaimers, but if it deletes only some comments based on their political content and not all comments with political content, the hospital may open itself to an accusation that it is promoting one political message over another.
Children’s Hospital is NOT Responsible For How Others Use Its Content

While the IRS has previously indicated that an organization is responsible for content it creates on its own website (and, likely, by extension, its Facebook page, Twitter feed, blog, or any other place where the organization maintains editorial control), an organization is likely not responsible for how others use that content – unless the organization suggests, promotes, or in some way sanctions the lobbying or partisan use of its content by others.

When a children’s hospital creates nonpartisan content (e.g., a blog post, a tweet, or even a hashtag) and that content is used by a member of the general public for a lobbying or partisan purpose, the IRS is unlikely to hold the hospital responsible for that lobbying or partisan use.

Likewise a hospital cannot control what others say or attribute to it in social media posts, so there likely is no legal obligation to respond to a communication from a third party that names the hospital or is addressed to one of its social media profiles (e.g., something addressed to the hospital’s Twitter handle). When necessary, a hospital may appropriately reply to any posts in which it believes the hospital has been improperly connected to partisan political content, in order to inform others of the improper connection.

If you have any questions or concerns, please contact Matthew Wright, Director of Advocacy and Outreach, at matthew.wright@childrenshospitals.org or 202-753-5364.