



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 23, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2010-16

Jerry H. Goldfeder, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038

Dear Mr. Goldfeder:

We are responding to your advisory opinion request on behalf of EmblemHealth Services Company LLC (“EmblemHealth LLC”) and Health Insurance Plan of Greater New York (“HIP”) concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the proposed payment by EmblemHealth LLC of administrative and solicitation costs for HIP’s separate segregated fund, Health Insurance Plan of Greater New York Federal Political Action Committee (the “SSF”); the renaming of the SSF; and the solicitation of contributions to the SSF.

The Commission concludes that EmblemHealth LLC may pay the administrative and solicitation costs of the SSF; that the name of the SSF may be changed and abbreviated to “EmblemHealth PAC;” and that EmblemHealth LLC, HIP, and Group Health Incorporated (“GHI”), an affiliated corporation, may solicit contributions to the SSF from certain employees of HIP, EmblemHealth LLC, and GHI.

Background

The facts presented in this advisory opinion are based on your letter dated July 20, 2010, and publicly available information from HIP’s and GHI’s websites.¹

EmblemHealth LLC is a Delaware limited liability company. It is headquartered in New York and is treated as a partnership under the Internal Revenue Code for Federal tax purposes. EmblemHealth LLC is owned by two New York not-for-profit health services corporations: HIP, which is the connected organization of the SSF, and GHI. HIP and GHI each own fifty percent of EmblemHealth LLC. Another corporation, EmblemHealth Inc., a New York not-for-profit corporation, is the sole owner of both HIP

¹ See <http://www.ghi.com> and <http://www.hipusa.com>.

and GHI. On their websites, both GHI and HIP state that they are “An EmblemHealth Company.”

EmblemHealth LLC was created by HIP and GHI to integrate management, financial, and administrative operations and “to ensure that [GHI and HIP] work together in a manner that facilitates the promotion of health, and the removal of financial barriers to quality health care and to foster efficient utilization of health resources for a broad cross-section of the community. . . .” EmblemHealth LLC has the full power to govern and manage the joint operations of GHI and HIP, defined generally as “the performance of administrative services and operations common to both.” Specifically, EmblemHealth LLC is responsible for setting overall strategic direction for the joint operations of GHI and HIP and for approving or modifying the portions of any operating and capital budgets that relate primarily to the joint operations.

Questions Presented

1. *May EmblemHealth LLC function as the connected organization for the SSF?*
2. *May the SSF be renamed “EmblemHealth Services Company LLC Federal Political Action Committee,” abbreviated as “EmblemHealth PAC”?*
3. *May EmblemHealth LLC, GHI, and HIP use their personnel and resources to pay the administrative and solicitation expenses of the SSF, and solicit the restricted class of EmblemHealth LLC, GHI, and HIP for contributions to the SSF?*

Legal Analysis and Conclusions

1. *May EmblemHealth LLC function as the connected organization for the SSF?*

Yes, EmblemHealth LLC may function as the connected organization for the SSF.

A connected organization is any organization that is not a political committee and that directly or indirectly establishes, administers, or financially supports a political committee. *See* 2 U.S.C. 431(7) and 11 CFR 100.6(a). Corporations, labor organizations, membership organizations, cooperatives, and trade associations may serve as connected organizations of their separate segregated funds. *Id.* Payments by a connected organization for the establishment, administration, or solicitation of contributions to its separate segregated fund are exempt from the definitions of contribution and expenditure. *See* 2 U.S.C. 441b(b)(2)(C) and 11 CFR 114.1(a)(2)(iii); *see also* 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v).

The Act does not extend the ability granted to a corporation to serve as a connected organization to a partnership, or an LLC that is treated as a partnership under

Commission regulations.² *See* 11 CFR 100.6(a) (definition of “connected organization” does not include partnerships or LLCs); *see also* Advisory Opinions 2009-14 (Mercedes-Benz USA/Sterling) and 2004-42 (Pharmavite). Instead, partnerships and other unincorporated entities generally may make contributions to Federal candidates and political committees directly. *See* 11 CFR 110.1(e).

Nonetheless, partnerships and LLCs treated as partnerships that are owned entirely by corporations, like EmblemHealth LLC, warrant special consideration. Under the dual attribution principle for partnership contributions at 11 CFR 110.1(e), contributions by partnerships are attributed not only to the partnership as a whole but also to the partners. Thus, a partnership owned entirely by corporations may not make contributions, either. *See, e.g.*, Advisory Opinions 2009-14 (Mercedes-Benz USA/Sterling) and 2001-07 (NMC PAC).

To avoid prohibiting these types of partnerships from making contributions *and* from establishing and administering a separate segregated fund, the Commission has interpreted the Act and Commission regulations as permitting a partnership (or an LLC electing partnership status) to pay the administrative and solicitation costs of a separate segregated fund established by the partnership’s corporate owner, but only when the partnership is wholly owned by corporations and is affiliated with at least one of the corporations. *See* Advisory Opinion 2009-14 (Mercedes-Benz USA/Sterling) at n.5. The administrative and solicitation support provided by a partnership wholly owned by affiliated corporations “may be construed as coming from the affiliated corporations.” Advisory Opinion 1992-17 (Du Pont Merck).

EmblemHealth LLC is treated as a partnership under Commission regulations because it is an LLC that has elected to be treated as a partnership under the Internal Revenue Code. 11 CFR 110.1(g)(2). In addition, EmblemHealth LLC is owned by both HIP and GHI, its equal and sole members, which are both corporations. Further, HIP and GHI are both wholly owned by EmblemHealth Inc. Therefore, HIP, GHI, and EmblemHealth LLC are all subsidiaries of EmblemHealth Inc., and, thus, are *per se* affiliated entities. *See* 11 CFR 100.5(g)(3)(i) and 110.3(a)(2)(i). *See also* Advisory Opinion 2003-28 (Horizon Lines).

Accordingly, because EmblemHealth LLC is wholly owned by corporations and is affiliated with at least one of those corporations, it may perform the functions of a connected organization for the SSF, including paying administrative and solicitation costs. However, because EmblemHealth LLC is not a corporation, it may not be listed as a connected organization on the SSF’s FEC Form 1 (Statement of Organization). Instead, the SSF must list one of EmblemHealth LLC’s corporate affiliates as the connected organization. *See* Advisory Opinions 2009-14 (Mercedes-Benz USA/Sterling) at n.7, 2004-42 (Pharmavite), and 2003-28 (Horizon Lines).

² Limited liability companies that choose to be treated as partnerships under the Internal Revenue Code are treated as partnerships under Commission regulations. *See* 11 CFR 110.1(g)(2).

2. *May the SSF be renamed “EmblemHealth Services Company LLC Federal Political Action Committee,” abbreviated as “EmblemHealth PAC”?*

Yes, the SSF may be renamed “EmblemHealth Services Company LLC Federal Political Action Committee,” abbreviated as “EmblemHealth PAC.”

Generally, the name of a separate segregated fund must include the full name of its connected organization. *See* 2 U.S.C. 432(e)(5); 11 CFR 102.14(c). However, a subsidiary need not include its corporate parent’s or other subsidiaries’ names in the name of its separate segregated fund. 11 CFR 102.14(c). In prior advisory opinions, the Commission has interpreted the Act and Commission regulations as allowing a separate segregated fund’s name to include only the name of a joint venture LLC that was treated as a partnership under Commission regulations, where the LLC was performing the functions of the separate segregated fund’s connected organization. *See* Advisory Opinions 2004-42 (Pharmavite) and 2003-28 (Horizon Lines). Under such circumstances, the separate segregated fund could omit the names of the LLC’s affiliated corporate owners from its name “because the LLC was in virtually the same position as a corporate subsidiary of the owner corporation.” Advisory Opinion 2004-42 (Pharmavite).

Accordingly, while the SSF must list one of EmblemHealth LLC’s corporate affiliates as its connected organization on its FEC Form 1 (*see* response to Question 1, above), the SSF may be renamed “EmblemHealth Services Company LLC Federal Political Action Committee.”

Commission regulations also permit a separate segregated fund to use a “clearly recognized abbreviation or acronym by which the connected organization is commonly known.” *See* 11 CFR 102.14(c). The Commission concludes that the proposal to abbreviate the name of the SSF as “EmblemHealth PAC” would accurately reflect the SSF’s full name, as well as the commonly known name of the family of companies that support the SSF and whose personnel may be solicited for contributions to the SSF. (*See* response to Question 3, below.)

3. *May EmblemHealth LLC, GHI, and HIP use their personnel and resources to pay for the administrative and solicitation expenses of the SSF, and solicit the restricted classes of EmblemHealth LLC, GHI, and HIP for contributions to the SSF?*

Yes, EmblemHealth LLC, HIP and GHI may each pay the SSF’s administrative and solicitation costs. EmblemHealth, HIP and GHI may solicit the restricted classes of HIP and GHI, and certain employees of EmblemHealth LLC, for contributions to the SSF.

As explained in the response to Question 1, EmblemHealth LLC may pay the SSF’s administrative and solicitation costs.

In addition, the connected organization of a separate segregated fund may use its treasury funds to establish and pay for the administrative and solicitation costs of its separate segregated fund. *See* 2 U.S.C. 441b(b)(2)(C); *see also* 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). Accordingly, as the connected organization of the SSF, HIP may also pay the SSF's administrative and solicitation costs.

Further, a corporation that is affiliated with another corporation may pay the administrative and solicitation costs of the latter corporation's separate segregated fund. *See* Advisory Opinion 1997-13 (USA PAC). Thus, GHI may also pay the SSF's administrative and solicitation costs, because GHI is a corporation affiliated with HIP.

A corporation and its separate segregated fund may solicit contributions to the separate segregated fund from the restricted class (*i.e.*, executive and administrative personnel and stockholders, and the families thereof) of its subsidiaries, branches, divisions, and other affiliates. *See* 2 U.S.C. 441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). The Commission, in previous advisory opinions, has concluded that "[o]nce the Commission has determined entities are affiliated, any one affiliate may solicit the restricted class of any other affiliated entities." Advisory Opinion 2004-32 (Spirit); *see also* Advisory Opinion 2001-18 (BellSouth).

Accordingly, HIP, GHI, and EmblemHealth LLC may solicit the restricted class of the SSF's connected organization (HIP) and the restricted class of its affiliated corporation (GHI) for contributions to the SSF.

EmblemHealth LLC, however, is not a corporate affiliate of HIP, but rather an LLC affiliate that, for the purposes of Commission regulations, is treated as a partnership. *See* 11 CFR 110.1(g)(2). As such, EmblemHealth LLC does not have a "restricted class." Thus the Commission's analysis here differs slightly from situations involving corporate affiliates. In Advisory Opinions 1989-08 (Wagner & Brown) and 1983-48 (Cablevision Systems), the Commission determined that the executive and administrative personnel of partnerships that were affiliated with corporate entities could be solicited for contributions to the corporation's separate segregated fund. Accordingly, because EmblemHealth LLC is affiliated with HIP, GHI, and EmblemHealth Inc., and is treated as a partnership for Federal tax purposes, HIP, GHI, and EmblemHealth LLC may solicit contributions from EmblemHealth LLC's executive and administrative personnel for contributions to the SSF.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on

this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law. The cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman