

AGENDA DOCUMENT NO. 10-57



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

SECRETARIAT

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**AGENDA ITEM**

For Meeting of 9-23-10

September 16, 2010

MEMORANDUM

TO: The Commission

FROM: Christopher Hughey *feh*  
Acting General Counsel

Rosemary C. Smith *RCR for RCS*  
Associate General Counsel

Amy L. Rothstein *ALR*  
Assistant General Counsel

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Attorney

Subject: Draft AO 2010-16 (EmblemHealth Services Company LLC)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for Thursday, September 23, 2010.

Attachment

1 ADVISORY OPINION 2010-16

2

3 Jerry H. Goldfeder, Esq.  
4 Stroock & Stroock & Lavan LLP  
5 180 Maiden Lane  
6 New York, NY 10038

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9 Dear Mr. Goldfeder:

10 We are responding to your advisory opinion request on behalf of EmblemHealth  
11 Services Company LLC (“EmblemHealth LLC”) and Health Insurance Plan of Greater  
12 New York (“HIP”) concerning the application of the Federal Election Campaign Act of  
13 1971, as amended (“the Act”), and Commission regulations to the proposed payment by  
14 EmblemHealth LLC of administrative and solicitation costs for HIP’s separate segregated  
15 fund, Health Insurance Plan of Greater New York Federal Political Action Committee  
16 (the “SSF”); the renaming of the SSF; and the solicitation of contributions to the SSF.

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

22 ***Background***

23 The facts presented in this advisory opinion are based on your letter dated July 20,  
24 2010, and publicly available information from HIP’s and GHI’s websites.<sup>1</sup>

25 EmblemHealth LLC is a Delaware limited liability company. It is headquartered  
26 in New York and is treated as a partnership under the Internal Revenue Code for Federal  
27 tax purposes. EmblemHealth LLC is owned by two New York not-for-profit health

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

1 services corporations: HIP, which is the connected organization of the SSF, and GHI.  
2 HIP and GHI each own fifty percent of EmblemHealth LLC. Another corporation,  
3 EmblemHealth Inc., a New York not-for-profit corporation, is the sole owner of both HIP  
4 and GHI. On their websites, both GHI and HIP state that they are “An EmblemHealth  
5 Company.”

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

16 ***Questions Presented***

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

1 ***Legal Analysis and Conclusions***

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

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

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

13 The Act does not extend the ability granted to a corporation to serve as a  
14 connected organization to a partnership, or an LLC that is treated as a partnership under  
15 Commission regulations.<sup>2</sup> *See* 11 CFR 100.6(a) (definition of “connected organization”  
16 does not include partnerships or LLCs); *see also* Advisory Opinions  
17 2009-14 (Mercedes-Benz USA/Sterling) and 2004-42 (Pharmavite). Instead, partnerships  
18 and other unincorporated entities generally may make contributions to Federal candidates  
19 and political committees directly. *See* 11 CFR 110.1(e).

20 Nonetheless, partnerships and LLCs treated as partnerships that are owned  
21 entirely by corporations, like EmblemHealth LLC, warrant special consideration. Under  
22 the dual attribution principle for partnership contributions at 11 CFR 110.1(e),

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<sup>2</sup> 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).

1 contributions by partnerships are attributed not only to the partnership as a whole but also  
2 to the partners. Thus, a partnership owned entirely by corporations may not make  
3 contributions, either. *See, e.g.*, Advisory Opinions 2009-14 (Mercedes-Benz  
4 USA/Sterling) and 2001-07 (NMC PAC).

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

15 EmblemHealth LLC is treated as a partnership under Commission regulations  
16 because it is an LLC that has elected to be treated as a partnership under the Internal  
17 Revenue Code. 11 CFR 110.1(g)(2). In addition, EmblemHealth LLC is owned by both  
18 HIP and GHI, its equal and sole members, which are both corporations. Further, HIP and  
19 GHI are both wholly owned by EmblemHealth Inc. Therefore, HIP, GHI, and  
20 EmblemHealth LLC are all subsidiaries of EmblemHealth Inc., and, thus, are *per se*  
21 affiliated entities. *See* 11 CFR 100.5(g)(3)(i) and 110.3(a)(2)(i). *See also* Advisory  
22 Opinion 2003-21 (Horizon Lines).

1           Accordingly, because EmblemHealth LLC is wholly owned by corporations and  
2 is affiliated with at least one of those corporations, it may perform the functions of a  
3 connected organization for the SSF, including paying administrative and solicitation  
4 costs. However, because EmblemHealth LLC is not a corporation, it may not be listed as  
5 a connected organization on the SSF's FEC Form 1 (Statement of Organization). Instead,  
6 the SSF must list one of EmblemHealth LLC's corporate affiliates as the connected  
7 organization. *See* Advisory Opinions 2009-14 (Mercedes-Benz USA/Sterling) at n.7,  
8 2004-42 (Pharmavite), and 2003-28 (Horizon Lines).

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

11           Yes, the SSF may be renamed "EmblemHealth Services Company LLC Federal  
12 Political Action Committee," abbreviated as "EmblemHealth PAC."

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

1 corporate subsidiary of the owner corporation.” Advisory Opinion 2004-42

2 (Pharmavite).

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

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

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

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

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

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

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

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

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

21           EmblemHealth LLC, however, is not a corporate affiliate of HIP, but rather an  
22 LLC affiliate that, for the purposes of Commission regulations, is treated as a



1 partnership. *See* 11 CFR 110.1(g)(2). As such, EmblemHealth LLC does not have a  
2 “restricted class.” Thus the Commission’s analysis here differs slightly from situations  
3 involving corporate affiliates. In Advisory Opinions 1989-08 (Wagner & Brown) and  
4 1983-48 (Cablevision Systems), the Commission determined that the executive and  
5 administrative personnel of partnerships that were affiliated with corporate entities could  
6 be solicited for contributions to the corporation’s separate segregated fund. Accordingly,  
7 because EmblemHealth LLC is affiliated with HIP, GHI, and EmblemHealth Inc., and is  
8 treated as a partnership for Federal tax purposes, HIP, GHI, and EmblemHealth LLC may  
9 solicit contributions from EmblemHealth LLC’s executive and administrative personnel  
10 for contributions to the SSF.

11           This response constitutes an advisory opinion concerning the application of the  
12 Act and Commission regulations to the specific transaction or activity set forth in your  
13 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
14 of the facts or assumptions presented and such facts or assumptions are material to a  
15 conclusion presented in this advisory opinion, then the requester may not rely on that  
16 conclusion as support for its proposed activity. Any person involved in any specific  
17 transaction or activity which is indistinguishable in all its material aspects from the  
18 transaction or activity with respect to which this advisory opinion is rendered may rely on  
19 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or

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1 conclusions in this advisory opinion may be affected by subsequent developments in the  
2 law including, but not limited to, statutes, regulations, advisory opinions and case law.

3 The cited advisory opinions are available on the Commission's website at  
4 <http://saos.nictusa.com/saos/searchao>.

5 On behalf of the Commission,

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7 Matthew S. Petersen

8 Chairman

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