

HEALTH POLICY CORNER: PART II

An Advocacy Guide for Government Employees: Understanding Federal and State Ethics Rules

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Physician advocacy is essential to improve patient care, protect essential funding for research and public programs, and maintain our medical profession. SGIM encourages all members to participate in advocacy efforts.

Many medical centers across the nation are affiliated with public organizations, such as state universities and government organizations like the Veterans Association (VA). The VA is the largest healthcare system in the United States and employs approximately 25,000 physicians. According to a 2014 membership survey, 11% of SGIM members report affiliation with VA medical centers. As executive branch employees of the federal government, VA physicians have special regulations for how to engage in advocacy work. Physician employees of public universities also have specific restrictions based on local state regulations.

Clinicians who have chosen to work for a federal or state entity have volunteered for more responsibilities to the public and consequently have more restrictions. Understanding the rules of engagement for advocacy work, in particular for these federal and state government employees, can be challenging. This article addresses common questions and concerns for government employees interested in participating in advocacy efforts.

1) Can I participate in Lobby Day or SGIM Hill Day activities? Yes, you can, and we encourage you to attend SGIM Hill Day in Washington, DC on March 14, 2018! Federal and state

employees still have a constitutional right to lobby and do advocacy work, but only in their personal capacity. In addition, there are important restrictions for federal employees:

- You cannot use federal time or resources; e.g. you cannot engage in activities on your tour of duty or using federal property such as your work computer, e-mail servers, copiers, fax machines, telephones, and Internet.
- You cannot use your federal title or position to represent you or your organization's viewpoint in conversation or written communication. You do not need to conceal this information; however, if your federal employment comes up in conversation, you must provide a disclaimer, e.g. "While I work at the VA, I am here today representing my own personal view and in no way represent the views of the VA or federal government."
- You cannot wear your federal government uniform or white coat.
- You cannot give out your federal government business card (even if you have paid for it yourself) or use your government work e-mail to communicate with legislative staff.

Doing any of the above items is considered using your federal official position to endorse an outside non-government activity, and this is against the law! [*Standards of Ethical Conduct for Employees*, 5 C.F.R § 2635.702(b) and (c)].

2) Can I write an op-ed or public opinion piece in the media or public press as a government employee? Yes, you may write op-eds or publish opinion pieces in the media. However, you cannot mention that you work for the VA or federal government in the body of the text. Regarding your signature, you cannot include your federal employment if you are only allowed to include one identifier. However, if you can include several identifiers, then you may include your official federal title or position so long as it is given no more prominence than any other identifiers. You should also include a disclaimer stating that the views expressed do not necessarily represent the views of the VA or the United States government. It is recommended that you contact your local Federal Ethics Officials to review before publication. [*Standards of Ethical Conduct for Employees*, 5 C.F.R § 2635.807(b)(2), and 5 C.F.R § 2635.807(b)(1)]

3) Can I advocate on an issue directly with a Federal Agency, (e.g., could I advocate for reallocation of Medicaid funding to the Centers for Medicare and Medicaid Services [CMMS])? You may advocate only as an individual with your opinions, on your own behalf, as a federal employee to a federal agency such as CMMS or a federal court. You may not advocate to a federal agency while representing a third party, such as a person (including patients) or organization (such as SGIM). Thus, if you work for the VA,

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you would not be able to advocate to CMMS on behalf of SGIM for reallocation of Medicaid funding. This is an important law to understand because it is a criminal statute which means violation can result in criminal prosecution. [18 U.S.C §§ 203 and 205]

4) Can I participate in a political campaign as a government employee?

Yes, you mostly likely can, but there are several specific rules that you should understand beforehand. To ensure that the federal workforce is free from partisan political influence, a federal law known as the Hatch Act of 1939 [*Political Activities*, 5 U.S.C. §§ 7321-7326] was established. In 1940, the law was expanded to include state and local employees [*Political Activity of Certain State and Local Employees*, 5 U.S.C. §§ 1501-1508] whose positions are funded by federal funds or programs. While healthcare advocacy issues may be in theory non-partisan, many current issues, such as the Affordable Care Act, have become divided along political party lines and, thus, it is important to understand the law. For example:

- You may donate to a candidate or political fundraiser event, but you cannot use email or social media to solicit other donations.
- You can attend a political

fundraiser but you may not host one or invite other guests.

- When engaging in political activity or event, you may not use federal or VA resources (see above lobbying restrictions)

An important exception is that certain federal employees may not participate in partisan political campaigns, such as Career Senior Executive Service employees in the civil service. These more strict regulations, however, do not pertain to a physician who works for Federal health systems including the VA. “A Guide to the Hatch Act for Federal Employees” is an excellent summary with additional information that can be found at: <https://osc.gov/Resources/HA%20Pamphlet%20Sept%202014.pdf>.

5) What restrictions do I have if I am affiliated with a state government (e.g., a public or state university medical school)?

Each state has its own definitions of lobbying and rules defining what kind of lobbying and campaigning activities in which state employees may and may not participate. In general, many restrictions are similar to those for federal employees, but you should confirm this by reviewing local regulations which are easily searchable on the internet. Many

states have lobbying guides and manuals available online.

Universities may additionally have academic ethics rules, but these are often generally less restrictive than Government Ethical Standards. This discrepancy can be problematic for clinicians with both university appointments and federal employment. In this case, observing the stricter rules is a safer bet. Before making a public statement or taking a public position that may reflect on your organization, it is prudent to check with your organization’s public relations (PR) and/or Ethics Officials.

6) Whom do I contact for additional questions related to being a federal employee?

You are encouraged to reach out to your local Ethics Officers with specific questions or concerns. The VA Ethics officials are extremely accessible and can be easily reached by e-mail via https://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf:

- VA Central Office (VACO): GovernmentEthics@va.gov
- Outside VACO: OGCNorthAtlanticEthics@va.gov
OGCMidwestEthics@va.gov
OGCContinentalEthics@va.gov
OGCPacificEthics@va.gov

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