

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY

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Advocacy vs. Lobbying: What This Means for You and Your Regional Organization

Any child and adolescent psychiatrist (CAP) looking to become more engaged with advocacy activities, or even a seasoned advocate, may have questions or misunderstandings about the type of advocacy and lobbying activities he or she may legally do on behalf of his or her regional organization. This document will help provide some information about the importance of becoming—and staying—engaged in advocacy efforts in your state or region.

In nearly all cases, AACAP's regional organizations (ROCAPs) can legally lobby and advocate on behalf of CAPs and patients by observing simple rules. Understanding a few details and limits on this activity will put your mind at ease and help you quickly realize that, in most cases, you and your ROCAP can advocate using a variety of different tools more often than you may think.

In addition to general federal tax law requirements, AACAP advises consulting with a professional to understand any local or state limits on lobbying not described here, as well as any possible lobbying registration requirements. This document does not intend to provide tax advice nor other legal guidance.

Why should you advocate on behalf of your patients or profession?

- ✓ The unique experience of a child and adolescent psychiatrists makes you *the expert* on how proposed policy, legislative, or regulatory change could impact children's mental health;
- ✓ Your knowledge and perspective is essential to relevant policy discussions and makes you well-positioned to advocate on behalf of your patients and profession;
- ✓ Local and state lawmakers and heads of state agencies will listen to you. With the growing need for services, and limited financial resources, these are instances where you can't afford not to advocate.

First: It's helpful to talk about the different between advocacy and lobbying

- **Advocacy** is the process of stakeholders making their voices heard on issues that affect their lives and the lives of others at the local, state, and national level. It also means helping policymakers and elected or appointed officials find specific solutions. Most nonprofits can and do engage in as much advocacy as possible to achieve their goals.

Key things to keep in mind about advocacy:

- Advocacy is not always considered lobbying;
- A conversation with a lawmaker is not automatically lobbying;
- Grassroots activities do not all count as lobbying;
- Inviting Members of Congress or state lawmakers to your hospital, or showing how state or federal funds have been used is not considered lobbying;
- Sharing technical advice in response to a question from a lawmaker is not lobbying; and
- Educating a lawmaker about an issue while not promoting a piece of legislation is only advocacy.

- **Lobbying**, on the other hand, involves activities that are in direct support of, or opposition to, a *specific* piece of introduced or proposed legislation. Lobbying is usually a small portion of all the typical advocacy activities. Examples of lobbying include:

- Writing to state lawmakers requesting funding for mental health services in the state budget;
- Writing to your Member of Congress asking that he or she support a specific bill; or
- A ROCAP President or Advocacy Liaison circulating a "call to action" to members of his or her ROCAP asking that they write their lawmaker to support certain legislation.

The IRS defines lobbying as an attempt to influence specific legislation (proposing, supporting or opposing specific legislation). While nonprofits can engage in some lobbying, the IRS has rules about what portion of their budget can go toward these activities

Second: What Does this mean for AACAP's Regional Organizations?

Determining the tax-exempt status of a regional organization is an important place to start to better clarify lobbying limits. Not all ROCAP's operate as a 501(c)(3) "charities." Instead, some may operate at a 503(c)(4) (i.e. social welfare organizations), or 501(c)(6) (i.e. trade associations). 501(c)(5) organizations are most often labor unions. It is up to each ROCAP to determine its tax-exempt status.

With this said, keep in mind that 501(c)(3) organizations are the most limited in the scope and amount of lobbying allowed, when compared to other tax-exempt status organizations. Also, no partisan activities nor direct support or endorsement of a political candidate can occur, and no federal funds can be spent on lobbying activities.

➤ **If your ROCAP is a 501(c)(3)**, there are TWO distinct ways to determine lobbying limits.

- **First**, the default test for a 501(c)(3) organization is what is known as the "substantial part" test. The IRS requires that no "substantial part" of a 501(c)(3) can consist of lobbying, which is why it is important to understand the difference between advocacy and lobbying.

The substantial part test measures both the organization's time spent on, and expenditures devoted to, lobbying on behalf of both paid staff and volunteers. The definition of "substantial" is not precisely defined. After understanding some of the differences between lobbying and advocacy, you may find that ROCAP time spent on lobbying is minimal and not significant.

- **A second** alternative method to determine a lobbying limit is the 501(h) expenditure test. This sets lobbying limits based on how much money is spent on lobbying, not the time spent. Volunteer time is not counted under this measure. Using this method, it is clearer and often easier to determine lobbying limits. 501(c)(3) organizations are limited to spending 20 percent of its annual budget on actual lobbying, and activities that directly support it, using this test.
- A 501(c)(3) can decide which of the two methods it would like to use to determine lobbying limits. Regardless of which method used, or how much time or money can be spent lobbying, voter registration or get-out-the-vote (GOTV) efforts are always allowed, as they are not considered lobbying.

➤ **If your ROCAP operates as something other than a 501(c)(3)**, here is what you need to know:

- There are no limits to lobbying if an organization operates as a 501(c)4, 501(c)5, or 501(c)6.

Other things to keep in mind:

If you work in an academic setting, universities typically employ their own lobbyist. It's a great opportunity to share the priorities of your regional organization or AACAP and learn about ways to collaborate. They could also help you understand any special lobbying limits in your state.

If you are an employee of a state or local government, you should check with your employer and state and local laws on any limits on advocacy activities that could affect you. Finally, do not think lobbying can only be done by professional lobbyists who lobby full-time. Typically, a paid lobbyist must register and declare his/her time. Individual ROCAP members are unlikely to fall under these requirements. However, there may be times when someone with the know-how, relationships, access and additional time and skills is useful to retain to get your message heard.