

Health Impact Project

Lobbying Compliance Training



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Session Goal: Boost Your Nonprofit's Advocacy



Topics to Cover:

- **What Is Lobbying?**
- **Plan Strategically to Educate Policy-Makers Without Crossing the Line**
- **Apply Theory to Real-World Situations**



My Background



- **Political communications strategist**
 - Sierra Club – National Media Relations Director
 - Jay Nixon for Senate – Press Secretary
 - Sen. Jay Rockefeller – Deputy Press Secretary
- **Lawyer for nonprofits**
 - Passionate about helping nonprofits maximize their advocacy

Section 501(c)(3) Charities May Lobby, But Not With Health Impact Project Funds



- **Public charity 501(c)(3)s legally may conduct a limited amount of lobbying.**
 - Charities may spend a certain percentage of their expenditures on direct and grassroots lobbying under the section 501(h) “expenditure test.”
 - “Grassroots lobbying” may be 25% of total lobbying.
- **Private foundation 501(c)(3)s may not directly pay for lobbying.**
 - Learn whether your grants restrict lobbying.

Congressional & State Lobbying Restrictions Apply, Too.



- **This presentation involves only the IRS lobbying rules.**
- **Separate federal and state lobbying laws may apply, in addition to these restrictions.**
 - Review the federal Lobbying Disclosure Act and your local laws to ensure compliance with those, too.
 - HIP grants also prohibit use for lobbying under any state or local definition of 'lobbying.'

What is Lobbying?



- IRS provides two ways to define “lobbying”
 - Insubstantial Part Test
 - Vague – Definitions are not defined specifically, and no clear cap on organization’s spending.
 - Expenditure Test
 - Very Clear – Specific definitions, explicit monetary caps on spending.
 - More generous than Insubstantial Part test (except for organizations with budgets over \$17 million per year).

Expenditure Test



- Expenditure Test defines two types of lobbying:
 - Direct Lobbying
 - Communications directly with lawmakers
 - Grassroots Lobbying
 - Communications with the public to influence lawmakers

What is Direct Lobbying?



- Direct Lobbying has Three Elements:
 - A communication directly with legislator or staff
 - On specific legislation
 - That reflects the organization's view on the legislation

What is Direct Lobbying?



1. A Communication Directly with Legislators or Staff

- Face-to-face meeting with legislator or staff
- Also certain executive branch officials/staff



- Letter



- Email

- Phone Call



What is Direct Lobbying?



1. A Communication Directly with Legislators or Staff

- Includes Congress, state legislators, city councils, tribal governments, town meetings.
- Does not include school boards, zoning boards, or other administrative agencies.

What is Direct Lobbying?



2. On Specific Legislation

- Bills that have been introduced
 - Specific legislative proposals not yet introduced
 - Appropriation bills
 - Ballot measures*
- Treaties
 - From the time the U.S. starts negotiating its position with other parties to the treaty
 - Confirmations and nominations to Senate-confirmable posts

What is Direct Lobbying?



2. On Specific Legislation

- “Specific Legislation” does not include:
 - Regulatory Actions
 - Executive Actions
 - School Board Decisions
 - Zoning Board Decision
 - Corporate Actions
 - Institutional Actions (e.g., churches, hospitals, universities, community centers)

What is Direct Lobbying?



3. Reflecting the Organization's Viewpoint

- Rarely will a communication to a lawmaker hide the organization's viewpoint.
- Communication may “reflect a view” without explicitly supporting or opposing legislation – **if you think your communication is completely neutral, take a fresh look.**

What is Grassroots Lobbying?



- Grassroots Lobbying has Four Elements
 - A communication
 - To the public
 - Includes tweets, advertisements and speeches
 - On specific legislation
 - That reflects the organization's view on the legislation, and
 - **Includes a call to action**

What is Grassroots Lobbying - Call to Action

Call to Action is the key distinction
between grassroots and direct lobbying

- Call to action asks the audience to contact their legislator
 - “Call Senator Smith, and tell her to vote yes on ...”



What is Grassroots Lobbying - Call to Action

Other Forms of “Call to Action”

- Identifying the audience’s legislative representative
- Providing contact information for legislator
- Identifying legislator as neutral or opposed to your position on the legislation



What is Grassroots Lobbying - Call to Action



Other Forms of “Call to Action”

- Providing vehicle for contacting the legislator (form email, petition, etc.)
- Identifying the legislator as a member of the committee that will vote on the legislation



What is Grassroots Lobbying - Call to Action



Call to Action Exception: Highly Publicized Legislation

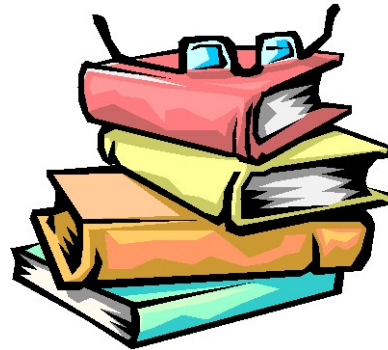
- No call to action needed for paid advertising that runs two weeks before a committee or floor vote on “highly publicized” legislation
- “Highly publicized” if it’s frequently on the evening TV news
- Automatically grassroots lobbying if it is:
 - Paid advertising,
 - On specific “highly publicized” legislation, and
 - Reflects the organization’s view on the legislation

What is *not* lobbying?



Nonpartisan Analysis, Study, Research

- Independent, objective analysis
- Distributed broadly, not just to one side
- May advocate a viewpoint, if it includes **a full and fair examination** of the issue



What is *not* lobbying?



Nonpartisan Analysis, Study, Research

- Don't assume Health Impact Assessment qualifies just because it's robust
- Lack of data on certain questions make some HIAs unbalanced



- **Key determinant:** Reasonable reader must be able to form an independent conclusion

What is *not* lobbying?



Technical Advice or Assistance

- Oral or written assistance provided in response to a written request by a governmental body, legislative committee or subcommittee

What is *not* lobbying?



Technical Advice or Assistance

- Request must be made in the name of the entity, not just from an individual member
- E.g., Committee chair asking on behalf of the committee

D. Scott Dibble
State Senator
District 61
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Senate
State of Minnesota

January 27, 2014

Rachel Callanan
Regional Vice President of Advocacy, Minnesota & Wisconsin
American Heart Association
4701 West 77th Street
Minneapolis, MN 55435

Dear Ms. Callanan,

On behalf of the Transportation and Public Safety Division of the Minnesota Senate Finance Committee, I request that you provide our committee with information regarding mechanisms other states have used for funding active transportation options. Based on your expertise in this area, and the American Heart Association's experience with these issues in other states, please provide the Transportation and Public Safety Division with your recommendations regarding which, if any, of these mechanisms would work in Minnesota. As chair of the Senate Transportation and Public Safety

What is *not* lobbying?



Technical Advice or Assistance

- Advice must be available to all members of the requesting entity



- May advocate a viewpoint, if the request specifically asks for opinions or recommendations



Activities to Prepare for Lobbying



Preparing for Lobbying = Lobbying Cost

- Activities whose only purpose is to prepare for lobbying must be paid with lobbying dollars.

Examples:

- Fact sheets or reports
- Polls
- Meetings to determine lobbying strategy or message

What is *not* lobbying?



Beware of “Subsequent Use” Rule

- All costs for purely educational materials are presumed to be grassroots lobbying if the materials are used for grassroots lobbying within six months of being produced
- To rebut the presumption, the organization must demonstrate its primary purpose in developing the materials was not for lobbying

What is *not* lobbying?



Broad Public Distribution: Media Outreach

- Briefing on poll results and **talking points distributed to coalition members** before public release.
- Coalition members provided with **sample tweets** and **Facebook posts** prior to release – timed for drumbeat into legislative session.
- Poll results released publicly through a **news release** and in one-on-one **briefings with legislative reporters** and reporters in targeted districts.
- Briefings with key **editorial-page editors** and key **bloggers**.
- **Radio news actuality** produced and distributed to radio stations statewide.
- **Talk radio strategy** – producers always need experts to fill time and provide explanation on controversial topics.
- **Letters to the editor** and **op-eds** crafted and submitted to key newspapers

What is *not* lobbying?



Subsequent Use Rule: Broad Public Distribution

- Briefing for academics
- Briefing for public health experts
 - Government agencies
 - Nonprofits
- Outreach to new constituencies
 - **Physicians**
 - Business
 - Civic/Ethnic/Religious Organizations
 - Sports/fitness

Is it lobbying?



Hypothetical: Public Transit HIA

- Community X has plans for a public transit project, which would require a large amount of state funding. Your organization drafts a Health Impact Assessment analyzing the project.
- Senator Smith, who sits on the Senate appropriations committee, calls to discuss implications for her pending budget proposal.
- Is it lobbying to discuss how her plan will impact local health?

Is it lobbying?



Hypothetical: Public Transit HIA

- Senator Smith asks you to testify at an upcoming hearing about how the transit plan will impact local health.

Is it lobbying?



Hypothetical: Public Transit HIA

- Senator Smith's chief of staff asks you to provide him with talking points summarizing the HIA's findings on how the transit plan will impact asthma rates.

Is it lobbying?



Hypothetical: Public Transit HIA

- A local environmental organization provides the executive summary from your HIA when they meet with legislators to lobby for the public transit project.

Is it lobbying?



Hypothetical: Public Transit HIA

- The city zoning commission chair asks for your help writing a new zoning restriction to focus development around the transit project.

Is it lobbying?



Hypothetical: Sugar-Sweetened Beverage HIA

- Community Y is considering a tax on sugar-sweetened beverages (“SSBs”). Your organization drafts a Health Impact Assessment analyzing the potential impact.
- The HIA notes that lower SSB consumption will cause job losses in the beverage and bottle-manufacturing industries, but not enough data exists to analyze this.
- If you distribute the HIA to legislators, does it qualify for the non-partisan analysis, study and research exception?

Is it lobbying?



Hypothetical: Sugar-Sweetened Beverage HIA

- If the HIA does not provide a sufficiently even-handed analysis to qualify as non-partisan analysis, study and research, what steps could be taken to ensure the HIA may be provided to legislators?

Additional Resources



- *Influencing Public Policy in the Digital Age: The Law of Online Lobbying and Election-related Activities*, Alliance for Justice, 2011
 - Explains the rules of 501(c)(3) online engagement.
 - www.afj.org/digitalage
- *Being a Player*, Alliance for Justice, 2011
 - Provides detailed information regarding lobbying.
 - www.tinyurl.com/AFJplayer