

Health Impact Project

Lobbying Compliance Training



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Session Goal: Boost Your Nonprofit's Advocacy



Topics to Cover:

- **Review Lobbying Rules**
- **Understand Key Exceptions Relevant to HIAs**
- **Apply Theory to Real-World Situations**



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



- **Public charity 501(c)(3)s may lobby, subject to restrictions:**
 - Limited amounts
 - Private foundations may not pay for it directly
- **Don't be afraid to lobby. Just know the rules.**

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.

What is Lobbying?



- Distinguish “advocacy” and “lobbying”
 - Advocacy = the act or process of supporting a cause or proposal (Merriman-Webster definition)
 - Lobbying = Efforts to influence legislation (IRC § 501(c)(3) definition)

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

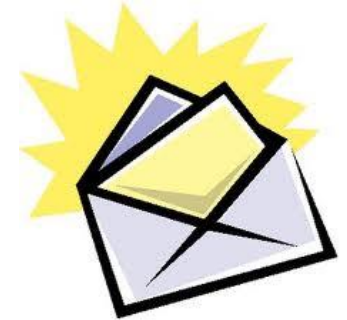
What is Direct Lobbying?

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?



2. On Specific Legislation

- Bills that have been introduced
- Specific legislative proposals not yet introduced
- Appropriation bills
- Ballot measures
 - (Voters are the legislators)
- 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.
- If you think your communication is completely neutral, call me – let's discuss.

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



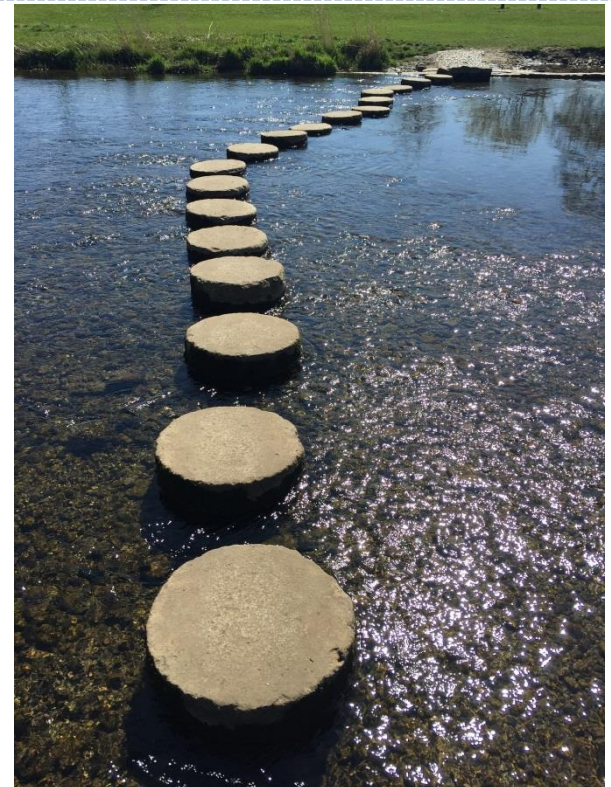
Call to Action is the key distinction
between grassroots and direct lobbying

- Asking audience to contact their legislator
- Providing vehicle for contacting legislator (form email, petition, etc.)
- Identifying legislator as a member of the committee that will vote on the legislation
- Identifying the audience's legislative representative
- Providing contact information for legislator
- Identifying legislator as neutral or opposed to your position on the legislation

Take Advantage of Exceptions



- **Subsequent Use**
 - Distribute HIA Broadly to Public
- **Nonpartisan Analysis**
 - Robust, Balanced Research
- **Invitation to Testify**
 - Committee Chair Must Issue



What is *not* lobbying?



Subsequent Use Rule

- If educational materials are used for lobbying, the IRS presumes they were created for lobbying.
- Rebut the presumption by demonstrating the materials were used for non-lobbying activities first, and that the **initial non-lobbying use outweighed any subsequent lobbying.**

What is *not* lobbying?



Subsequent Use Rule: Broad Public Distribution

- Briefing for academics
- Provide copies to public health experts
 - Government agencies
 - City planners, architects, transit advocates
 - Nonprofits
- Outreach to constituencies across sectors
 - **Physicians**
 - PTAs
 - Business
 - Civic/Ethnic/Religious Organizations
 - Sports/fitness
- Media outreach

What is *not* lobbying?



Broad Public Distribution: Media Outreach

- Briefing on HIA and **talking points distributed to coalition members**.
- Coalition members provided with **sample tweets** and **Facebook posts** prior to release – timed for drumbeat into legislative session.
- HIA released publicly through a **news release** and in one-on-one **briefings with reporters** who cover the issue.
- Briefings with **editorial-page editors** and key **bloggers**.
- **TV media tour** of the area impacted by the HIA, to shoot b-roll.
- **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?



Broad Public Distribution: Materials Development

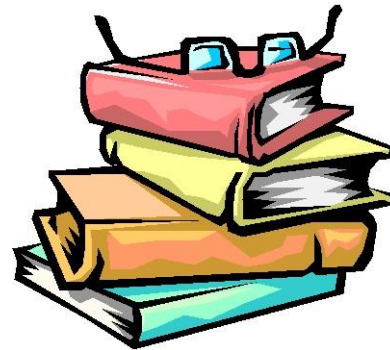
- Create a suite of materials, not just the official HIA
 - Non-jargon summary
 - One-page fact sheet
 - FAQs
 - Simple charts
- Anticipate long-term needs
 - What will coalition allies need in 6 months or a year?

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

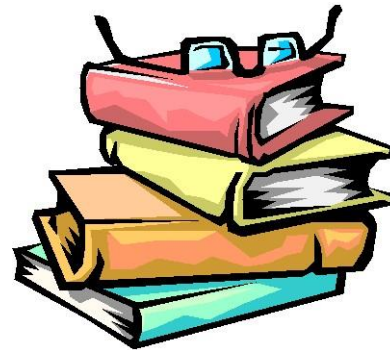


What is *not* lobbying?



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

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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



Is it lobbying?



Hypothetical: Electric Metering Infrastructure

- Electric Company has proposal to implement smart-metering. HIA examines impact pricing and technology will have on health and ability to survive extreme heat and cold.
- Nonprofit presents findings to the Public Utility Commission, responsible for setting regulations regarding smart metering, before it distributed the HIA to the public.

Is it lobbying?



Hypothetical: Electric Metering Infrastructure

- State Senator Jackson calls the HIA author to ask whether legislation creating a statewide program would be useful.

Is it lobbying?



Hypothetical: Electric Metering Infrastructure

- Senator Jackson asks the HIA author for examples of legislation from other states that have successfully created a smart-metering mandate.

Is it lobbying?



Hypothetical: Paid Sick Days

- Nonprofit conducts HIA on Senator Smith's bill to require paid sick days in food industry. HIA examines how proposed requirements would prevent disease spread and impact workers' income.
- Nonprofit wants to release its HIA the week Sen. Smith introduces his bill, and to say they think the legislature should pass his bill.

Is it lobbying?



Hypothetical: Paid Sick Days

- Senator Smith, chair of the Labor Committee, calls the HIA author to ask whether his bill language will work as anticipated, and about unintended effects. The author has a few technical suggestions, e.g., changing a particular semi-colon to a comma will increase by 40% the number of workers who will be covered.

Is it lobbying?



Hypothetical: Paid Sick Days

- Senator Smith asks the HIA author to testify at an upcoming hearing about the bill – but only if the author will speak in favor of passing the bill.

Is it lobbying?



Hypothetical: Paid Sick Days

- May Senator Smith speak at Nonprofit's press conference?
- May the nonprofit staff have a briefing on their findings for legislators?
- May the nonprofit staff meet with the editorial board of the state's largest newspaper, and tell them to urge the legislator to pass the bill?

Is it lobbying?



Hypothetical: Paid Sick Days

- Other organizations in Nonprofit's state have a lobby day planned, to push the legislators to support the paid sick day bill. One organization asks the HIA author to write a one-pager summarizing the bill's likely impacts, to use at the lobby day.

Is it lobbying?



Hypothetical: Paid Sick Days

- The groups that are organizing the lobby day have a short training scheduled the morning of the lobby day, to prepare their volunteers. The groups ask the HIA author to speak at the training to educate the volunteers about the issue of paid sick days.

Is it lobbying?



Hypothetical: Revitalization Project

- Nonprofit conducts an HIA to examine how a potential state-funded street revitalization project will impact food access and active living. The HIA advisory team includes academics, local residents and merchants, the mayor and a staffer from the state Senate appropriations committee.

Is it lobbying?



Hypothetical: Revitalization Project

- HIA includes detailed recommendations regarding the funding required to accomplish the revitalization project's purported goals. HIA details particular legislative provisions that will be necessary for a successful revitalization.
- Nonprofit accompanies HIA with talking points, FAQs and fact sheets that will enable organizations to conduct lobbying if such legislation is introduced.

Questions?

