



Presented by: **Sarah De Guia, JD**
Chief Executive Officer

Manel Kappagoda, JD, MPH
Vice President of Strategic Initiatives

Research Support: **Erin O'Malley, JD**
Attorney

ChangeLabSolutions.org

Public Health Advocacy

The Basics

ChangeLabSolutions



Welcome!



Manel Kappagoda, JD, MPH
Vice President of Strategic Initiatives
mkappagoda@changelabsolutions.org

Sarah de Guia, JD
CEO
sdeguia@changelabsolutions.org

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

© 2020 *ChangeLab Solutions*

Presenter Disclaimer:
Sarah De Guia

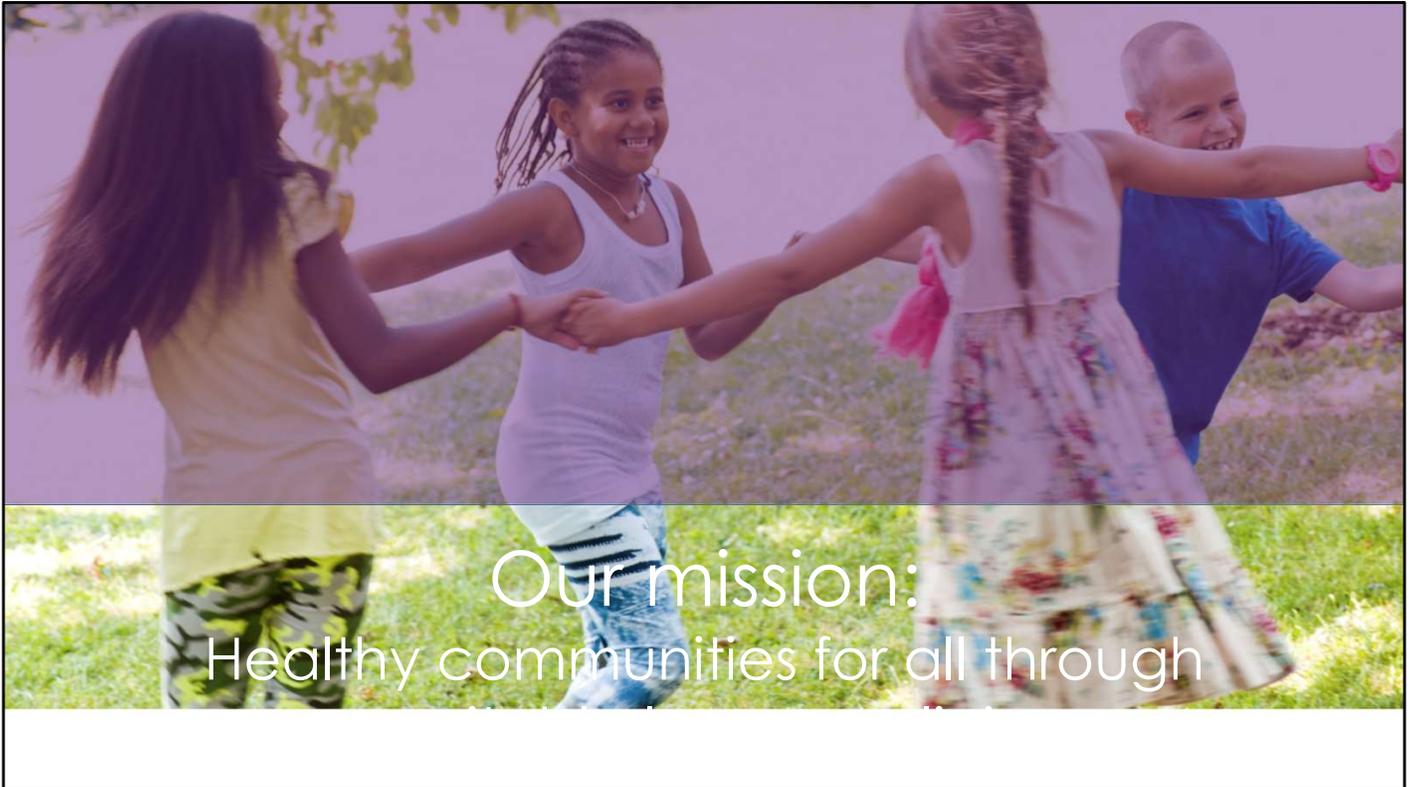
(1) The following personal relationships with commercial interests relevant to this presentation existed during the past 12 months:

No relationships to disclose

Presenter Disclaimer:
Manel Kappagoda

(1) The following personal relationships with commercial interests relevant to this presentation existed during the past 12 months:

No relationships to disclose



Our mission:
Healthy communities for all through

ChangeLab Solutions creates innovative laws and policies to ensure everyday health for all, whether that's providing access to affordable, healthy food and beverages, creating safe opportunities for physical activity, or ensuring the freedom to enjoy smokefree air and clean water. Our solutions address all aspects of a just, vital and thriving community, like food, housing, childcare, schools, transportation, public safety, jobs, and the environment.

Overview of this Session



What is Lobbying?



Philanthropic Funding

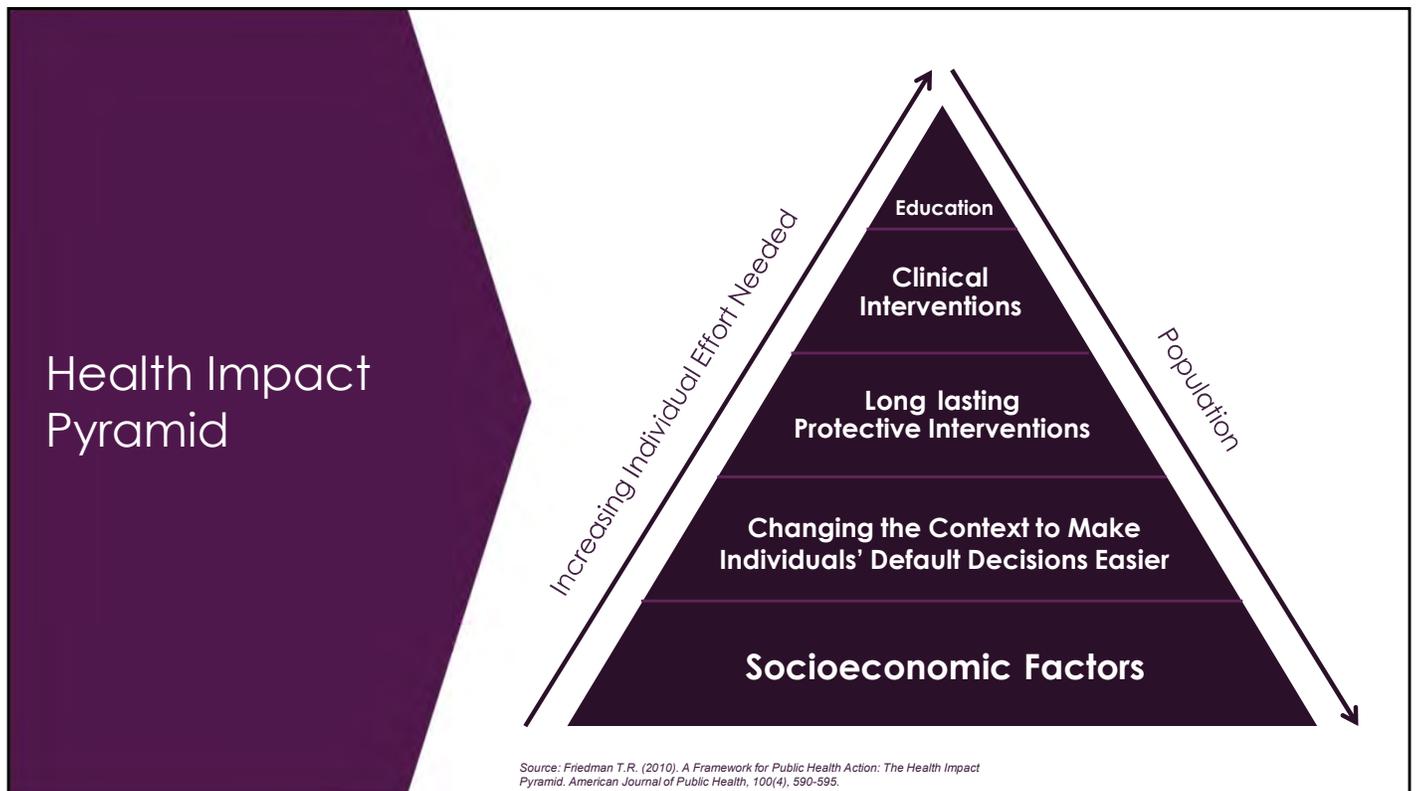


**Federal Funding
- including social media**



Examples and Q&A

There are many public health policy activities that ARE NOT lobbying activities. Also, some lobbying activities are permitted by federal law. This session provides information on what you can do without lobbying, and the most common restrictions on lobbying activities. Participants should consult their legal counsel regarding the specific laws or contract provisions that apply to your specific funding and in your state.



The image on this slide is the health impact pyramid. This framework was developed by Dr. Thomas Friedan, the former director of the CDC. The health impact pyramid provides a visual representation of the different types of interventions that health and public health community use to improve health.

Interventions focused on the lower levels tend to be the most effective because they reach broader segments of society and require less individual effort. They may also be more controversial, particularly if the public doesn't see these types of interventions as falling within the government's appropriate sphere of action. Frequently, interventions at the bottom of the pyramid involve legislation or policy which is how this framework connects to the topic of lobbying. Actions related to activities represented at the higher level of the pyramid, such as appropriations for clinical interventions, may also involve legislation.

Implementing interventions at each of the levels can achieve the maximum possible sustained public health benefit.



Philanthropies: What is lobbying?

Let's start by looking at lobbying in the context of philanthropic funding.

Philanthropy/ Foundations



IRS §501(c)(3) Nonprofit Organizations

- The use of funds for lobbying are likely to be restricted by contract/grant
- Review contracts carefully and consult your legal counsel if needed

A Foundation's lobbying activities are usually limited because of the internal revenue code. Therefore, foundations usually pass down these restrictions to their grantees under a grant agreement. Not every foundation restricts lobbying (for example, unrestricted gifts or donations), so participants should review their grant agreements.

Must Have
All 4 Elements

1. **Communication** with a
2. **Government official or employee** who participates in forming legislation that
3. **Reflects a point of view** (i.e., attempts to influence)
4. **Specific legislation**

To be considering lobbying, an activity must have all four elements on this slide.

Two Types of Lobbying



Direct lobbying

Grassroots lobbying

There are two types of lobbying.



Notes: Definitions of Key Terms:

A direct lobbying communication includes any email, phone call, letter or in-person meeting with a government official who is involved with specific legislation.

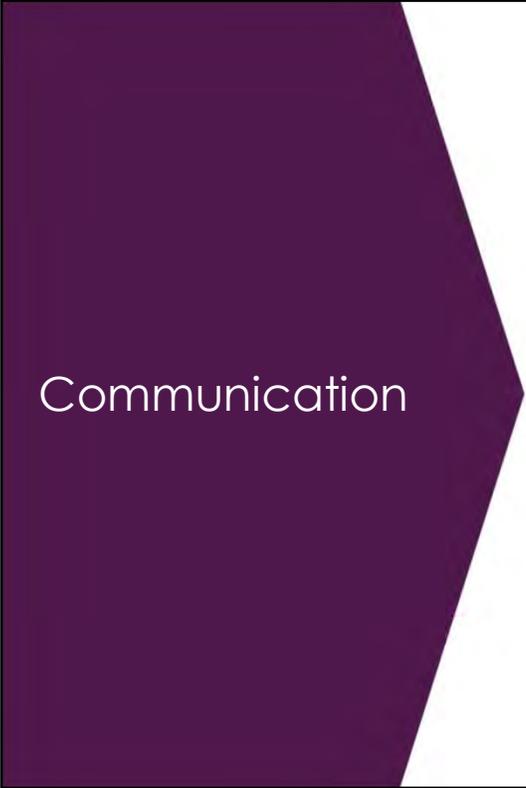
A government official includes anyone working for a legislative body, a legislator or other government agency/department that takes part in forming legislation.

Influencing legislation means reflecting a particular view about the legislation or making a direct appeal.

CDC Guidance has 3 simple statements that are clear/helpful:

1. Refers to specific legislation or other executive order;
2. Reflects a point of view;
3. Contains an overt call to action.

The IRS form 990 (used to report lobbying/advocacy/political activities) defines direct lobbying even more broadly and includes "any attempt to influence any legislation through communication with: (1) a member or employee of a legislative or similar body; (2) a government official or employee (other than a member or employee of a legislative body) who may participate in the formulation or the legislation, but if the principal purpose of the communication is to influence legislation only; or (3) the general public in a referendum, initiative, constitutional amendment, or similar procedure."



Communication

- Email
- Phone call
- Letter
- In-person meeting
- Tweets
- And more ...

Government
Official



**Anyone working for
a legislative body, a legislator, or other
government agency/ department that
takes part in forming legislation.**

Influencing
Legislation



Reflecting a particular view about the legislation or making a direct appeal.



SIGN THE PETITION

To all Members of US Congress:

As concerned citizens, we call on you to stand for a free and open Internet and vote against both the Protect IP Act and the Stop Online Piracy Act. The Internet is a crucial tool for people in the US and around the world to exchange ideas and work collectively to build the world we all want. We urge you to show true global leadership and do all you can to protect this basic pillar of our democracy.

Already an Avvo member?
Enter your email address and hit "Send".

Email **SEND**

First time here? Please fill out the form below.

Name

Email

Country Post code

Cell/phone

Avvo.com will protect your privacy and keep you posted about this and similar petitions.

SEND

Grassroots Lobbying

A communication encouraging the public to take action to influence specific legislation

Grassroots lobbying is similar to direct lobbying, except that, in lieu of communicating directly with a government official, you are communicating with the public to influence the government official. This is a common type of petition that is asking the public to take action and communicate with his/her representatives. Grassroots lobbying also could include phone banking, letters or emails that encourages a person to take action about legislation.

[Additional background: "The form 990 is a little more broad. The main definition from the IRS (before it devolves into a lot of specific rules and subparts) is: "any attempt to influence any legislation through an attempt to affect the opinions of the general public or any part of the general public."]

What Kind of Lobbying?

- The health officer sends a letter to the local Congresswoman in support of HR 123 to restore funding for HIV/AIDS services.
- The health department sends a letter to the members of a Healthy Equity Coalition urging them to write a letter to Congress in support HR 123.
- The health officer tells the Congresswoman about the great work being done with HIV/AIDS services funding.

1 = Direct lobbying

2 = Grassroots lobbying

3 = No lobbying

Philanthropies:
Only
Legislation



Prohibitions on lobbying with philanthropy funds do *not* apply to:

- Regulations
- Administrative actions
- Often non-legislative bodies like planning commissions or school boards

Prohibitions on lobbying with philanthropy funds do *not* apply to:

- Regulations
- Administrative actions
- Often non-legislative bodies like planning commissions or school boards



Exceptions to Lobbying Rules

NOT lobbying under either
philanthropy rules or federal rules

The following examples are EXCEPTIONS to the general prohibition on lobbying.



Coalition building

among governments, nonprofits,
the private sector, and
community members to discuss
problems and share ideas



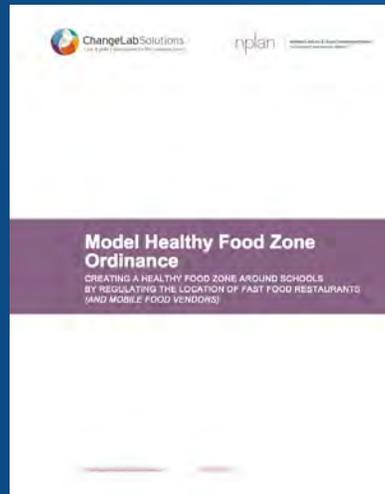
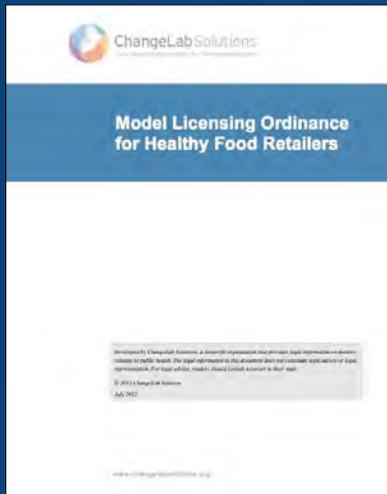
Place, race, wealth, & health
are linked

Photo courtesy of Tim Wagner for HEAC



Sharing best practices & success stories
with the public or government officials

Broadly Sharing Evidence-Based Policy Approaches



“Model” policies include non-partisan analysis, study, and/or research that supports the conclusion that certain policy choices will have a positive impact. A model policy is an example of what governments may adopt, and there may be several policy options. Any specific legislation based on a model policy is left to the discretion of government officials and the legislative body. There is no “call to action” or encouragement of legislators to adopt the policies.

Exceptions for
IRS 501(c)(3)
Nonprofits

Even if the 4 elements are present, a communication will **NOT** be lobbying if:

1. Nonpartisan Study, Research, or Analysis
2. Invitations to Testify

These are the two that come up the most in the context of public health efforts.

Other Allowed Activities

- Educating the public about personal health behaviors
- Communicating to the public about health risks and their consequences
- Working with private sector organizations about voluntary institutional changes without public policy
- Engaging in regulatory affairs

What are examples of each of these **non-lobbying** activities?

Highlight regulations: “**Engagement in regulatory affairs.** Regulations are not considered specific legislation. Submitting comments on a proposed rulemaking that would impact your work is a permissible advocacy activity that non-profit organizations can engage in.”

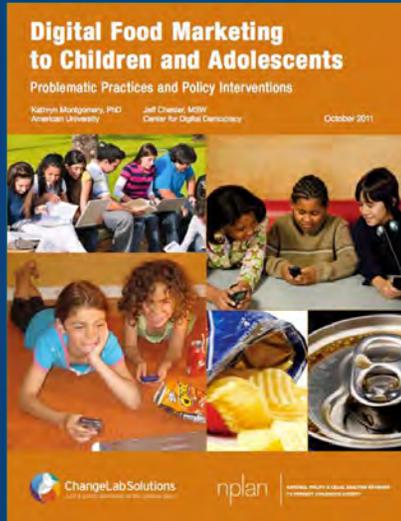
If we have a chat function, we can ask folks to put answers in the chat. If no chat function, we can just ask people to think about the question.



Nonpartisan Study, Research, and Analysis

- Let's look more closely at NPSRA:
- This can be helpful for academic researchers.
- Acknowledge that the rules are complicated.

Non-Partisan Study, Research, or Analysis



on **policy** alternatives or specific legislation that may express support for a specific policy

Non-Partisan Generally Means

1. Independent, **balanced** and objective;
2. **Fair to both sides** of an issue (contains a full and fair exposition of the pertinent facts);
3. Allows a reader to **draw own independent opinion or conclusion** but author may include his/her own conclusion;
4. Conclusion is based on **evidence and facts**, but not unsupported opinion;
5. **Broadly distributed** to the public, and not directed to only one side of an issue.

Examples of Non-Partisan

- Model ordinance for SSB taxes.
- Toolkits on improving government food procurement along with model contracts.
- Results of policy scans that summarize school district policies on tobacco control.

What are other examples of **nonpartisan** analysis, study and research?



Invitations to Testify

- Now let's look at invitations to testify.



© Panning Commissioner Journal

At request of a government or legislative body,
a technical or factual presentation of information to government decision-makers regarding specific legislation or a legislative proposal.

This may include testimony or other type of presentation. These presentations are generally non-partisan, but opinion may be offered based upon the presentation. This should be a “documented” request to presenters.

Optional notes: Under IRS rules, a documented request must be written and received from a government body or legislative body. Under OMB A-122, the documented request does not necessarily be written, but there should be some evidence of the request. For example, a state assembly committee may have its committee staff send an email to several organizations requesting testimony on a hearing on childhood obesity. This would satisfy both IRS Rules and OMB A-122 because the request is written, the hearing is public and documented, and the request was sent from a staff member representing the entire committee, but not an individual assembly member.

Key Questions

1. Is the request related to proposed/specific/ pending legislation?
2. Is the requestor involved with the legislative process, such as drafting, sponsoring, voting, or commenting?
3. Can this person provide a **written** request?

IRS Requirements:

- A written request (preferably on letterhead) from a government or legislative body (or any subdivision);
 - Acknowledgment that information will be made available to all members of the gov't/leg body;
 - The requestor must have the authority to speak on behalf of the gov't/leg body, such as a chair, committee staff, department head/staff.
 - Request must ask for our opinion and/or recommendations.
- **NOTE:** a written request from an individual, elected official (or staff) does not qualify!

An email will work as well if it contains the same information and is from a person that has the authority it speak on behalf of the legislative or government body.

Sample request

A written TA Request only needs to contain the 3 requirements by the IRS.

1. Written on behalf of the government or legislative body (or subdivision);
2. Request for information AND recommendations;
3. Response will be available to ALL members of the legislative or gov't body.

Keith Nagayama
State Senator
District 19
Metropolis - Southwest and Downtown

123 State Capitol
13579 A Street
Capitol City, New State 02589

May 14, 2014

VIA FIRST CLASS MAIL AND EMAIL (taprovider@publichealthexpert.org)

Susannah Vance Gopalan
Staff Attorney
Public Health Organization
8642 Main Avenue
New Town, New State 98765

Re: Request for Technical Assistance

Dear Ms. Gopalan,

On behalf of the Transportation and Housing Division of the New State Senate Finance Committee, I request that you provide our committee with information regarding mechanisms ~~other~~ states have used for funding healthy housing options. Based on your expertise in this area, and the Public Health Organization's experience with these issues in other states, please provide the Transportation and Housing Division with your recommendations regarding which, if any, of these mechanisms would work in New State. As chair of the Senate Transportation and Housing Division, I will ensure your information and recommendations are made available to all members of the committee.

Thank you for your assistance.

Very Truly Yours,

Keith Nagayama

Keith Nagayama
State Senator, District 19
Chair of the Transportation and Housing Division of the New State Senate Finance Committee



IRS Requirements:

- A written request (preferably on letterhead) from a government or legislative body (or any subdivision);
- Acknowledgment that information will be made available to all members of the gov't/leg body;
- The requestor must have the authority to speak on behalf of the gov't/leg body, such as a chair, committee staff, department head/staff.
- Request must ask for our opinion and/or recommendations.
- **NOTE:** a written request from an individual, elected official (or staff) does not qualify!

An email will work as well if it contains the same information and is from a person that has the authority to speak on behalf of the legislative or government body.

Important To Remember

1. All governments and nonprofits are allowed to conduct lobbying activities.
2. Your lobbying activities may be restricted by a funder or particular state or local law.
3. Consult your legal counsel about your particular grants/contracts and state/local laws.

Even if you fall into an exception, you do need to check with your employer before you take action.

We're not here to guess what you've been told by your supervisors.

The Hatch Act: <https://osc.gov/Services/Pages/HatchAct.aspx>. The Hatch Act restricts the political activity of individuals principally employed by state, District of Columbia, or local executive agencies and who work in connection with programs financed in whole or in part by federal loans or grants.

What about my private life vs. my work life?

Look at recent examples of issues with the Hatch Act.



Federal Grants: What is lobbying?

Now we're going to look at lobbying in the context of federal grants.

Must Have
All 4 Elements

1. **Communication** with a
2. **Government official or employee** who participates in forming legislation that
3. **Reflects a point of view** (i.e., attempts to influence)
4. **Specific legislation+++**

As with the IRS definition of lobbying, lobbying in the context of federal grants has the same four elements:

1. **Communication** with a
2. **Government official or employee** who participates in forming legislation that
3. **Reflects a point of view** (i.e., attempts to influence)
4. **Specific legislation +++**



Federal Grants

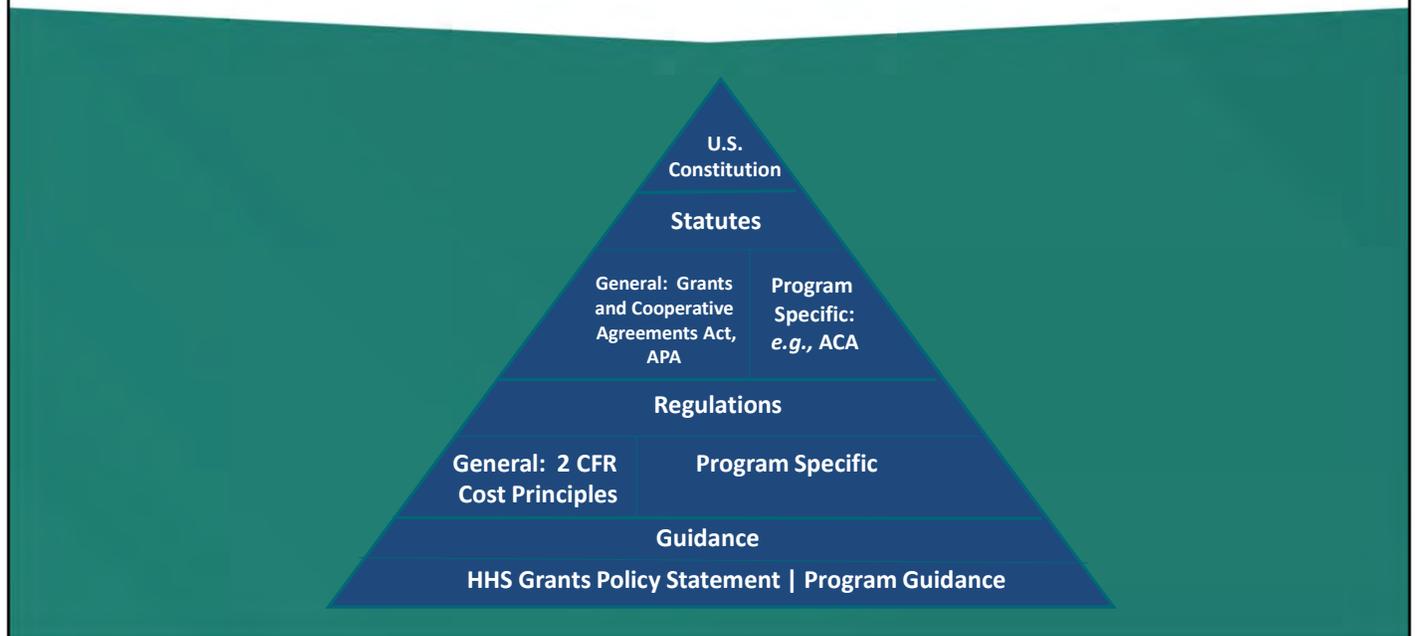
Grants from federal government agencies prohibit grantees from using funds for direct or grassroots lobbying.

The federal government either restricts or prohibits the use of federal funds for lobbying. Most state and local governments also prohibit lobbying with grant funds or restrict such funds for this purpose.

Specifically Congress placed restrictions on lobbying on recipients of federal funding from all federal agencies through the Byrd Amendment to the Department of the Interior Appropriations Act for Fiscal Year 1990 ([Pub. L. 101-121 - PDF](#)). Health and Human Services has implemented this requirement through specific federal regulations for parties receiving funds from HHS. (45 CFR Part 93, “New Restrictions on Lobbying” and our Grants Policy Statement.)

For more information, see the additional resources slide at the end of this presentation.

Rules that govern federal funds



This diagram gives you a sense of the hierarchy of the rules that govern federal funds.

- Commonly known as the Spending Clause, Article I, Section 8, Clause 1 of the U.S. Constitution has been widely recognized as providing the federal government with the legal authority to offer federal grant funds to states and localities that are contingent on the recipients engaging in, or refraining from, certain activities.
- Moving down the pyramid, there are general statutes such as the grants and cooperative agreements act and the Administrative Procedures Act and there are specific statutes such as the Affordable Care that have provisions about how federal funds can and cannot be used.

Regulations interpret statutes and again there are general regulations such as Section 2 of the Code of Federal Regulations which addresses cost principles and regulations that interpret statutes about specific programs. Section 2 of the Code of Federal Regulations is very clear that lobbying is an unallowable cost.

[§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or [loans](#) is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and [loans](#) is governed by relevant statutes, including among others, the provisions of [31 U.S.C. 1352](#), as well as the common rule, “New Restrictions on Lobbying” published at [55 FR 6736](#) (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published at [54 FR 52306](#) (December 20, 1989), [55 FR 24540](#) (June 15, 1990), [57 FR 1772](#) (January 15, 1992), and [61 FR 1412](#) (January 19, 1996).]

- At the bottom level of the pyramid we have agency guidance such as HHS grants policy guidance or program-specific guidance.

“No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body...”

Department of Defense and Labor, Health and Human Services, and Education
Appropriations Act, 2019 and Continuing Appropriations Act, 2019

Continuing Appropriations Act §503(b)

The language on this slide from Continuing Appropriations Act § 503(b) is specific to Health and Human Services etc. To paraphrase: “No part of any appropriation...shall be used to pay the salary of expenses of any grant or contract recipient...designed to influence the enactment of legislation, appropriations, regulation, administrative action or executive order proposed or pending before the Congress or any State government, State legislature, or local legislature or legislative body.

As a point of interest, the section of the act that deals with the Dept of Defense has no such restrictions.

[Note: This is still correct, but the appropriations covered in the Act expire at the end of this FY for the most part--if this is just an example of further restrictive language in legislation then that shouldn't matter. A new Continuing Appropriations Act was passed Oct 1 but the text doesn't mention lobbying or a specific amendment to 503(b). It does appear to extend some of the appropriations from the 2019 act on the slide into the 2021 FY, so presumably they come with the same strings attached. (Link to new appropriations act: <https://www.govtrack.us/congress/bills/116/hr8337>]

Designed to Influence

TYPE of ACTION

- Legislation
- Appropriations
- Regulations
- Administrative action
- Executive order

VENUE for ACTION

- Congress
- State government
- State legislature
- Local legislature
- Legislative body

The language laid out on the previous slide - “designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body...” - is broad.

Regulations and administrative actions are not covered by the IRS rules but they are covered here.

Local legislatures and local legislative bodies are covered here but they weren’t covered until the American Recovery and Reinvestment Act of 2009 (also known as the stimulus act passed by President Obama. If anyone here received CDC funding under the Communities Putting Prevention to Work initiative in 2010, you may remember receiving specific guidance from the CDC about these lobbying provisions which were new, in part, at that time.

All this to say, it is important to know where your funding is coming from. Sometimes, staff members in local health departments may not realize they are working with federal dollars that has come down to the state or local level.



Remember, lobbying must have all 4 elements:

1. **Communication** with a
2. **Government official or employee** who participates in forming legislation that
3. **Reflects a point of view** (i.e., attempts to influence)
4. **Specific legislation**

If one of these elements is not present, it is not lobbying.

Remember lobbying must have all 4 elements:

1. Communication with a
2. Government official or employee who participates in forming legislation that
3. Reflects a point of view on
4. Specific legislation AND *appropriation, regulation, administrative action, executive order*

If one of these elements is not present, it is not lobbying.

No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body . . .

OTHER THAN FOR (i.e., the EXCEPTIONS):

Normal and recognized executive-legislative relationships or Participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

Federal Government Grants Continuing Appropriations Act §503(b)

The CDC, for example, provides the following guidance to potential grantees related to what local and state agencies can do:

“... [T]hese prohibitions are not intended to prohibit all interaction with the legislative or executive branches of governments, or to prohibit educational efforts pertaining to public health that are within the scope of the CDC award. For state, local, and other governmental grantees, certain activities falling within the normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and administrative processes within the executive branch of that government are permissible. There are circumstances for such grantees, in the course of such a normal and recognized executive-legislative relationship, when it is permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, such communications cannot directly urge the decision makers to act with respect to specific legislation or expressly solicit members of the public to contact the decision makers to urge such action.”
(<https://www.cdc.gov/grants/additional-requirements/ar-12.html>)

What does this mean?:

- In the context of normal and recognized executive-legislative relationships, it is allowable to make recommendations on public health policy matters, including those that may require some type of legislative or executive action to be implemented. In performing such activities, caution should be exercised that such recommendations do not involve express calls to engage in grass roots lobbying activities.
- Local and state government agencies can work with executive agencies in state and local governments in support of science-based policy approaches.

Exceptions for Federal Grantees

Normal and recognized executive-
legislative relationships

Participation in policymaking and
administrative processes within the
executive branch of same level of
government

Let's dig down a little further into the phrases "normal and recognized executive-legislative relationships" and "participation in policymaking and administrative processes within the executive branch of same level of government".



Normal and recognized executive-legislative relationships =

- A health department **typically** provides an annual state of the health report to elected officials with recommendations for legislative action.
- State legislative liaisons **typically** consult local health agencies about pending legislation.

Normal and recognized executive-legislative relationships equal:

- A health department that *typically* provides an annual state of the health report to elected officials with recommendations for legislative action.
- State legislative liaisons that *typically* consult local health agencies about pending legislation.

What else?

What are other examples of typical communications in your state or locale?

These are just two examples, there could be many more.



Participation in policy or admin processes =

Government officials may communicate with anyone within the same government about policy or legislation

Government officials must be allowed to communicate with other government officials and the legislative body to discuss legislation or policy. That's just part of the business of the government. However, using a government grant, lobbying is generally restricted when a government wants to lobby a different government, such as when a city lobbies a state legislator.

For Example

- A state health agency liaison may discuss legislation with the governor's office.
- A county planner may discuss updates to the zoning code with the county public health department.
- A city public health department employee may discuss specific legislation with a city manager.

This slide lists examples of internal communications between government agencies or the executive branch and the legislative branch within the same level of government, i.e. County level of government.

- A state health agency liaison may discuss legislation with the governor's office.
- A county planner may discuss updates to the zoning code with the county public health department.
- A city public health department employee may discuss specific legislation with a city manager.

There might be questions about a county or state providing technical assistance to a city. It is still an open question whether a county can provide services to a city because they are different levels of government. Section 503 allows lobbying communications within a “normal and recognized executive-legislative relationship.” Participants are advised to consult their legal counsel whether such relationship exists between different levels of government. For example, a county public health official acting as the public health officer of a city may be functioning within a normal and recognized executive-legislative relationship. This situation is further developed in the hypo on the next slide.

Hypothetical Exercise

County Health Department receives a grant from the CDC for reducing tobacco use.

- May the county health department use federal funds to develop model legislation for cities to pass to ban smoking in public places?
- May the county health department use federal funds to discuss the model legislation with county supervisors? With the cities within the jurisdiction of the county?

Question: County Health Department receives a grant from the CDC for reducing tobacco use.

- May the county health department use federal funds to develop model legislation for cities to pass to ban smoking in public places?
- May the county health department use federal funds to discuss the model legislation with county supervisors? With the cities within the jurisdiction of the county?

Answer: The County Health Department may use the CDC grant to create legislation for itself or as a model as long as the legislation is within the scope of permissible activities under the CDC grant.

The health department may discuss the legislation with county supervisors. As part of the executive-legislative relationship, the health department (executive branch) may communicate with the county supervisors (legislative branch) about legislation, policy or other matters that affect the functions of government.

Communications with cities is a difficult issue under Section 503. Because Section 503 does not specifically acknowledge the existing relationship among cities, counties and the state government, it is not clear whether county health department may engage cities about adopting local ordinances. CDC Guidance states that the executive-legislative relationship applies only to the same level of government, such as governor to state assembly, county administrator to board of supervisors, or mayor/city manager to city council. However, health departments may discuss model legislation or policy broadly with cities, nonprofit organizations or the public as part of a discussion on public health issues. There is also an open question whether a county health official acting as the public health officer for a city has the same relationship as other city officers. Participants are encouraged to confer with their legal counsel about the local interpretation of an executive-legislative relationship.

Good Questions to Ask Yourself

- Does funding include a restriction on lobbying?
- What activities can I do without lobbying?
- Which laws or rules do I need to follow for my lobbying activities?
- Are there any state or local laws that prevent me from lobbying?

These are some good questions to ask yourself:

- Does funding include a restriction on lobbying?
- What activities can I do without lobbying?
- Which laws or rules do I need to follow for my lobbying activities?
- Are there any state or local laws that prevent me from lobbying?

The NCSL has a 50-state chart that describes each state's statutory provisions discussing restrictions on the use of public funds to lobby. Most often this involves agencies, but some laws also relate to local governments' use of public funds to lobby a state's legislature. The link to that chart is on the resource slide at the end of this presentation.

Need to talk to your legal counsel to understand the rules.

Talk about experience working with RWJF and AHA funding and CDC funding.

Hatch Act: “Political Activity”

“Any activity directed at the success or failure of a political party or partisan political group, or candidate for political office.”

5 CFR § 734.101

See Office of Special Counsel website:
<https://osc.gov/Services/Pages/HatchAct.aspx>

The Hatch Act, a federal law passed in 1939 (5 U.S.C. § 7321 – 7326), limits certain political activities of federal employees, as well as some state, D.C., and local government employees who work in connection with federally funded programs.

The political activity restrictions apply during the entire time of an employee’s federal service. Certain rules prohibit both on-duty and off-duty conduct.

Partisan political activities are those activities directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. While most Federal employees are permitted to take an active part in partisan political management and partisan political campaigns, the Hatch Act does prohibit certain participation by all Federal employees. Federal employees may not seek public office in partisan elections, use their official title or authority when engaging in political activity, solicit or receive contributions for partisan political candidates or groups, and engage in political activity while on duty. The government employees in the audience will have had to watch trainings on how to avoid Hatch Act and other violations connected to lobbying and political activities.

An examination of the Hatch Act is beyond the scope of this training but for more information, go to: <https://osc.gov/Services/Pages/HatchAct.aspx>.

Hatch Act:
Political Activity
via
Traditional and
Social Media

Federal employees may not use their official capacity to engage in political activities.

Political activity is OK in a private capacity without identifying official titles or positions.

Careful!! Can be ambiguous!

Federal employees may not use their official capacity to engage in political activities.

Political activity is OK in a private capacity without identifying official titles or positions.

Be Careful!! Can be ambiguous!

Ambiguity:
Be Careful!

It's OK to have your work affiliation someplace on a Facebook page or Twitter account, but **not** associated with the political activity.

Include disclaimers on posts with personal views. Do not allow content to be viewed as work related.

More information: A Guide to the Hatch Act for Federal Employees

It's OK to have your work affiliation someplace on a Facebook page or Twitter account, but *not* associated with the political activity.

Include disclaimers on posts with personal views. Do not allow content to be viewed as work related.



Important Tips

If you engage in lobbying, maintain accurate and detailed records that distinguish between your lobbying and non-lobbying activities.

Standard time reporting is sufficient to show that grant funds were not used for lobbying activities.

If you engage in lobbying, maintain accurate and detailed records that distinguish between your lobbying and non-lobbying activities.

Standard time reporting is sufficient to show that grant funds were not used for lobbying activities.

Yikes! I Got It Wrong! Did I Break the Law?

- Bill your time to a fund code that allows lobbying.
 - ✓ **Government:** General funds
 - ✓ **Nonprofits:** Unrestricted funds
- Get a proper cost accounting system in place.
- Talk to your legal counsel to understand the rules.

What can you do if you realize you have been engaged in lobbying activities:

- Bill your time to a fund code that allows lobbying.
 - **Government:** General funds
 - **Nonprofits:** Unrestricted funds
- Get a proper cost accounting system in place.
 - “Out-of-pocket expenses associated with lobbying activities (such as payments to lobbyists; travel expenses to meet with legislators; costs of researching, writing, developing, printing or producing, and mailing, or otherwise distributing lobbying communications; telephone calls to legislators, etc.) must be included. Internal overhead expenses (staff salaries, benefits, rent, etc.) must be allocated between lobbying and nonlobbying. A common approach (although by no means the only acceptable one) is for paid professional staff to keep time records showing the hours devoted to direct lobbying, grass roots lobbying, and nonlobbying activities. This information is then used to allocate compensation and benefits for those timekeepers, and the aggregate percentage of total professional staff time devoted to the two forms of lobbying is used to allocate other overhead costs.” (<https://www.pgdc.com/pgdc/introduction-lobbying-charities>)
- Talk to your legal counsel to understand the rules.

Wrap Up

- Lobbying is allowed, unless there are specific restrictions
- Restrictions on lobbying vary based on funding, contract language, and federal/state/local laws
- There are many allowable activities regardless of lobbying restrictions
- Carefully separate personal and professional lives
- It is important to consult your legal counsel

- Lobbying is allowed, unless there are specific restrictions
- Restrictions on lobbying vary based on funding, contract language, and federal/state/local laws
- There are many allowable activities regardless of lobbying restrictions
- Carefully separate personal and professional lives
- It is important to consult your legal counsel

Guidance on Lobbying Activities

Webinar/background materials from ChangeLab Solutions
<http://changelabsolutions.org/publications/webinar-complying-anti-lobbying-rules>

Feldesman Tucker – a private law firm specializing in federal contracts

A Guide to the Hatch Act
<https://osc.gov/Resources/HA%20Pamphlet%20Sept%202014.pdf>

National Council of State Legislatures' Chart on Laws that Limit Public Funds to Lobby
<http://www.ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx>

Center for Lobbying in the Public Interest
clpi.org

Alliance for Justice
bolderadvocacy.org

We'll end with a list of resources that provide additional guidance on lobbying.



Thank you!

Sarah De Guia
sdegua@changelabsolutions.org

Manel Kappagoda
mkappagoda@changelabsolutions.org

ChangeLabSolutions.org

Thank you for your time.