Public Health Advocacy

The Legal Basics

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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.

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(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 better laws & policies
Healthy Policies

Healthy Eating

Healthy Schools

Transportation

Healthy, Smokefree Housing

Active Living

Economic Opportunity
LEGAL TECHNICAL ASSISTANCE

- Legal Research
- Policy Development, Implementation, Defense
- Publications
- Trainings

- Direct Representation
- Lobby
Overview of this Session

- What is lobbying?
- Philanthropic Funding
- Federal Funding - including social media
- Examples and Q&A
Changing the Context to Make Individuals’ Default Decisions Easier

Long-lasting Protective Interventions

Clinical Interventions

Education

Socioeconomic Factors

First Amendment
Philanthropies:
What is lobbying?
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
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
Two Types of Lobbying

Direct lobbying
Grassroots lobbying
Direct Lobbying:
A communication directly with a government official to influence specific legislation

Photo courtesy of Tim Wagner for HEAC
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.
Grassroots Lobbying

Grassroots Lobbying: a communication encouraging the public to take action to influence specific legislation.
What Kind of Lobbying?

- The health officer sends a letter to the local Congresswoman in support of HR 123 to restore PICH funding.

- 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 PICH funding.
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
Exceptions to Lobbying Rules

Not Lobbying under either philanthropy rules or federal rules
Coalition building among governments, nonprofits, the private sector, and community members to discuss problems and share ideas.
Educational campaigns that explain the advantages & disadvantages of public policies
Place, race, wealth, & health are linked
Sharing best practices & success stories
with the public or government officials

Photo: Creative Commons Flickr: Michigan Municipal League
Broadly Sharing Evidence-Based Policy Approaches

Model Licensing Ordinance for Healthy Food Retailers

Model Healthy Food Zone Ordinance
CREATING A HEALTHY FOOD ZONE AROUND SCHOOLS
BY REGULATING THE LOCATION OF FAST FOOD RESTAURANTS
_AND MOBILE FOOD VENDORS_
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 and Analysis
2. Invitations to Testify
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

What are examples of each of these non-lobbying activities?
Nonpartisan Study, Research, and Analysis
Non-Partisan Analysis, Study or Research

Non-partisan analysis, study, or research 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’s
- Shared use agreement contract language
- Toolkits on improving government procurement along with model contracts
- Results of policy scans

What are other examples of nonpartisan analysis, study and research?
Invitations to Testify
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.
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?
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
State Senator, District 19
Chair of the Transportation and Housing Division of the New State Senate Finance Committee
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.
Federal Grants: What is 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 +++
Federal Grants

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

U.S. Constitution

Statutes
- General: Grants and Cooperative Agreements Act, APA
- Program Specific: e.g., ACA

Regulations
- General: 2 CFR Cost Principles
- Program Specific

Guidance
- HHS Grants Policy Statement
- Program Guidance
Continuing Appropriations Act § 503(b)

“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…”
## Designed to Influence

<table>
<thead>
<tr>
<th>TYPE of ACTION</th>
<th>VENUE for ACTION</th>
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<tbody>
<tr>
<td>Legislation</td>
<td>Congress</td>
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<tr>
<td>Appropriations</td>
<td>State government</td>
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<td>Regulations</td>
<td>State legislature</td>
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<td>Administrative action</td>
<td>Local legislature</td>
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<tr>
<td>Executive order</td>
<td>Legislative body</td>
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</table>
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
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.
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
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.
What else?

What are other examples of typical communications in your state or locale?
Participation in policy or admin processes = Government officials may communicate with anyone within the same government about policy or legislation.
• 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.
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?
• 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?
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.
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.
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.
Federal employees may not use their official capacity to engage in political activities.

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

Careful!! Can be ambiguous!
It’s OK to have your work affiliation somewhere 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.

• 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 hosted by **Changelab Solutions**
http://changelabsolutions.org/publications/webinar-complying-anti-lobbying-rules

**Feldesman Tucker** private law firm specializes in federal contracts

**Center for Lobbying in the Public Interest** clpi.org

**Alliance for Justice** boulderadvocacy.org

**A Guide to the Hatch Act**
Thank you!

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