Public Health Advocacy

The Basics

Presented by:
Sabrina Adler, JD
Vice President of Law

Research Support:
Vince Young, JD
Attorney

Melani Tiongson, JD
Attorney
Our mission:
Healthy communities for all through equitable laws & policies
Act for Public Health is a collaborative working group that provides resources, technical assistance, and training to help push back against attempts to block public health officials’ ability to do their job. This group of public health organizations and experts is applying their decades of experience in public health law and policy work to preserve public health authority and infrastructure wherever challenges arise.

Act for Public Health is an initiative of the Public Health Law Partnership.

https://www.changelabsolutions.org/act-public-health
Disclaimer

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 nonpartisan nonprofit organization that educates and informs the public through objective, nonpartisan analysis, study, and 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.

Copyright © 2022 ChangeLab Solutions
Overview of this Session

What is Lobbying?

Exceptions to Lobbying Rules for IRS 501(c)(3) Nonprofits & Federal Grantees

Key Points and Q&A
What is lobbying?
IRC § 501(c)(3) Nonprofit Organizations

- The use of funds for lobbying is likely to be restricted by funders through a contract or grant.
- Review contracts carefully and consult your legal counsel if needed.
Grants from federal government agencies prohibit grantees from using federal funds for lobbying.
Lobbying: Must Include All 4 Elements

1. Communication with a
2. Government official or employee (legislative, or other who takes part in forming legislation)
3. Reflects a point of view on (i.e., attempts to influence)
4. Specific legislation
2 Types of Lobbying

1. Direct lobbying
2. Grassroots lobbying
Direct Lobbying

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

A communication encouraging the public to "take action" to influence specific legislation
Exceptions to Lobbying Rules
Coalition building among governments, nonprofits, the private sector, and community members to discuss problems and share ideas generally
Sharing best practices & success stories with the public or government officials
Non-Partisan Analysis, Study, and Research

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 though author may include their own opinion or conclusion;
4. Conclusion is based on evidence and facts, not on unsupported opinion;
5. Broadly distributed to the public, and not directed to only one side of an issue.
Broadly Sharing Evidence-Based Policy Approaches
Examples

• Model ordinance for mandatory indoor masking

• Toolkits on improving government procurement of at-home COVID-19 testing kits along with model contracts

• Results of policy scans that summarize school district policies on hybrid schooling
Other Allowable Activities

- Educating the public about personal health behaviors
- Communicating to the public about health risks, their consequences, including possible policy or legislative solutions
- Talking with legislators and staff about policy and issues, including site visits to help them gain a deeper understanding of public health issues
- Working with private sector organizations on voluntary institutional changes that do not constitute public policy
- Responding to a written request from a legislative committee about evidence of program or policy effectiveness regarding a specific piece of legislation
Exceptions to Lobbying Rules Under IRC 501(c)(3)

Even if all 4 lobbying elements are present, the following communications are **NOT** lobbying:

- Responses to a written invitation to testify about a bill (even if discussing pros and cons) or to provide technical assistance

Additionally, prohibitions on lobbying with philanthropic funds only apply to legislation and **do not** apply to:

- Regulations
- Administrative actions
- Often the decisions or actions of non-legislative bodies like planning commissions or school boards
Invitation to Testify or Provide Technical Assistance

At the request of a government or legislative body, you may give a technical or factual presentation of information to government decision-makers regarding specific legislation or a legislative proposal. You may provide your opinion or recommendation if the invitation requests it.
A written TA Request only needs to reflect the 3 requirements of the IRS.

1. Written on behalf of the government or legislative body (or a subdivision);
2. Request for information AND recommendations;
3. Response will be available to ALL members of the legislative or gov’t body.
Exceptions to Lobbying Rules for Government Employees Receiving Federal Funding

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.
Participation in policy or admin processes =

Government officials may communicate with anyone within the same government about policy or legislation.
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.
Questions to Ask Yourself

• Does funding include a restriction on lobbying?

• What advocacy can I engage in that doesn’t constitute 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?
Yikes!

I Got It Wrong!

Did I Break the Law?

• Bill your time to a funding 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?
• **Engage**: Get people excited about their vision for change

• **Assess**: What’s the problem? What solutions are there?

• **Propose**: Draft a strong policy that expresses the vision

• **Advocate**: Identify and meet with decision makers

• **Implement**: Stay focused even after a policy gets adopted
Key Points and Q&A
Key Points

- 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 advocacy activities regardless of lobbying restrictions

- Carefully separate personal and professional lives

- It is important to consult your legal counsel
Webinar/background materials from ChangeLab Solutions
http://changelabsolutions.org/publications/webinar-complying-anti-lobbying-rules

Feldesman Tucker (private law firm specializing in federal contracts)
https://www.feldesmantucker.com/

A Guide to the Hatch Act for Federal Employees

National Council of State Legislatures’ Chart on Laws that Limit Public Funds to Lobby

National Council of Nonprofits – Everyday Advocacy
https://www.councilofnonprofits.org/everyday-advocacy

Alliance for Justice: Bolder Advocacy Resource Library
https://bolderadvocacy.org/resource-library/
Public Health Authority Resources

Public Health Authority Litigation Tracking
https://www.publichealthlawwatch.org/actforpublichealth/litigationtracking

Public Health Authority Resources from The Network for Public Health Law
https://www.networkforphl.org/resources/topics/public-health-authority/

Public Health Authority Resources from Changelab Solutions
https://www.changelabsolutions.org/public-health-authority

Public Health Authority Resources from Public Health & Equity Resource Navigator
https://phern.communitycommons.org/topic/public-health-authority/
Technical Assistance on Public Health Authority & Email List

https://actforpublichealth.org/connect-with-us/
Questions?
Thank you!

Post-training survey will follow.

Sabrina Adler, JD
Vice President of Law
sadler@changelabsolutions.org

www.changelabsolutions.org
Twitter: @ChangeLabWorks
Political Activity on Traditional & Social Media
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
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!
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.