



Advocating for Impact

Nonprofit Organizations and
Lobbying

The Colorado Health Foundation's Vision

That across Colorado each of us can
say: “ We have all we need to live
healthy lives.”



Webinar Goals

- How can lobbying be an effective tool in advancing an organization's goals and mission?
- What are the legal parameters for nonprofit organizations that engage in legislative lobbying?
- How can a nonprofit ensure they are prepared to lobby effectively for their organization's priorities?



Today's Presenters



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LOBBYING ACTIVITIES OF 501(c)(3) ORGANIZATIONS

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Lobbying and Advocacy Activities of 501(c)(3)s

Definition of Lobbying : “Lobbying” refers to the expenditure of money by an organization for the purpose of *attempting to influence legislation*.

An organization will be regarded as *attempting to influence legislation if the organization*: (a) advocates the adoption or rejection of legislation; (b) contacts members of a legislative body with respect to legislation (including the general public in the case of ballot measures); or (c) urges the public to contact members of a legislative body with respect to legislation.

Lobbying and Advocacy Activities of 501(c)(3)s

Private foundations are prohibited from engaging in either type of lobbying.

Public funds cannot be used for lobbying.

Certain restricted funds cannot be used for lobbying – check the grant agreement!

Definition of Legislation

“Lobbying” refers to the expenditure of money by an organization for the purpose of attempting to influence “*specific legislation.*”

“*Legislation*” means “action by Congress, a State legislature, by a local council or similar governing body, or by the public in a referendum or ballot measure or similar procedure.”

Definition of Legislation

“*Legislation*” does not include actions by judicial, executive or administrative bodies –actions by school boards, housing authorities, and similar federal, state or local bodies, as they are considered to be administrative, not legislative bodies.

“*Legislation*” generally does not include executive orders, but may include executive vetoes.

Definition of Specific Legislation

In order for there to be lobbying, either direct or grassroots, there must also be “*specific legislation*.”

Legislation becomes “*specific legislation*” upon the introduction of a bill into a legislative body as well as upon the existence of specific legislative proposals. It may also become specific legislation at an early time.

As to a referendum, ballot initiative, or similar item, an item becomes “*specific legislation*” when the petition is first circulated among voters.

Types of Lobbying

Direct Lobbying: any communication that an organization has about *specific legislation* with either legislators or government officials (or their aides) who participate in the formation of legislation.

Ballot measures such as referenda and ballot initiatives are determined at the ballot box by the general public. Thus, efforts aimed at convincing the general public to support or oppose ballot measures are considered to be direct lobbying since the voting public is the legislature.

Types of Lobbying

Grass Roots Lobbying: any communication which (i) refers to *specific legislation*; (ii) reflects a view on the legislation; and (iii) encourages the recipient to *take action* with respect to the legislation.

A “*call to action*” includes telling the recipient to contact their legislator for the principal purpose of influencing legislation, stating the contact information of a legislator, or providing a mechanism such as a petition for the recipient to communicate with a legislator for the principal purpose of influencing legislation.

What Activities Are Not Considered To Be Lobbying

Nonpartisan analysis, study or research: a private foundation or public charity may make available the results of “nonpartisan analysis, study or research” on a legislative issue provided that such results present a sufficiently full and fair exposition of the pertinent facts to enable the audience to form an independent opinion.

This is probably the most important single exception to the lobbying rules and is particularly important because many nonprofits that engage in public policy activities conduct significant amounts of nonpartisan analysis, study and research on legislation.

What Activities Are Not Considered To Be Lobbying

Providing Requested Technical Advice. A public charity or private foundation's response to *written* requests from a legislative body (not just a single legislator) for technical advice on pending legislation is not considered lobbying. Thus, if requested in writing by the legislative body, an organization may provide testimony on legislation, including taking a position on that legislation, and it would not be engaged in lobbying.

What Activities Are Not Considered To Be Lobbying

Self-Protection. A public charity or private foundation is allowed to lobby to protect its own existence. This is a very limited exception.

What Activities Are Not Considered To Be Lobbying

Discussion of Broad Social Issues. A public charity or private foundation may discuss broad social, economic and similar policy issues whose resolution would require legislation – *even if specific legislation on the matter is pending* – so long as the discussion does not address the merits of the *specific legislation*.

Miscellaneous Non-Lobbying Activities

- Educate legislators (which includes the general public for ballot measures) on broad social issues;
- Contacts with *executive* branch employees or legislators in support of or opposition to proposed *administrative regulations*;
- Influence regulatory bodies (in that such efforts are before an administrative body which is part of the executive branch of government, not the legislative branch);
- Lobbying by volunteers unless the organization incurs expenses associated with the volunteers' lobbying;
- Train grantees how to lobby;
- Produce nonpartisan analysis or research;
- Encourage civic participation;
- Support advocacy through grant-making.

Lobbying Limits of § 501(c)(3) Organizations

There are two tests to determine lobbying limits:

The first is the "**insubstantial part test.**" It requires that "no substantial part" of a public charity's activities are for attempting to influence legislation. It is unclear how to calculate the "insubstantial part" test, although it is likely somewhere between 4%-10% of an organization's total annual expenditures.

Most organization's choose to make the "h" election –why?

Lobbying Limits of § 501(c)(3) Organizations

The second test is the “h” election:

- certain organizations such as churches are not eligible to make this election.
- If an eligible public charity would like to make the “h” election, it should file Form 5768, *Election/Revocation of Election By Eligible 501(c)(3) Organizations To Make Expenditures to Influence Legislation*, with its next annual Form 990. Form 5768 can also be filed with its Form 1023 application.
- The “h” election can be revoked by filing the same election.

Calculating the “h” Election

Its based on an organization’s “**exempt purpose expenditures**,” which include all lobbying expenditures, grants (including restricted grants which cannot be used for lobbying purposes), the costs of in-house fundraising, employee salaries, and related employee expenses.

A public charity’s *total lobbying limit* under its “h” election is calculated as follows:

- 20% of the first \$500,000 of the § 501(c)(3) exempt purpose expenditures
 - + 15% of the next \$500,000 of exempt purpose expenditures
 - + 10% of the next \$500,000 of exempt purpose expenditures
 - + 5% of the remaining exempt purpose expenditures

Example

“Exempt purpose expenditures” for 2018 is estimated at \$10,000,000.

- 20% of the first \$500,000 of the § 501(c)(3) exempt purpose expenditures = **\$100,000**
- + 15% of the next \$500,000 of exempt purpose expenditures = **\$75,000**
- + 10% of the next \$500,000 of exempt purpose expenditures = **\$50,000**
- + 5% of the remaining exempt purpose expenditures = $(\$10,000,000 - \$1,500,000) \times 5\% =$ **\$492,500**

Total permitted lobbying for 2018: **\$717,500**

Calculating the “h” Election

- In no case may the total lobbying expenditures exceed \$1,000,000 in any year under the “h” election.
- An organization’s *grass roots lobbying* limit is 25% of the total lobbying limit. Thus, no more than 25% of the number determined pursuant to this calculation can be spent on grass roots lobbying. If desired, the remaining 75% could be spent on *direct lobbying*.

Exceeding the Annual “h” Election Limit

- If a public charity exceeds its “h” election in any given year, it will be required to pay an excise tax of one quarter of the *excess* lobbying expenditures.
- A public charity that exceeds its lobbying limit only risks losing its tax exempt status if it exceeds its lobbying limits by more than 50%, which is generally calculated using a four year moving average.
- Thus, because of this four year moving average, if a public charity exceeds its limit in one year, it can correct it in the next year by spending less than its allowable lobbying amount, although it will have to pay a tax on its excess lobbying amount.

Thank you!

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Nonprofit Organizations and Lobbying: Advocating for Policy Change

NOVEMBER 8, 2017

Why Lobby?



Colorado's Legislature

- ▶ Amazingly Accessible
- ▶ Every bill gets a hearing and a vote
- ▶ 33-18-1
 - ▶ 65 Members in the State House
 - ▶ 35 Members in the State Senate
 - ▶ 1 Governor



Making Change – One Bill at a Time

- ▶ Maximum Policy Power
- ▶ Fast Pace – Immediate Impact
- ▶ Direct State Agencies



Lobbying Strategies



Inside vs. Outside Game

Inside Game



In-House vs. Contract Lobbyists

Outside Game

- ▶ Communications
 - ▶ Social, Free, Paid
- ▶ Organizing
 - ▶ Grassroots / Grasstops
- ▶ Research



What Makes a Good Client?

- ▶ Clear goals that translate to actual policy
- ▶ Quick decision making process
- ▶ Long term commitment to advocacy
- ▶ Credible experts who can communicate



Contact Information

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Additional Resources

- Additional resources at
 - www.coloradohealth.org/advocating-impact
 - <https://bolderadvocacy.org/>

