

First Amendment Rights for Non-Profit: Lobbying & Advocacy

Advocacy and lobbying are a First Amendment Right. Given the issues facing 501 (c)(3) non-profit organizations and the people they serve, it is more important than ever that non-profits engage in the legislative policy process.

Some non-profit organizations rarely tread in advocacy territory for fear of crossing the line and losing their tax-exempt status. And many more mistakenly assume lobbying is altogether illegal. To the contrary, federal laws actually exist to encourage and permit non-profits to lobby within certain limits – and to advocate without limits.

Your understanding what constitutes lobbying under the law – and what the limits are – is key to lobbying legally. In addition, your understanding what constitutes general advocacy (as opposed to lobbying) and that organizations can engage freely in general advocacy, is vital for the promotion of positive health policy.

This section summarizes some of the laws and regulations governing lobbying* that pertain to non-profit organizations and provides guidelines for general advocacy efforts and political activities. It is intended to empower non-profit organizations and to create a greater culture of advocacy.

*Note: IRS regulations, federal and state law are subject to change and to differing legal interpretations in relation to specific programs. This section is intended only as a general guide. You should not rely on the information herein as a legal opinion regarding you activities. For a legal opinion, contact you attorney. For more information on the specific laws pertaining to lobbying, contact the Senate Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510, (202) 224-0758, or the House Legislature Resource Center, B-106, Cannon House Office Building, Washington, DC 20515, (202) 226-5200, or see http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm. For additional information regarding state laws pertaining to lobbying, see <http://www.state.ak.us/apoc/labcov.htm> or contact Alaska Public Offices Commission, PO Box 110222, Juneau, AK 99811, (907) 465-4864.

Although at first glance, some of the nuances presented here may appear intimidating your ability to maneuver comfortably and confidently within the two realms of advocacy and lobbying will increase with understanding and practice. Don't miss out on a First Amendment Right because of ignorance! Rest assured that the Alaska Primary Care Association will not request grassroots assistance that will jeopardize your legal, non-profit status.

Lobbying and Advocacy: What's the Difference?

While there are complex legal definitions of lobbying and advocacy, the key difference is that lobbying entails support or opposition to specific legislation at the federal, state, or local level, while advocacy does not specify a particular legislative proposal.

Think of general advocacy as the big pie and lobbying as a particular slice of the pie. Advocacy is education to influence policy in general sense; lobbying is

education to influence policy in a very specific sense. The good news is that non-profit healthcare organizations have access to the entire pie; they must, however, be careful in regard to one particular piece of that pie: the lobbying piece.

As discussed, all non-profit organizations can advocate without limits; they may also lobby, but within limits, as defined by law. The best way to understand what advocacy is, and therefore what your organization may engage in freely, is to understand what specifically constitutes lobbying.

IRS regulations define two types of lobbying communications: direct lobbying and grassroots lobbying. And activity that does not fit into one of these two types is regarded as advocacy.

What Kind of Communication Is It Really?

Lobbying Activities: Two Types of Lobbying Communications

As you read this segment outlining lobbying, remember that non-profits may indeed engage in lobbying activities, but within limits. These limits are discussed in subsections "Lobbying Dollars" and "Lobbying Hours."

Direct Lobbying – In general, direct lobbying is any attempt to influence any legislation through communication with a legislator, an employee of a legislative body or other government official, which:

- (1) refers to specific legislation; and
- (2) reflects a view on such legislation

Grassroots Lobbying - In general, grassroots lobbying is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof. A grassroots lobbying communication is one which:

- (1) refers to specific legislation;
- (2) reflects a view on that legislation; and
- (3) encourages the recipient to take action with respect to the legislation, either by
 - (a) directly urging the recipient to contact legislators or other government officials in order to influence legislation;
 - (b) including the address, phone number or similar information about a legislator or government official;
 - (c) providing a petition, postcard or other prepared message to send to a legislator or government official in order to influence legislation; or
 - (d) identifying one or more legislators 1) who will vote on the legislation as opposing the organization's view, 2) who is undecided, 3) who is the recipient's representative in the legislature, or 4) who is a member of the legislative committee that will consider the legislation.

Referenda voted on by the public presents a special case in regard to these definitions. Because the public is the body enacting the legislation, work on public policy referenda is considered to be direct lobbying and not grassroots lobbying. A message for action sent to the public under these circumstances is a direct lobbying contract. This scenario is relevant in the calculation of lobbying dollars an organization may spend (see "Lobbying Dollars" on page 4)

Non-Lobbying Activities: Advocacy Communications

Any legislative communication activity that does not meet the above lobbying communication criteria is regarded as advocacy, which non-profit organizations may conduct without limit.

Examples of advocacy communications which are not considered lobbying include the following:

- Providing elected officials with organizational information such as newsletters and fact sheets

- Conducting a tour of your facility for legislators

- Presenting a legislator with an appreciation award

- Performing a legislative survey

- Communicating with a legislator without citing specific legislation

- Communicating with a legislator while citing specific legislation but not indicating direct or indirect support of or opposition to that legislation

- Communicating with a legislator while indicating support or opposition to a general position but not citing or directly or indirectly implying specific legislation

- Communicating with the public to provide education on specific legislation as well as to indicate your organization's support of or opposition to that legislation but not requesting action to influence that legislation, not identifying specific legislators, and not providing contact information for legislators.

“Self-defense lobbying” is unlimited like general advocacy communications. This is a peculiar, wonderful, and important exception to the rules regarding lobbying for non-profits. If a specific piece of legislation is tied to the life or death existence of an organization (thus the need for “self-defense”) the non-profit organization is not restricted from lobbying on its own behalf in this case.

Attempts to influence administrative rules, regulations or other executive branch actions are also not viewed as a lobbying by the IRS. Be aware, however, that the State of Alaska does not view state level attempts to influence these as lobbying.

Legislative surveillance, analysis or research, if not conducted in preparation for a lobbying activity, is considered advocacy.

Decide How Much and How Often You Can Lobby

When General Advocacy Is Not Enough: Non-Profits Engaging in Lobbying

It very likely will be necessary for your organization to lobby from time to time on specific pieces of legislation, as opposed to only advocating in a general sense. You should know a little more about this particular “lobbying piece” of the “advocacy pie” so you’ll know how much and how often you can lobby and so you stay within your legal bounds.

Lobbying Dollars: Whose and How Much?

One area of restriction on lobbying for non-profits has to do with an organization’s monies.

The source of funds may dictate restrictions on how the funds may be used. Non-profit organizations may not use government funds, such as government grants or contracts, to lobby. For example, federal grant money typically may be used for advocacy but may never be used for lobbying purposes.

In addition, federal law permits an organization to use a portion of its total expenditures for lobbying purposes but place no restrictions on how much may be used for advocacy.

Federal law states that a 501(c)(3) publicly supported organization may devote no more than an “insubstantial” portion of its activities to lobbying. There are two ways in which this can be measured.

One method of measurement is a subjective “substantiality test” based on the facts and circumstances of each case. Because this test can be applied rather arbitrarily, it is advisable for an organization to file IRS Form 5768 with

the Internal Revenue Service in order to be governed by the “expenditure test” or “H election test.” This test sets a dollar limit on the amount allowed for lobbying based on the non-profit organization’s total annual exempt purpose expenditures.

Total Annual Exempt Purpose Expenditures	Percent that May be Spent on Lobbying
\$500,000 or less	20%
\$500,000 -1 million	\$100,000 + 15% of budget over \$1 million
\$1 million-1.5 million	\$175,000 + 10% of budget over \$1 million
\$1.5 million and over	\$224,000 + 5% of budget over \$1.5 million

Note: Total lobbying expenditures may not exceed \$1 million. “Grassroots lobbying” expenditures may comprise no more than 25% of an organization’s total allowable lobbying ceiling. See page 2 for what constitutes “grassroots lobbying.”

Lobbying Hours: How Much Time Is Allowed?

In addition to monies spent on lobbying, the amount of time spent on lobbying is an important consideration for non-profit organizations.

Only a certain number of lobbying hours can be performed by a representative of an organization in a certain time period before the person must register as a lobbyist and file reports and/or the organization must register and file reports.

Individuals who spend more than 20% of their time lobbying at the federal level on behalf of an organization must register as a lobbyist with Congress. For example, a typical 40-hour per week employee would be required to register if the amount of time spent on federal lobbying were to regularly exceed 8 hours per week. Also at the federal level, an organization must register and file reports if its total expenses for federal lobbying exceed \$24,500 in a six-month period. These expenses include any portions of salaries paid to employees who engage in lobbying activities based on time spent and hourly rate.

In Alaska, current law dictates that a person who engages in more than 10 hours of lobbying at the state level in any 30-day period in a calendar year must register and file reports. If the person is an employee lobbyist, the employer is also required to register and file quarterly reports.

**Election Time
What’s a Non-Profit To Do?**

What Political Activities Are Permitted?

In addition to being aware of what types of legislative communication activities are considered lobbying and what are not, you should understand what political activities are permitted and what are not. Political activities in this segment refer to election or partisan activities.

Whereas lobbying activities are allowed within dollar and time limits, be aware that certain political activities are prohibited altogether for 501(C) (3) organizations.

A 501(C)(3) organization cannot be partisan or advocate for one candidate over another and cannot legally participate in many election activities. Below you will find a list briefly outlining the political activities in which 501(C) (3) organizations may engage as well as the political activities in which they may not engage.

A 501(C)(3) organization may engage in these political activities:

- Contact candidates to persuade them of a particular view
- Criticize incumbents during non-election periods of the year
- Conduct a voter registration or get-out-the-vote drive
- Distribute non-partisan voter education materials
- Conduct polls and convene focus groups
- Perform non-partisan political surveillance, analysis or research
- Host a candidate forum to which all candidates for a particular seat have been invited
- Conduct a candidate survey and distribute straight results in a fair, non-partisan format without rating or scoring candidates, without instructing voters how to vote, and without directly comparing survey results with the organization's position(s) to imply endorsement or non-endorsement of candidates

A 501(c) (3) organization may not engage in these political activities:

- Contribute to political campaigns
- Conduct political fundraising activities
- Endorse a political candidate
- Rate or score candidates
- Use phrases with political connotations in its voter education literature
- Use a poll or focus group to influence an election

In summary, non-profit organizations are expressly prohibited from intervening in political campaigns for candidates for public office and from engaging in partisan activity of any kind, but are not prohibited from non-partisan activities, including non-partisan interactions with legislators and candidates.

Summing It Up: Lobbying, Advocacy, and Political Activities

The world of advocacy is wide open to non-profit organizations. Advocates who know the general rules and guiding principles are desperately needed to promote positive health policy.

Although lobbying has dollar and time restraints, it too is an arena for confident non-profits who understand the fairly generous limits. Finally, some political activities are permissible for 501(c) (3) organizations, while others are fully prohibited.

As health policy advocates preparing to engage in the legislative process, you should become familiar with these guidelines* and refer to them periodically to refresh your understanding.

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REPRESENTATIONAL LOBBYIST REQUIREMENTS

Please be advised that anyone who is going to Key Campaign may need to be registered as what is known as a REPRESENTATIONAL LOBBYIST. A representational lobbyist is defined as a person who attempts to influence legislative or administrative action and receives only reimbursement for travel and other expenses, but does not receive any compensation or fee for this activity. This registration must occur **BEFORE** we travel to Juneau. There is no fee to register a representational lobbyist. You will need to register your representatives if they meet the following criteria:

1. The person is not an employee of your agency.
2. You are paying for any portion of their expenses in traveling to Juneau.

PLEASE NOTE: If children are going, but are not going to be “communicating directly”, they do not have to be listed. If they are going to be speaking to legislators/administration (either verbally or with a communication device) they will need to be listed. For instance, Hope has 15 people going to Key Campaign. Of those, 1 is a Board member (not paid), 5 are family members (two are children who will not be communicating directly) and the remainder are employees (paid). Of these, only 4 are required to be registered as a representational lobbyist (the Board member and the family members – not the children).

Please note, your employees will not have to register, unless they exceed 10 hours of communicating directly with public officials to influence legislative or administrative action in a 30 day period. Then they will have to register as a paid lobbyist since they receive their normal compensation for this activity. This is the primary difference from a representational lobbyist.

In order to make this a simple process, Patty Ware of the Alaska Public Offices Commission has come up with a group registration form for each agency rather than each individual having to register separately as a lobbyist

Please go to the website at: www.apoc.alaska.gov to locate the form.. You will find on the left hand side with the word “new” to its left, the following items:

- Representational Lobbyist and Legislative Fly-In FAQ’s
- Group Representational Lobbyist Registration Form

Please print off the Frequently Asked Questions and review it before completing the registration form. Then print off the Group Representational Lobbyist Registration Form. You will find the following sections:

1. General information (page 1) – This form requires that you type in the name of each person who is a representational lobbyist for your agency. It also requires a **signature** from each person you must register. So, because this must be completed prior to going to Juneau, please start on this right away.
2. Lobbying Interest (page 2) – We will be talking about the following items: Wait List, budgets for DD programs statewide, ILP programs
3. Employer/Reimbursing Entity Information (page 2) – Please provide your agency name, mailing address, phone number, and a contact person.
4. Employer/Reimbursing Entity Verification (page 2) – Please sign and date this form. Print/type the name and title of the person who signed this form on behalf of your agency.

When complete, please fax the form to the APOC. Their fax number is (907) 465-4832.

Representational Lobbyist Requirement
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APOC requires a quarterly report from any entity that employs a lobbyist. For those of you who have an agency lobbyist working on your behalf, you already file quarterly reports with APOC. All you need to do is include the reimbursement of expenses for any of the representational lobbyists on your group registration form when you file your normal quarterly report.

However, for the purpose of this legislative fly-in trip, if you are NOT already reporting to APOC because you employ a lobbyist, there will be a one-time report you will have to complete summarizing your reimbursement of expenses for all of your representational lobbyists. This form is being created by Patty from the APOC. Once it is completed, she will let me know that it is available for you to access. The report is due April 30th and will be available sometime in March. For the Key Campaign, this report must be filed by April 30th. Please do not forget.