Advocacy Legalese
Dos and Don’ts for Advocacy & Civic Engagement at Health Centers

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Why Advocacy Has to Matter to Health Centers

Income Sources for Health Centers

- Medicaid/CHIP: 40%
- Federal (330): 21%
- Other grants/contracts: 13%
- Private 3rd Party Payers: 7%
- State: 7%
- Patient Self Pay: 6%
- Medicare: 6%
“The only way to predict the future is to have power to shape the future.”

Eric Hoffer
Can Health Centers lobby?

**YES**, and you should. More than 75% of a health center’s budget can be determined by federal, state and local governments’ decisions. However, there are limits to what health centers can do.

*If you take nothing else away from today’s presentation, remember: you cannot use ANY federal funds to lobby.*
Breakdown of Activities

Advocacy

Legislative Advocacy (Lobbying)

Educational Advocacy

Direct Lobbying

Grassroots Lobbying
Educational Advocacy

- Meeting with, calling, emailing, general communications to legislators or decision makers to educate them about your Health Center or the impact of issues on the Health Center

- There is NO LIMIT on the amount of educational advocacy Health Centers may provide
Legislative Advocacy vs. Political Campaign Advocacy

- Legislative advocacy is allowed (within certain limits)

- Political campaign activity is **entirely prohibited**
Advocating the enactment or defeat of pending or proposed federal, state, or local legislation – even in concept.
Direct Lobbying vs. Grassroots Lobbying

Direct Lobbying – communicating with legislators (including staff)

Grassroots Lobbying – communicating with the general public in an effort to influence the vote of a legislative body
Direct Lobbying (tax law definition)

• Attempt to influence specific legislation through a communication with Member or employee of legislative body, or
• Any government official who may participate in formulation of legislation, if purpose is to influence legislation
• Specific legislation
  • Legislation that has been introduced
  • Specific proposal that has not been introduced
• Communication reflects a view on such legislation/proposal
Grassroots Lobbying (tax law definition)

• Attempt to influence specific legislation through communication to general public (or segment) if communication:
  • Refers to specific legislation
  • Reflects a view on such legislation; and
  • Contains a “call to action”
    • *e.g.* “write your Congressman”
    • Provides address or tel. number of member/staff
    • Contains petition or postcard
    • Specifically identifies a legislator who will vote on the matter
Exceptions

Common exceptions

• Does not include actions by executive, judicial, or administrative bodies
• Providing objective, educational, nonpartisan information is NOT lobbying so long as the communication does not support or oppose legislation

• State and/or private funds may have restrictions on lobbying activities
A 501(c)(3) organization (and its affiliates, directors, employees and agents acting on behalf of the organization) cannot engage in or conduct any political campaign activities:

- Making contributions to candidate or party
- Endorsing/promoting candidates
- Activities that favor/disadvantage candidates – appearances are important
- Publishing candidate statements

Participation can sometimes be viewed as intervention.
Political Campaign Activity

• Violations may result in:
  • Revocation of the organization’s tax-exempt status
  • Imposition of an excise tax on the amount of money spent on the activity
  • Cost disallowance
So, I can’t use my 330 grant for lobbying…

what CAN I use?
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No other sources are shown.
Dollars you CAN use for lobbying

• Revenues unrelated to the grant-supported project (and not restricted by other payors);
• Unrestricted donations, and investment income;
• A health center's fees (self-pay) or premiums, (as identified by the 1996 amendments to Section 330 law);
• Third party reimbursements (including Medicaid and Medicare payments) and potentially state, local, and other operational funding.
Allowable Lobbying Limits

• Substantial part test & expenditure test
  • Expenditure test (IRC Section 501(h))
    • Clearer standard
    • Allows 501(c)(3) organizations to elect to have their allowable lobbying measured by amounts expended for lobbying
      • Funds may be spent within certain limits, up to $1 million a year
        • (e.g. 20% of first $500 thousand of “exempt purpose expenditures”)
      • No more than 25% of organization’s allowable lobbying expenses may be used for grassroots lobbying
      • Applies only if organization elects 501(h) treatment
  • In short, the “real” restrictions apply to federal grant dollars
What about social media?
Advocacy and Social Media

• Social media, *e.g.*, Facebook, twitter, blogs, websites, are “communications,” but rules/limits are unclear and evolving

• Personal use of center resources will be attributed to the center

• Social Media and Lobbying
  • Generally subject to rules/limits on lobbying communications
  • Distinguish direct and grassroots
  • Consider “political” content
Advocacy and Social Media

• Blogs
  • Content is attributed to the organization
  • User comments likely not attributed to organization, if access is provided (but include a disclaimer)
  • “Guest” post likely OK (but include a disclaimer)

• Facebook, Twitter
  • “Friending” may signal approval
    • Distinguish “official” capacity from campaign
  • “Following” likely not an endorsement, but caution warranted
  • Accepting a candidate as a “friend” or “follower” likely OK if unbiased
  • Delete or at minimum disclaim a political posting to Facebook page
What about voter registration?
YES, you can!

• **Register Voters**
  • Drives must be designed to educate the public about the importance of voting.
  • Activities **cannot be biased** for or against any candidate or party.
  • Nonprofits may target registration and turnout efforts to the areas or people they serve.

• **Educate Voters**
  • Educate the public on issues and encourage participation in the political process.
  • Educate **all candidates and political parties** on your issues.
  • Conduct or participate in a nonpartisan candidate forum. The forum must be open to all candidates, be run in a balanced way, and include a broad range of nonpartisan questions for the candidates.
  • Make presentations on your organization’s issue to platform committees, campaign staff, candidates, media, and the general public.

http://communityhealthvote.net
“The NVRA has a provision to designate offices that provide “public assistance” as voter registration agencies. Public assistance agencies include any site where an individual may apply or receive an application for Medicaid, such as FQHCs. Under this law, FQHCs with State, city, or county employees as outstationed Medicaid eligibility workers are considered public assistance offices and must provide voter registration services. The FQHCs that use non-governmental employees as outstationed Medicaid eligibility workers (e.g., clinic staff, volunteers) may provide voter registration services.”

PAL 96-17, Title: “Federally Qualified Health Centers Participation in Implementation of the National Voter Registration Act.”
Voter Registration Guidelines

Choosing a Target Group
• You **CAN** target historically disadvantaged populations
• You **CANNOT** target ideological groups: liberal, conservatives, etc.

Choosing a Geographic Area
• You **CAN** target an area because it has historically low voter turnout
• You **CANNOT** target an area because it has a close race
Get Out the Vote (GOTV)

- As with voter registration, your GOTV drives must be designed to educate the public about the importance of voting, cannot be biased for or against any candidate or party, and may be targeted to underrepresented communities or those the nonprofit serves.

- Work on behalf of a ballot measure. *Note that this counts towards your direct lobbying limits.*
Test your knowledge!
How nonpartisan (or not!) is the activity?
VOTE

SHUT UP AND DO WHAT WE SAY

Your voice, Your choice

VOTE
On Tuesday, November 7th
Your voice, Your choice

VOTE
On Tuesday, November 7th
Remember:

- **Always be nonpartisan**
  - Nonpartisan is **not** bipartisan
- **Timing is everything**
- **IRS looks at “facts and circumstances” of each case**
  - Seemingly small things can have huge impact
- **When in doubt, get advice beforehand!**
Remember:

- Elections matter to the future of health centers and the health of HC patients
- The populations least likely to vote are those CHCs serve
- Health centers have a trusted relationship with their patients
- Because **YOU CAN** make an impact!
  - Between 910,000-3mil votes were LOST due to registration problems in 2008; a modest improvement over the year 2000, when between 1.5-3mil votes were lost for the same reason.
Visit [www.hcadvocacy.org/legalese](http://www.hcadvocacy.org/legalese) for this information and more, including:

- Q&A on Health Center Lobbying
- Sample Health Center Policy on Lobbying and Political Campaign Activities
- Q&A on Voter Registration Activities
- Sample Health Center Statement of Nonpartisanship
- Info on legal risks in social media use by nonprofits
- Sample Health Center Policy on Social Media

Or email [grassroots@nachc.org](mailto:grassroots@nachc.org) for help!
Save the date!

• How to Prepare for the Policy & Issues (P&I) Forum - Tuesday, 2/27 at 3:00PM ET. RSVP at www.hcadvocacy.org/events

• 2018 NACHC Policy & Issues Forum - March 14-17 in Washington, DC. Register to attend at www.nachc.org

• Election-year legalese webinar - Spring 2018 (date, time, and RSVP information TBD)
Questions?