

Best Practices for Local Public Health Working with Legislators to Advance Health in All Policies

North Dakota Public Health Association – Annual Conference

Chris Chanyasulkit, PhD, MPH
President, American Public Health Association

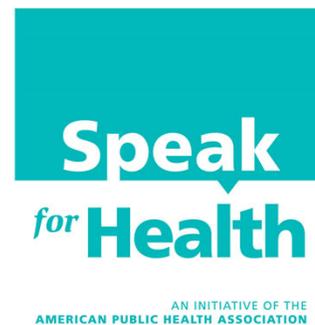


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Advocacy Opportunities:

Speak for Health

- Speak for Health is a member-driven advocacy campaign to enhance the collective public health voice
- The campaign focuses on the August recess, when members are home and available to meet with constituents
- During August-September, APHA shares weekly resources with members to encourage advocacy
- Resources, including fact sheets, sample questions and more, can be found on the Speak for Health website



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You Can:

Send a Message

- APHA's action alerts are an easy way to contact your members of Congress on priority health issues
- Action alert topics: health equity, climate change, gun violence, and more
- Customizing an action alert is recommended – use your experience and expertise



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You Can:

Attend a Town Hall

- Town halls and public forums are a great place to ask your elected officials questions about their commitment to public health
- APHA's sample questions for public forums provide suggested questions on priority issues and point to APHA-endorsed legislation



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You Can:

Write an Op-ed

- Op-eds are a great way to use your public health expertise and spread the word about important public health issues
- Aim your efforts at smaller, local papers
- APHA has op-ed templates on public health funding, climate change and gun violence
- APHA's tips for writing an op-ed include helpful suggestions for getting an op-ed published



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You Can:

Schedule a Meeting

- 94% of congressional staff listed constituent meetings as a key influencer in their boss' decision-making process
- APHA members have public health expertise and live all over the country – a perfect combination to become a public health advocate
- Meeting with your member can be quick, simple, and virtual – but very impactful for the member



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You Can:

Boost Efforts with Fact Sheets

- You don't have to already be an expert to be an advocate
- APHA provides a range of different fact sheets that you can point to in your advocacy
- These fact sheets can be used for phone calls, shared with elected officials during meetings and more



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You Can:

Hold your Members Accountable

- APHA's congressional vote record shows how each member of Congress voted on key public health votes that took place throughout the year
- A higher score = better record of voting in favor of pro-public health legislation
- Last year's record includes voting rights legislation as part of the score
- Use the vote record to congratulate members who have high scores, and encourage members with lower scores to do better on upcoming public health votes



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You Can:

Stay in the Loop

- APHA has several resources that you can use to stay up to date with our advocacy efforts, congressional developments and more
- APHA members receive a monthly Legislative Update with information about recent APHA advocacy on legislation, public health regulations, public health-related federal court cases and more
- Our website also contains a list of all the letters to Congress, comments to agencies, and court briefs that APHA has sent or joined



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What is Lobbying?



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**Philanthropy
&
Foundations**

**IRS § 501(c)(3)
Nonprofit Organizations**

- The use of funds for lobbying is likely to be restricted by contract/grant
- Review contracts carefully and consult your legal counsel if needed

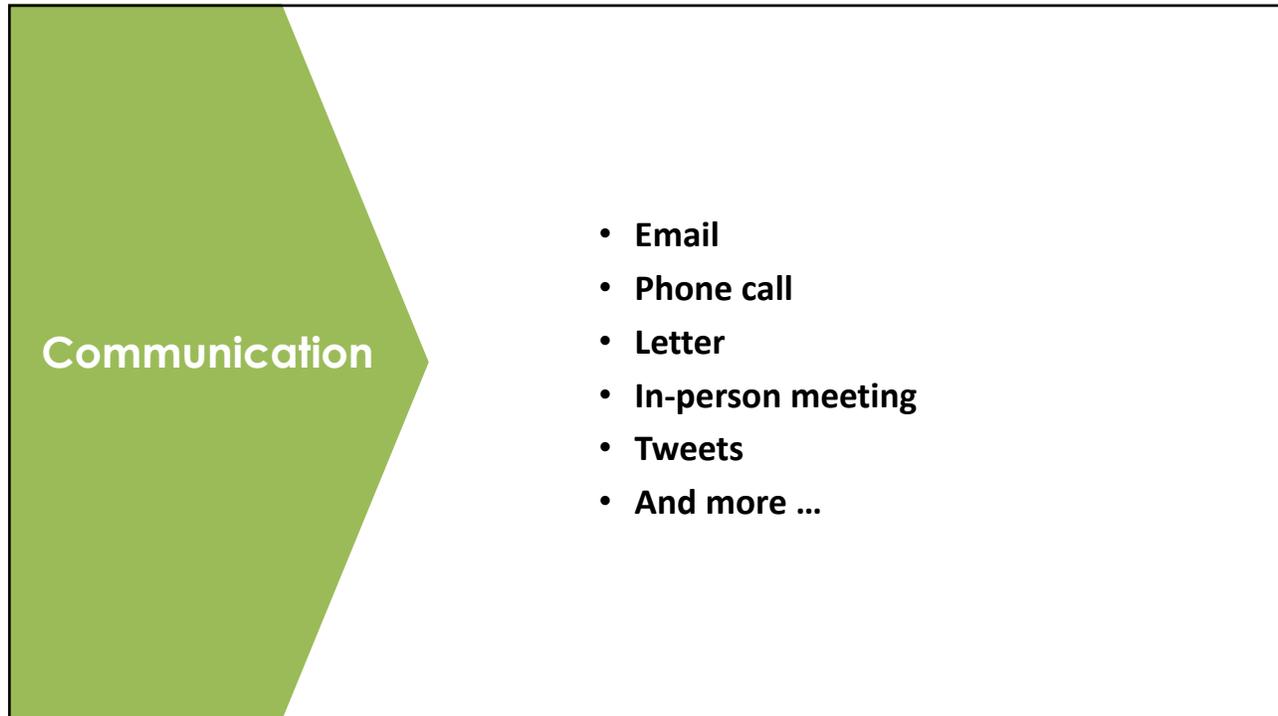
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**Must Have
All 4 Elements**

- 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) on
- 4. Specific legislation**

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Communication

- Email
- Phone call
- Letter
- In-person meeting
- Tweets
- And more ...

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Government Official

Anyone working for...
a legislative body, a legislator, or other government agency/ department that takes part in forming legislation.

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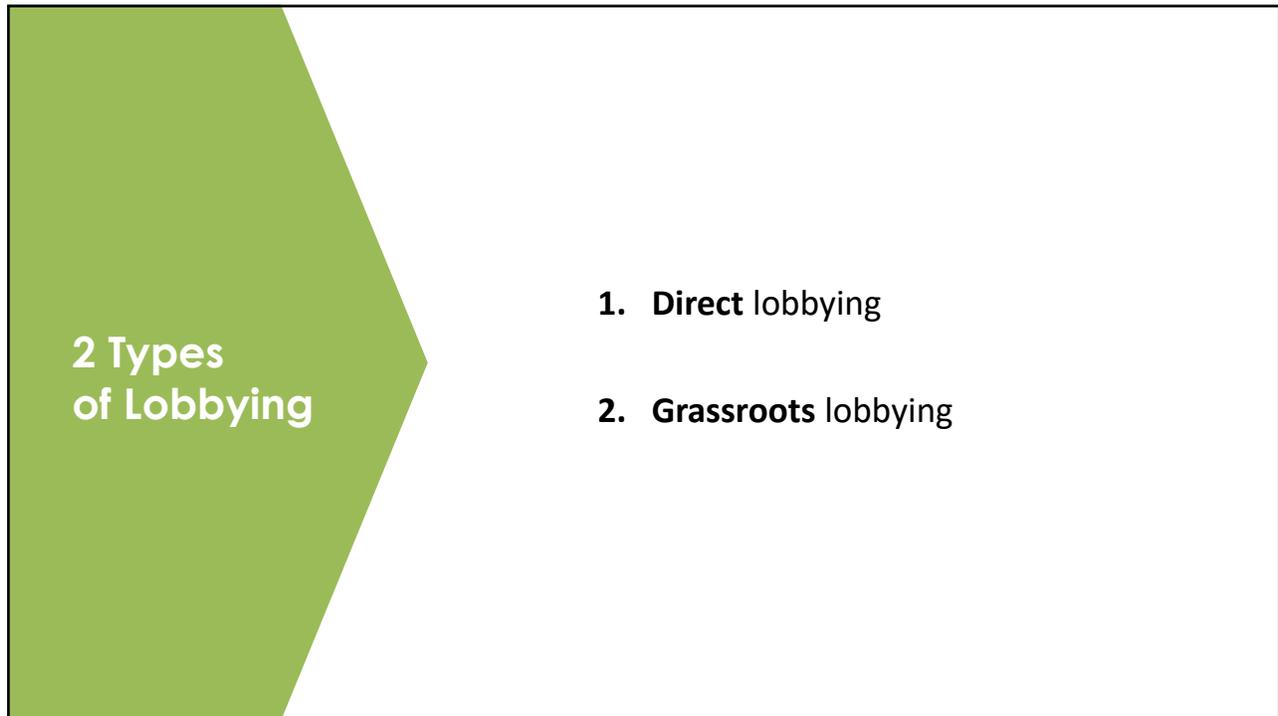


Influencing Legislation

Reflecting a particular view about the legislation or making a direct appeal.

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2 Types of Lobbying

- 1. Direct lobbying**
- 2. Grassroots lobbying**

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Photo courtesy of Tim Wagne

Direct Lobbying

A communication directly with a government official to influence specific legislation

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SIGN THE PETITION

To all Members of US Congress:

As concerned citizens, we call on you to stand for a free and open Internet and vote against both the Protect IP Act and the Stop Online Piracy Act. The Internet is a crucial tool for people in the US and around the world to exchange ideas and work collectively to build the world we all want. We urge you to show true global leadership and do all you can to protect this basic pillar of our democracy.

Already an Avaaz member?
Enter your email address and hit "Send".

Email **SEND ▶**

First time here? Please fill out the form below.

Name

Email

Country Post code

Cell/phone

Avaaz.org will protect your privacy and keep you posted about this and similar campaigns. **SEND ▶**

Grassroots Lobbying

A communication encouraging the public to take action to influence specific legislation

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What Kind of Lobbying?

- A local health department official sends a letter to a state senator in support of SB 123 to pass an indoor mask mandate.
- The health department sends a letter to the members of a Health Equity Coalition urging them to write a letter to their senator in support of SB 123.
- The health department official talks to a senator about the benefits an indoor mask mandate has on minimizing the spread of COVID-19.

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Is this Lobbying?

- Asking a state legislator to oppose a bill (SB 243) that prohibits local health officers from imposing local emergency orders that are more stringent than those issued by the Governor
- Speaking to a state legislator about protecting public health authority to keep us safe and healthy

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Philanthropies: *Only* Legislation

Prohibitions on lobbying with philanthropic funds do *not* apply to:

- Regulations
- Administrative actions
- Often non-legislative bodies like planning commissions or school boards

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Exceptions to Lobbying Rules

NOT lobbying under either
philanthropy rules (or federal rules)

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Coalition Building

among governments, nonprofits, the private sector, and community members to discuss problems and share ideas



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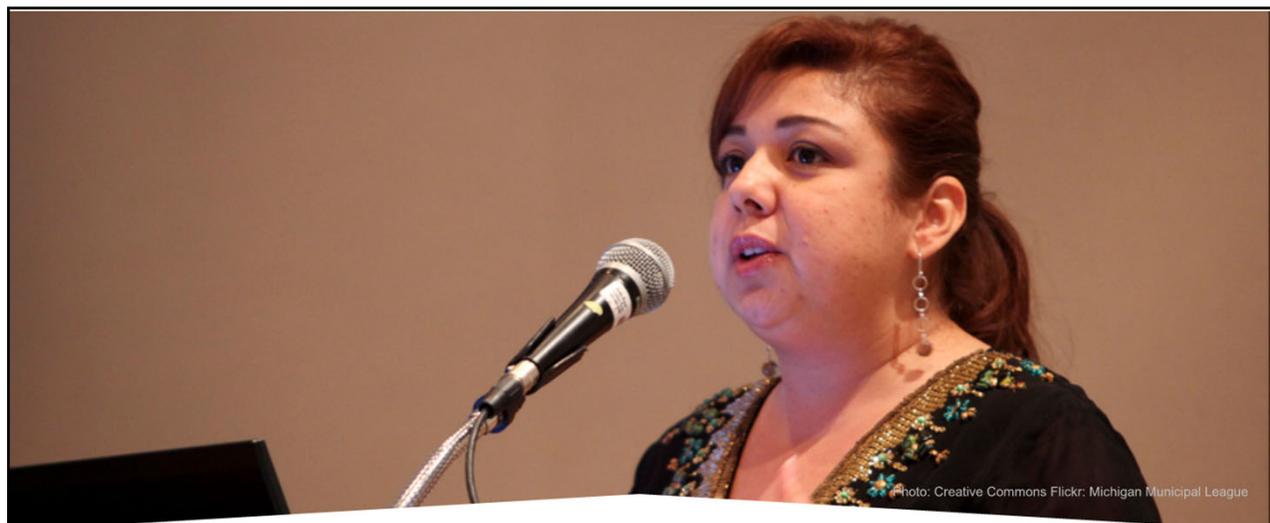
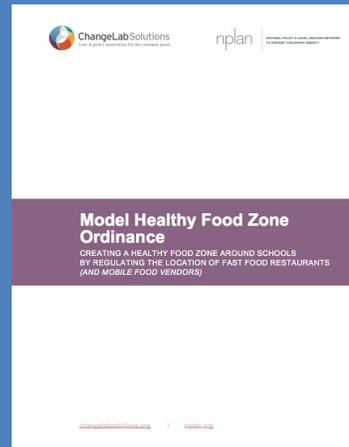
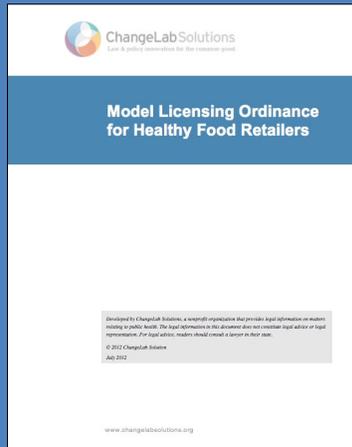


Photo: Creative Commons Flickr: Michigan Municipal League

Sharing best practices & success stories
with the public or government officials

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Broadly Sharing Evidence-Based Policy Approaches



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Exceptions for IRS 501(c)(3) Nonprofits

Even if the 4 elements are present, some communication is **NOT** lobbying:

1. Nonpartisan analysis, study, or research
2. Response to a written invitation to testify or provide technical assistance

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Other Allowable Activities

- Educating the public about personal health behaviors
- Communicating to the public about health risks and their consequences
- 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
- Engaging in regulatory affairs

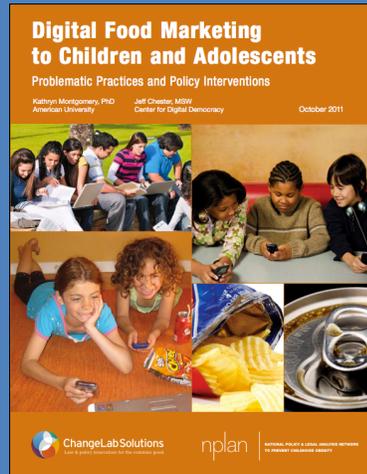
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Nonpartisan Analysis, Study, and Research

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Non-Partisan Analysis, Study, and Research



on policy alternatives or specific legislation that may express support for a specific policy

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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.

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Examples of NPASR

- 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
- A 50-State summary of laws and pending bills that limit public health authority with explanation and analysis of their potential impact

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Invitations to Testify or Provide Technical Assistance

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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.

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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?

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Sample request

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.

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,

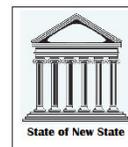
On behalf of the Transportation and Housing Division of the New State Senate Finance Committee, I request that you provide our committee with information regarding mechanisms other states have used for funding healthy housing options. Based on your expertise in this area, and the Public Health Organization's 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

Keith Nagayama
State Senator, District 19
Chair of the Transportation and Housing Division of the New State Senate Finance Committee



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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 under a particular state or local law.
3. Consult your legal counsel about your particular grants/contracts and state/local laws.

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Federal Grants: What is Lobbying?

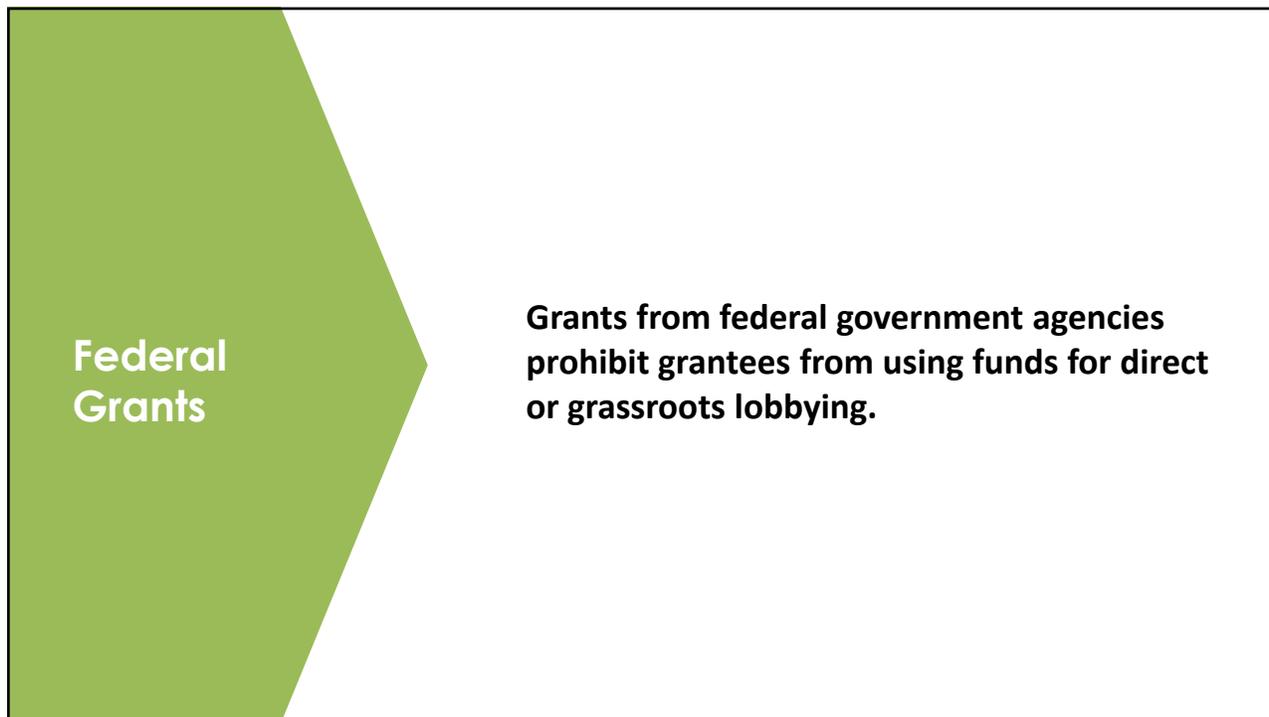


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**Must Have
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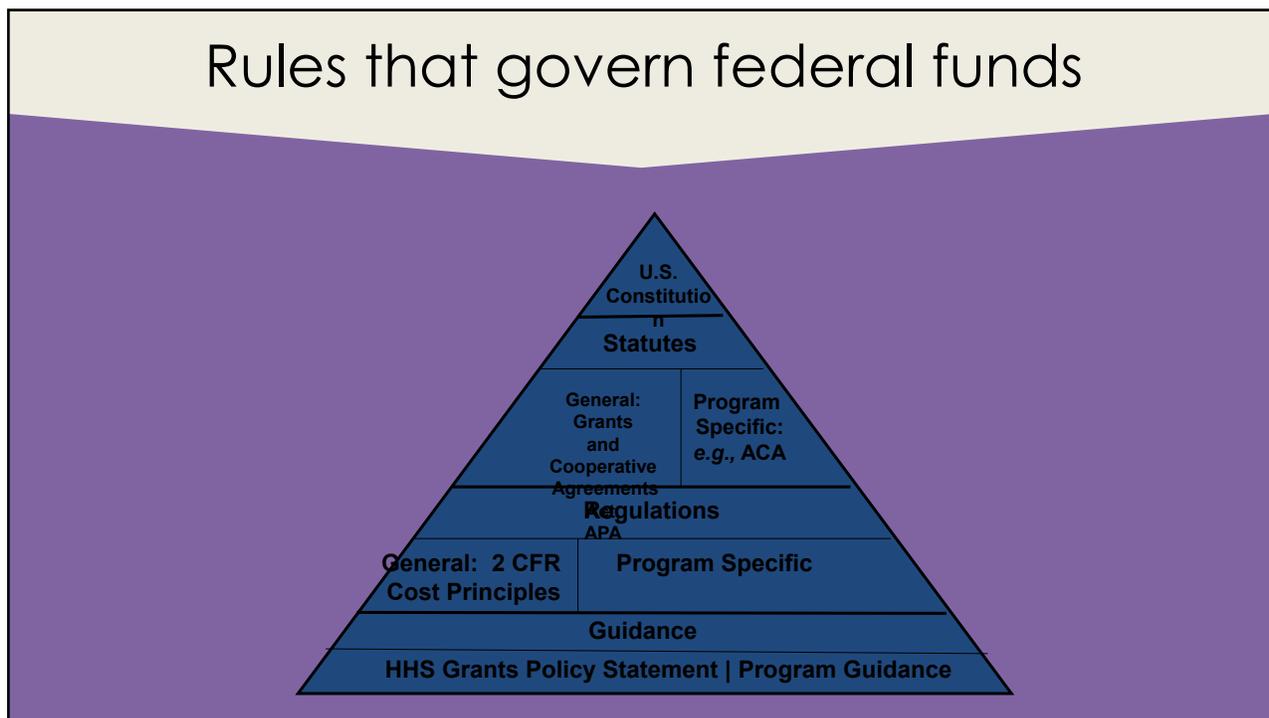
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Federal Grants

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

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•“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...”

Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019

Continuing Appropriations Act §503(b)

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Designed to Influence

TYPE of ACTION

- Legislation
- Appropriations
- Regulations
- Administrative action
- Executive order

VENUE for ACTION

- Congress
- State government
- State legislature
- Local legislature
- Legislative body

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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** (i.e., attempts to influence)
4. **Specific legislation**

If one of these elements is not present, it is not lobbying.

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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.

Federal Government Grants
Continuing Appropriations Act §503(b)

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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

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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.

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Participation in policy or admin processes =

Government officials may communicate with anyone within the same government about policy or legislation

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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.

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Hypothetical Exercise

A county health department receives a grant from a federal agency to develop strategies to increase vaccination uptake among county residents.

- May the county health department use federal funds to develop model legislation for cities to pass a mandate to require vaccination for entry into restaurants and bars in the county?
- 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?

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Good Questions to Ask Yourself

- 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?

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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>

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Hatch Act: Political Activity via Traditional and Social Media

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!

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Ambiguity: Be Careful!

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.

More information: *A Guide to the Hatch Act for Federal Employees*

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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.

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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.

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Wrap Up

- 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

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Guidance on Lobbying Activities

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

<https://osc.gov/Documents/Outreach%20and%20Training/Handouts/A%20Guide%20to%20the%20Hatch%20Act%20for%20Federal%20Employees.pdf>

National Conference of State Legislatures' Chart on Laws that Limit Public Funds to Lobby

<http://www.ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx>

National Council of Nonprofits – Everyday Advocacy

<https://www.councilofnonprofits.org/everyday-advocacy>

Alliance for Justice: Bolder Advocacy

bolderadvocacy.org

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About APHA

The American Public Health Association champions the health of all people and all communities. We strengthen the public health profession, promote best practices and share the latest public health research and information. We are the only organization that combines a 150-year perspective, a broad-based member community and the ability to influence policy to improve the public's health. Learn more at www.apha.org.



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