Welcome!
November 4, 2020
9:00 AM – 11:15 AM

Participants will be automatically muted. Please type questions into chat box for Question & Answer Session

• Be sure that your name is displayed correctly: (1) Hover over your picture (2) Click the three dots in the righthand corner (3) Click ‘Rename’.
• Please email Jess Barnett at info@nhpha.org if you’re having technical difficulties
• The event will be recorded
AGENDA

9:00  Introduction & Welcome

9:10  *How to Get Advocacy Done without Violating the Law!*
Federal Lobbying Laws, IRS Restrictions, Federal Appropriations Act

9:55  Break

10:05  *New Hampshire Lobbying Laws:*
What You Need to Know

10:25  Scenarios

10:45  *Advocacy on the Ground in New Hampshire:*
What you can do

11:00  Q&A, Conversation, Closing and Evaluations

11:15  Adjourn
THANK YOU

Funders:

• New England Public Health Training Center
• New Hampshire Charitable Foundation
• Endowment for Health
• New Hampshire Children’s Foundation
• Tufts Health Foundation

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NHPHA INTRODUCTIONS

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Introduction

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OBJECTIVES

1. Identify the legal sources of lobbying restrictions
2. Define and describe advocacy, direct lobbying, and grassroots lobbying and the difference between these terms
3. Describe federal lobbying restrictions and the impact these restrictions have on public health officials and advocates in non-profits
4. Describe New Hampshire laws relative to lobbying and advocacy
5. Identify ways to advocate on the ground in NH
MISSION

NHPHA: A member driven organization that champions policy, develops the workforce and inspires leaders to strengthen public health.
OUR STRATEGIC PRIORITIES

● Champion public health policy and advocacy
● Strengthen the public health workforce through professional development
● Implement strategic communications to inspire a public health movement
NHPHA 2020–2022 Legislative Priorities

Support Public Health Preventive Efforts and Health Access, Particularly for Underserved Populations

- Support community health workers infrastructure funding
- Advocate for funding and infrastructure for equitable distributions of vaccines

Provide Support for a Strong Local and State Public Health Infrastructure

- Advocate for funding to support foundational public health services at the state and local level
- Advocate for support to implement the State Health Improvement Plan and assure it addresses the need of marginalized and vulnerable populations
Support Policies that Enable Families to Earn a Living Wage and Care for Their Families

- Support efforts to provide for a living/minimum wage
- Support efforts for job training for skill-based careers, particularly for marginalized populations
- Support a step-down approach to public benefits reductions

Support Policies and Programs that Increase Access to Healthy, Affordable Foods

- Advocate to expand use of the WIC program (farmer’s market, online purchasing)
- Support expansion of SNAP, Granite State Market Match, and Farm to School initiatives
How to Get Public Health Advocacy Done in New Hampshire without Violating the Law

Kerri McGowan Lowrey, JD, MPH
Network for Public Health Law – Eastern Region

Lobbying and Advocacy: A Primer for New Hampshire Non-Profit Advocates
November 4, 2020
University of New Hampshire School of Law
The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

The Network for Public Health Law provides information and technical assistance on issues related to public health law. The legal information and assistance provided in this presentation does not constitute legal advice or legal representation. For legal advice, please consult New Hampshire legal counsel.
Fun with Disclaimers

▪ This presentation does not establish an attorney-client relationship
▪ Seek professional legal counsel in the state of NH for specific advice

Source: www.likelihoodofconfusion.com
What is the Network?

- **Funded by Robert Wood Johnson Foundation**
  The mission of the Foundation is to improve the health and health care of all Americans.
- **One National Office**
  Donna Levin, Executive Director
- **Five Regional Offices**
  Northern, Western, Mid-States, Southeastern, Eastern
- **YOU!**
Northern Region

▪ Tobacco control, cross-border issues, mental health

Western Region

▪ Emergency legal preparedness and response, Tribal law

Mid-States Region

▪ Health information data sharing; public health regulation (HIPAA)

Southeastern Region

▪ Accreditation and structure of public health agencies, health reform (ACA)

Eastern Region

▪ Food safety, environmental health, injury prevention, marijuana, school health
Roadmap

● What is lobbying?
● How is lobbying restricted?
● What is allowed?
● What if…
Competing Realities

Need to promote and protect the public’s health

- Stagnant or shrinking budgets
- Greater demand than ever for evidence-based solutions
- Population-level change often requires policy change
- Public health professionals, health care providers, and community health advocates are uniquely qualified to advocate for the community’s health and to educate policymakers
Competing Realities

There are restrictions on lobbying activities

- Recipients of federal funds
- Nonprofit organizations
- State/tribal/local restrictions
BUT! There is usually a way to get advocacy work done without violating the law...
Advocacy. Lobbying. What’s the difference?

While all lobbying is advocacy, not all advocacy is lobbying

- Advocacy and lobbying are similar, and the distinction is not always clear.
- Instead of trying to distinguish between advocacy and lobbying, we’re going to determine:
  1. The federal and state restrictions on lobbying, and
  2. Given these restrictions, what is allowed
Restrictions on Lobbying

- Lobbying Disclosure Act, 2 U.S.C. § 1605
- Internal Revenue Code
- Federal Consolidated Appropriations Act § 503
- State and Local Laws
Two Main Factors:

1. Nature of Employer
   - Government
   - Non-profit

2. Source of Funds
   - Federal government
   - State or local government
   - Private
Internal Revenue Code
Internal Revenue Code

▪ Limits, but **does not prohibit**, nonprofits from lobbying

▪ “In general, no organization may qualify for section 501(c)(3) status if a **substantial** part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.” – IRS website

▪ **What is substantial?**

  ▪ Case-by-case determination made by time and money spent by organization on lobbying (‘‘insubstantial part’’ test)
  ▪ Devoting **less than 5%** of activities to lobbying is **not** substantial
Direct Lobbying

Three Elements:

1. Direct written or oral communication to a legislator, legislative staff, or other government official working on legislation

2. That reflects a view (for or against)

   - “Specific legislation” means introduced bills, legislative proposals not yet introduced, budget bills, ballot measures, U.S. Treaties and confirmation of appointees
Grassroots Lobbying

Four Elements:

1. A written or oral communication to the public (e.g., speeches, ads, op-eds, blog)
2. That reflects a view
3. On specific legislation, and
4. Includes a call to action.
What constitutes a call to action?

- Asks audience to contact a legislator;
- Identifies a legislator as being the audience’s representative;
- Provides legislator’s contact information;
- Provides a vehicle for contacting the legislator (e.g., form email, petition);
- Identifies a legislator’s position on the legislation as being undecided or opposing the communication’s viewpoint;
- Identifies a legislator as sitting on the voting committee; OR
- A paid ad that expresses a view on prominent legislation within 2 weeks of a vote, even if it doesn’t contain a CTA.
Internal Revenue Code

Alternatively, nonprofits may choose to have their lobbying activities analyzed under 501(h)

- Provides for a sliding scale of amounts that can be spent on lobbying with a $1M cap
- Provides clear expenditure limits (clearer than the “insubstantial part” test)
- Shows IRS that organization is aware of lobbying limits (not likely to increase likelihood of audit)
- Penalty tax, rather than loss of tax-exempt status, for exceeding limits
501(h) Election Process

1. Complete Form 5768
2. Keep a copy for your organization’s records
3. Calculate your lobbying limit (starts as high as 20% for small charities and decreases to a smaller % of expenditures for larger organizations)
4. Track lobbying expenditures (law requires organization to maintain records for grassroots and direct lobbying)

✔ Salaries and benefits; costs of communications; overhead attributable to lobbying; grants, payments, reimbursements, etc.
✔ Report expenditures on Schedule C of Form 990
Remember...

- Nonprofits are not prohibited from lobbying, but rather limited in the *amount* they can lobby (<5%)
- IRS lobbying restrictions expressly limit
  1. Communications
  2. Expressing a view on specific legislation
- Restrictions apply to legislation only, meaning Congress, any state legislature, or local legislative body
  » IMPORTANT: Does *not* include executive, judicial, or administrative bodies
- Non-profits should consider the 501(h) election
  - Funds may be spent on lobbying within certain limits, up to $1 million per year
Key Points

Nonprofits may educate the public, but all participation in community affairs must be nonpartisan.

Nonprofits can, for example:

- Advocate on an issue
- Conduct candidate forums with all candidates
- Send questionnaires to each candidate
- Voter education
- Voter registration
- Candidate education
Lobbying Restrictions for Federal Grantees
(For example: CDC, NIH, EPA, FDA)
Consolidated Appropriations Act, 2012

In 2011, Congress established clear restrictions on the use of HHS funds, including CDC grant funds, for lobbying and related activities. (Division F, Title V, Section 503)

“No part of any appropriation...shall be used:

(a) For publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body…or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.

(b) To pay the salary or expenses of any grant or contract recipient, related to an activity to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government...

(c) To advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing…”
What is prohibited?

▪ All direct and grassroots legislative lobbying
  ▪ Same rules as for nonprofits
  ▪ Applies to legislation pending in federal, state and local legislative bodies

▪ Lobbying on federal, state, or local level executive actions
  ▪ Restrictions now extend to agency regulations, administrative actions, and executive orders*

▪ Advocacy related to any proposed, pending or future: (1) tax increase or (2) regulation of a consumer product
What is allowed?

- **Executive agencies** (e.g., state HD) may work with directly with each other on policy-related issues and on policy implementation
  - **Example:** A city health department may lobby another city agency.

- Examination/discussion of broad social, economic, or health problems *that do not refer to specific legislation or contain a call to action*
What is allowed?

- *Nonpartisan policy research*, study, or analysis
  - “Full and fair exposition” that allows recipient to form an independent opinion
  - May give a viewpoint (and even name a legislator)
  - Cannot contain a Call to Action
  - Must be broadly disseminated

Example →

“This effort will be nonideological and nonpartisan, and will focus on improving what we know about the causes, consequences and prevention of gun violence.”

— Frank M. Clark, Research Advisory Committee chairman
What is allowed?

*Educating the public on:*

- Personal health behavior and choices
- Health issues and their public health consequences
- Examples of best practices or success stories across states or localities

Local government entities (e.g., LHDs) may work with other gov. entities (e.g., state legislature, city council, etc.) if it is *within the normal scope of their work.*
What is allowed?

Responding to request from legislative body for technical advice or assistance

▪ **Note:** Request must be in writing from a committee or legislative body (not an individual legislator) and the response/advice must be available to all members of that body. May advocate a viewpoint or opinion if the request specifically asks for one.

“Self defense”

▪ Direct (not grass roots) contact with legislative branch about actions that could affect group’s existence, powers, duties, or tax-exempt status
Key Additional Points

▪ These lobbying restrictions only apply to the use of federal grant dollars.

▪ So, if an activity constitutes lobbying, it does not mean you cannot do it, but rather that the activity must be paid from a non-federal funding source.

▪ Seek guidance! The lobbying restrictions are legally complex, you should consult, for example:
  ▪ CDC guidance documents
  ▪ CDC project officer
  ▪ Legal counsel
Break
MISSION
New Futures is a nonpartisan, nonprofit organization that advocates, educates and collaborates to improve the health and wellness of all New Hampshire residents.

VISION
New Futures envisions a State and local communities whose public policies support the health and wellness of all New Hampshire residents.
RSA 15, Lobbyists -
  • Prohibited Activities
  • Scope
  • Registration
  • Identification
  • Disclosure

RSA 15, Lobbyists
http://www.gencourt.state.nh.us/rsa/html/1/15/15-mrg.htm
Prohibited Activities  - RSA 15:5

- State funds cannot be used to lobby, attempt to influence legislation, participate in political activity, or contribute funds to any entity engaged in these activities.
- Any recipient of a grant or appropriation of state funds that wishes to engage in any of the activities must **physically and financially** separate from any non-state funds that may be used for any of these purposes.
- Mere bookkeeping separation of the state funds from other moneys shall not be sufficient.
Scope - RSA 15:1

- **A lobbyist** is employed by any entity other than the state
- To promote or oppose, directly or indirectly, any legislation pending or proposed before the general court,
- To promote or oppose, directly or indirectly, any action by the executive branch such as contracts, proposed administrative rule, or the procurement of goods or services.
- Employment Restriction – For 6 months after leaving office or employment with the state, no executive branch official or classified employee shall appear as a lobbyist. (RSA 21-G:26, Code of Ethics)
Lobbying Exceptions 15:1, V

- Public testimony before a legislative committee or subcommittee****
- A written documentation filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding
- Communication made by a public official acting in the public official’s official capacity
- Communication made in a speech, article, publication or other material that is distributed and made available to the public through radio, television, cable television, the internet, or other medium of mass communication.

RSA15:1, V
A lobbyist registration form reports the existence of a relationship between a single client and either a single lobbyist or a partnership, firm, or corporation with one or more partners, members, or employees who will be acting as lobbyists for that client.

**Registration form**

- File at Secretary of State
- Name, client name, address, field of business, nature of advocacy
- Forms for single lobbyists and multi lobbyists
- $50 fee
- Annual Registrations expire Dec. 31st each year
New Hampshire Laws

Disclosure RSA 15-1-

- Name Tag
- **Lobbyist Monthly Statement of Income and Expenses** - Filed with the Secretary of State and enforced by Attorney General
  - Fees
  - Expenditures
  - Honorariums, gifts, and political contributions
  - Public document
  - Due quarterly
What if…
Scenario #1

You work for NH Child Safe, a non-profit organization that advocates for child safety. HB 123 would require children under the age of 8 to be secured by an approved child restraint in motor vehicles.

May you communicate with coalition members and other partners to let them know that HB 123 exists and answer questions about its impact?
Scenario #1

You work for NH Child Safe, a non-profit organization that advocates for child safety. HB 123 would require children under the age of 8 to be secured by an approved child restraint in motor vehicles.

May you communicate with coalition members and other partners to let them know that HB 123 exists and answer questions about its impact?

▪ **Yes.** There is no call to action here. Why?
Note: Sending an email to the public that says, “Senator Bradley can support child safety or he can ignore it. Contact him today and tell him we need his support!” would be a call to action.
Scenario #2

The state holds a public hearing to consider granting local control of smoke-free policy. May a smoke-free coalition that is funded with federal grant dollars inform the public about the hearing and urge people to attend?
**Scenario #2**

The state holds a public hearing to consider granting local control of smoke-free policy. May a smoke-free coalition that is funded with federal grant dollars inform the public about the hearing and urge people to attend?

- **It depends.** Notifying the public of a legislative hearing is **not** lobbying. However, if the coalition urged the public to support the bill or otherwise took a side, it would constitute lobbying.

(Remember, however: the coalition **may notify its own members** and urge them to testify since that would not be a communication with the public.)
Scenario #3

You are a local health official. A subcommittee of the NH General Court requests your assessment of the impact a specific bill would have on your jurisdiction. Is it OK for you to respond with your department’s position on the bill?
Scenario #3

You are a local health official. A subcommittee of the NH General Court requests your assessment of the impact a specific bill would have on your jurisdiction. Is it OK for you to respond with your department’s position on the bill?

- **Yes.** This is not lobbying, because it would be considered within the normal scope of a local health department’s work. (Levels of government can—and should—communicate with each other.)
Scenario #4

You work for Opioid Policy Research (OPR), a nonprofit organization that works on substance use policy. The FDA Commissioner has asked for public comment on regulations to reclassify naloxone as an over-the-counter drug.

Can OPR file comment taking a position on these regulations?
Scenario #4

You work for Opioid Policy Research (OPR), a nonprofit organization that works on substance use policy. The FDA Commissioner has asked for public comment on regulations to reclassify naloxone as an over-the-counter drug.

Can OPR file comment taking a position on these regulations?

- **Yes.** Nonprofit lobbying restrictions under the IRC pertain only to legislative bodies, so nonprofits can “lobby” the FDA (executive branch).

- You can also write or join an amicus brief!
Scenario #4b

OPR receives a large CDC grant to research opioid policy. Can it file comment taking a position on these regulations using grant funds?
Scenario #4b

OPR receives a large CDC grant to research opioid policy. Can it file comment taking a position on these regulations using grant funds?

- **No.** The Consolidated Appropriations Act lobbying restrictions, which govern federal $$, pertain to legislative *and* executive bodies.

- But OPR can *still* write or join an amicus brief!
Scenario #5

Your position is 100% funded by a HRSA grant on child and maternal health policy. There is a state bill that you feel strongly about, and you want to testify at the NH General Court. How can you do so?
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Your position is 100% funded by a HRSA grant on child and maternal health policy. There is a state bill that you feel strongly about, and you want to testify at the NH General Court. How can you do so?

▪ Take time off to testify as a citizen! You can testify as much as you want, as long as you are not being compensated by federal (or nonprofit) funds.

▪ You may identify your position/ place of employment, as long as your workplace allows it.
NH Scenario #1:

Betsy works for a non-profit provider organization that has several contracts with the state of New Hampshire’s Department of Health and Human Services. Some of Betsy’s salary is funded from one of these contracts with NH DHHS (the rest of her salary is funded through the organization’s general fund, generated through individual & corporate donations).

A statewide advocacy organization asks Betsy to forward an email to community partners that includes a call to action on an upcoming bill. Should Betsy forward the email?
Answer: Maybe.

Considerations:
Does her organization have a position on this bill? Does it align with the position of the advocacy group?

Has she talked to her direct supervisor about sending this email?

How is her time sheet structured? Will an outside auditor know if she has spent her government-paid salary on this communication?

Work around:
If you like the work this advocacy group does, and you think forwarding this email is beneficial to public health, you can send this email off the clock!
NH Scenario #2

Gloria is the Chief Financial Officer of a community-based non-profit organization. A NH funding bill that would impact her organization comes up for a public hearing in the House Finance Committee in Concord.

Gloria would like to testify about how the loss of this funding would impact her non-profit at the hearing. Can she attend the hearing and testify on behalf of her organization?
NH Scenario #2 - Answer

Answer: Yes!

Considerations:
- Does she have the permission of the leadership of her organization and her board?
- This is not lobbying because it directly impacts the ability of her organization to function!
- Testifying is not considered lobbying under state law.
NH Scenario #3

David is the Director of Community Health Center which receives federal and state funding. A large portion of the health center’s clients have Expanded Medicaid as a health benefit.

He has been asked by a statewide advocacy organization to host a legislative breakfast to urge legislators in his area to vote for HB 1, which reauthorizes Medicaid Expansion.
Answer: No!

This is a direct call to action and considered lobbying under state and federal law.

However.....

The health center could host a breakfast that educates legislators about how the health center serves that community and the impact of Medicaid Expansion has had to its clients - without a specific call to action on legislation.

Considerations:

- Consider having it prior to the legislative session to avoid the appearance of a call to action.
- If it's during the session - invite a membership/advocacy organization to speak to or answer any questions on upcoming legislation.
Legislative Timelines

2020 - 2021 HOUSE LEGISLATIVE DEADLINES

- Friday, October 30, 2020 Last day to file 2020 Interim Study reports
- Wednesday, November 4, 2020 First day for all Representatives to file LSRs with complete information
- Friday, November 20, 2020 (3:00 p.m.) Last day to file LSRs with complete information
- Wednesday, December 30, 2020 (12:00 p.m.) Last day to sign-off on all LSRs
- Friday, January 15, 2021 Last day to introduce House Bills

STATE FISCAL YEARS 22-23 OPERATING BUDGET PREP

- August 20 - June 21
What can you Advocate for this Session?

- Support a strong local and state public health infrastructure
- Ensure access to health care and support a strong health care workforce
- Protect investments to early childhood efforts and family resource centers.
- Secure investment in children’s mobile crisis system and other community-based and in-home services outlined in New Hampshire System of Care Law
- Support efforts to sustain and grow New Hampshire’s Behavioral Health services
Advocacy on the Ground in New Hampshire

What you need to know!
Opportunities to advocate!
Examples of Advocacy

- Call Your Legislator
- Testify
- Coffee with your legislator
- Letter to the Editor
- Attend an event or rally
- Social Media
- Email your legislator
- And more!
Host a legislative event
Turn out your advocate/volunteer base

Show up to support Medicaid expansion

Tuesday, February 20th 1:30 PM

State House, Representatives Hall
107 North Main Street, Concord
Collect & share stories

REAUTHORIZE
#MedEx

“New Hampshire’s economy gains more than $500 million in federal funds annually thanks to Medicaid Expansion. #MedEx gets people back to work. Over 130,000 NH residents have used the program & more than 80,000 have since transitioned off, many of whom now have employer-sponsored health care.

The program drastically lowers NH’s uncompensated care costs.

One in ten veterans under the age of 64 rely on Medicaid Expansion for their health coverage.

Medicaid Expansion is the state’s number one tool to fight our opiate epidemic.”

- Nikki, Nashua

“As a woman in long term recovery from alcohol and other drugs, I cannot emphasize enough how important it is for the State of New Hampshire and other people like me that Medicaid Expansion is reauthorized.

“When I was enrolled in Medicaid Expansion, my life transformed. For the first time, I had access to the treatment and medications I needed to get my life back on track and become a healthier person.

“Access to health care is a crucial tool for the state to combat the opiate epidemic. Please pass Senate Bill 313 and Reauthorize Medicaid Expansion.”

- Carrie, Dover
New Futures Training Program

- Free to nonprofits, coalitions, and community organizations who will advocate for the health and wellness of NH residents
- Trainings for:
  - Individual Advocates
  - Building organizational advocacy capacity
  - Educating on New Futures policy issues

www.new-futures.org/trainings
What can you advocate for this legislative session?

The Budget!

- Public health infrastructure
- Strong healthcare workforce
- Children and adult mental health and SUD services
- Family and early childhood supports and services

new-futures.org/email - signup
Stay Connected

New Futures is always here to assist you with your advocacy needs!
Resources

New Hampshire Center for Nonprofits
  • https://www.nhnonprofits.org/

Bolder Advocacy (Alliance for Justice)
  • https://bolderadvocacy.org/

National Conference of Nonprofits
  • https://www.councilofnonprofits.org
Contact

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QUESTIONS AND ANSWERS

Please type your questions into the chat box
CLOSING

• Upcoming NHPHA events and priorities
• Join us!
• Evaluations
• Thank you – Kerri Lowrey, New Futures, IHPP, NEPHTC