Maryland’s Legislative Process and Local Involvement

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Roadmap

• Legal Resource Center and the Network for Public Health Law

• Getting involved...
  – Lobbying vs. Advocacy (What’s OK?)
  – The legislative process in Maryland
The Legal Resource Center for Public Health Policy (LRC)

• Established in 2001, the LRC is a grant-funded legal center;

• Offers *pro bono legal technical assistance* on a wide-range of public health issues, including tobacco regulation, injury prevention, and reduction of obesity and hypertension;

• **Guidance provided to:**
  – State and local governments;
  – Legislators;
  – NGOs;
  – Health advocacy groups;
  – State agencies;
  – Individual citizens
The Network for Public Health Law

- Funded by Robert Wood Johnson Foundation since 2010
  - One National Office
  - Five Regional Offices
- Our Purpose—To increase the use and effectiveness of public health laws in protecting, promoting, and improving public health
  - Legal Technical Assistance
  - Products (fact sheets, issue briefs, 50-state compilations, blog, webinars, updates, alerts, etc.)
  - Network of experts (That means you!!)
  - Join at www.networkforphl.org
The Network for Public Health Law: School Health Work

✓ State laws addressing the school breakfast gap
✓ Partnership with National Association of School Nurses:
  ✓ School nursing SOP laws
  ✓ Data privacy and data sharing in school nursing (FERPA compliance)
  ✓ Reducing chronic absenteeism
  ✓ The role of school nurses in students’ return-to-school after TBI
  ✓ Medicaid reimbursement for school nursing services
✓ Return-to-play and return-to-school laws
✓ School discipline and public health
✓ School vaccination laws
✓ High school start times and healthy sleep
Competing Realities

- Need to promote and protect student health
  - Stagnant or shrinking budgets
  - Greater demand than ever for evidence-based solutions
  - Population-level change often requires policy change

- You are uniquely qualified to advocate for the community’s health and to educate policymakers!
Advocacy vs. Lobbying

While all lobbying is advocacy, not all advocacy is lobbying

- Advocacy and lobbying are similar, and the distinction is not always clear.
- Main question: What is the source of funds?
  - Federal government?
  - State or local government?
  - Private?
  - Non-profit?
There are restrictions on lobbying.

- Internal Revenue Code (Nonprofit organizations)
- Consolidated Appropriations Act (Federal Grantees)
- State/tribal/local law
- Restrict direct and grassroots lobbying

There is usually a way to get advocacy work done without violating the law!
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)

3. **Specific legislation.**

   - “**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’s 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.
Nonprofits: 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

- Restrictions apply to legislation only, meaning Congress, any state legislature, or local legislative body

  — IMPORTANT: Does not include executive, judicial, or administrative bodies*
Key Points

- Non-profits may educate the public, but all participation in community affairs must be nonpartisan.

- Non-profits can, for example:
  - Advocate on an issue
  - Conduct candidate forums with all candidates
  - Send questionnaires to each candidate
  - Voter education
  - Voter registration
  - Candidate education
Federal Grantees: The Consolidated Appropriations Act

- Applies to recipients of federal HHS grant funds
- Prohibits 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*
  - Amicus briefs are still OK!
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

- 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
What is allowed?

- Local health and education departments may work with the state legislature, city council, etc., if it is within the normal scope of their work.
  - **Important:** Non-government grantees, may upon formal, written request, provide technical assistance to public officials (e.g., testify before a committee).

- 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.
Key Points

- The lobbying restrictions only apply to the use of federal grant dollars. Employees on federal grants may lobby if using other, unrestricted funds.

- 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.
THE MARYLAND LEGISLATIVE PROCESS
BEFORE THERE IS A BILL, THERE IS AN IDEA, A PROBLEM, AN OPPORTUNITY

Sources of Legislation:

• Advocacy Organizations;
• Individuals;
• Legislative Studies (Task Forces/Commissions);
• Administration (Governor, Executive Agencies)
DRAFTING PROCESS

• Member requests a draft bill from the Department of Legislative Services (DLS).
  – Single Subject Rule
  – Short title; Purpose; Function Clause

• LR version returned to member for review;

• Once final, it is dropped into the “Hopper” and assigned a Bill Number.
FIRST READING

• “Read” by Clerk of House/Secretary of Senate
• Assigned to Committee based on subject matter
FISCAL AND POLICY NOTE PREPARED BY DLS

• Impact on State and Local Government, small business;
• Reveals who contributed to note and who drafted;
• Should be amended if necessary with Committee amendments (rarely occurs)
HEARINGS

• Most bills get a hearing;
• Little notice is often provided;

• Lobbyists representing organized interest groups, officials from State agencies, local government representatives, and other interested citizens provide testimony at these hearings
AFTER THE HEARING

• May be assigned to a sub-committee to make recommendation to committee;

• Committee voting sessions;

• Committee may make amendments; Majority vote (tie does NOT pass): Favorable (with amendments); Unfavorable; No Position (rare); Refer to Interim Study (technically dead)

• Only favorable (with amendment) passed on to full body
SECOND READING

• Presented at Floor Session with opportunity for question and debate;
  • *May be amended*;
  • *Special Order*—to a date certain;
  • *Laid Over*—next day/session;
  • *Voice Vote*—majority
THIRD READER

• May **NOT** be amended unless it is a **CROSSED OVER BILL**.
What if second chamber amends on cross over (or cross filed bills get amended differently)?

• House of Origin can accept amendments or request second house to withdraw amendments;
• If no agreement, **CONFERENCE COMMITTEE:**
  – 3 members from each house selected by Speaker/President;
  – Usually Committee Chair/Vice-Chair; bill sponsor;
  – Produce CC REPORT (must be agreed upon by at least 4 of 6 members);
  – Report presented to each house; if accepted, appropriate bill then submitted to each house for a vote.
PRESENTMENT TO GOVERNOR

• Presentment during session:
  – If presented in the first 83 days, Governor has 6 days to sign or veto;
  – If presented during the last week, Governor has 30 days to sign or veto;

• Governor may:
  – Sign;
  – Refuse to sign;
  – Veto (must do within 30 days of presentment)

• Veto Override: 3/5 vote of each chamber to override
Sign up for Our Legislative Updates!

• Bi-weekly conference calls beginning second week of January.
  – Review bills of interest and take questions.

• Tracking document updates
  – Detailed information including hearing dates and hearing summaries;
  – Updated on Google Docs for ready access at any time and current version in pdf form distributed weekly.

• Email Brooke Torton at btorton@law.umaryland.edu to be added to the listserv.
Questions?