

## Lobby laws

by Melinda Baker, State Affairs Associate, and Kristen V. Hedstrom, Assistant Director, Legislative Affairs, Division of Advocacy and Health Policy

Over the last few years, headlines questioning the ethics of state legislators, governors, and members of Congress and their interactions with lobbyists have become more and more commonplace. The profession of lobbying also grabbed state and national attention as, during his election campaign, President Barack Obama ran on a platform of “cleaning up Washington.” Once he was elected, laws were strengthened in an attempt to curb unethical practices by both legislators and lobbyists and made understanding the new rules and guidelines critical for anyone in regular communication with a legislator.

It is important to understand that advocacy is not always the same as lobbying. Likewise, lobbying can be defined in a number of ways and may be subject to different rules from state to state. Lobbying by a 501(c)(3) or a 501(c)(6) tax-exempt organization is legal, but before embarking on any kind of advocacy initiative as an organized group, the group leaders must examine their state and local lobbying laws as well as the Internal Revenue Service (IRS) regulations.

The IRS has not clearly defined what it considers to be lobbying activities, but generally, it is considered lobbying when contacting legislators and their staff members (by phone, in writing, or in person) to discuss pending or proposed legislation and regulations. This broad definition of lobbying also has been extended to newsletters and other types of member communications when a particular publication contains information about current or pending legislation or regulations—especially if members are encouraged to contact their elected officials.

There are distinct differences between what is permissible at a state or local level and what is acceptable at the federal level. Remember, it's the branch of government involved in the efforts that determines which laws—state or federal—should be followed, not the locale of the event. For example, hosting an event for

a local U.S. congressman is regulated by federal laws, whereas hosting the same event for a state representative would be regulated by state law. If, however, an event includes both the congressman and the state representative at the same time, the state law applies to the state representative and the federal law applies to the federal representative.

The complexity of these laws and regulations should not prohibit or deter individual surgeons or ACS chapters from becoming involved in legislative and political processes. However, chapter leaders should plan to obtain expert legal advice before engaging in certain legislative and political activities. In particular, chapter leaders should consult the Chapter Guidebook compiled by the College's Division of Member Services (<http://www.facs.org/about/chapters/guidebook.html>) and/or seek advice from a tax attorney/advisor with questions about lobbying and political expenditures. Fellows and chapter leaders may also contact the College's Division of Advocacy and Health Policy for information about lobbying regulations.

### State laws

State and local laws vary, so always check with your state as to what constitutes lobbying and any reporting requirements. Different states regulate lobbying through different offices. Because some state lobbying laws are less strict than others, it is critical to know what activities are permitted. For example, you may be barred from giving a cup of coffee to a state senator in one state, whereas other states allow unlimited gift giving. In another state, you may be allowed to discuss pending legislation with an elected official without registering as a lobbyist—or, you may only be able to talk about general issues or answer direct questions put to you by the official. The bottom line is that it is prudent to check on the law before you do anything.

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the ACS Web site as a PDF and a PowerPoint presentation at <http://www.ntdb.org>.

If you are interested in submitting your trauma center's data, contact Melanie L. Neal,

Manager, NTDB, at [mneal@facs.org](mailto:mneal@facs.org).

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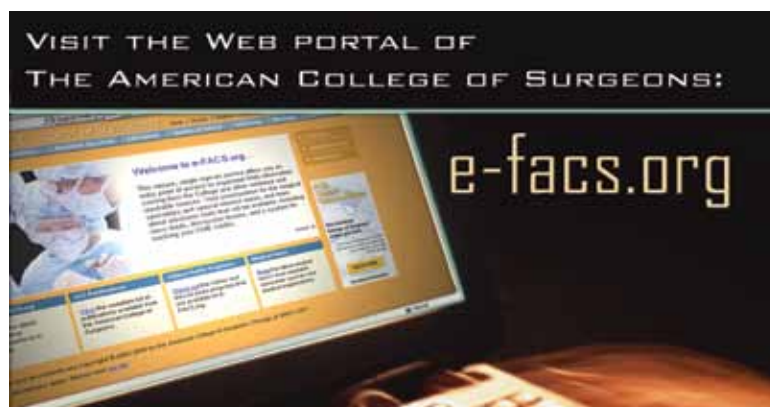
### **Federal laws**

In an effort to increase transparency on federal lobbying activities, the Lobbying Disclosure Act of 1995 (LDA) received a major overhaul with the passage of the Honest Leadership and Open Government Act in late 2007. Although the updated provisions are directed at professional lobbyists, surgeons—especially surgeons who have frequent contact with their members of Congress—should be familiar with the basic restrictions and the accompanying internal House and Senate rules that outline the ethical standards for members of Congress and their employees (<http://senate.gov/reference/resources/pdf/RL31126.pdf>).

The updated LDA now defines a professional lobbyist as an individual who makes more than one lobbying contact (written or verbal) to a member of Congress, congressional staff, or senior agency official and spends a minimum of 20 percent of his or her time on these activities during a three-month period. A practicing surgeon will rarely, if ever, meet this threshold.

However, a surgeon who is lobbying his or her members of Congress and their staff should always follow the new House and Senate ethics rules pertaining to gift giving and travel. In general, members of Congress and their staff may not accept gifts or travel of any value, including meals, provided by private parties. The House and Senate rules include several exemptions, such as allowing food of nominal value and permission to continue receiving gifts from family and friends. However, these exemptions also have strict requirements, so you should always check the rules before making a purchase of any kind for a member of Congress or staff.

If you are going to be advocating as an individual, remember that you have the right and the civic responsibility to contact legislators. Surgeons are encouraged to regularly communicate with their elected officials, advising them on issues and concerns related to the health care profession. □



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