



MONTANA  
HOSPITAL  
ASSOCIATION

**Memo to:** MHA Member CEO's  
MHA Member Government Relations Contacts

**From:** Rich Rasmussen, President/CEO

**RE:** **Lobbying Rules for 2021 Session of the Montana Legislature**

With the 2021 session of the Montana Legislature underway, I thought it would be helpful to provide a brief refresher about the lobbyist registration and reporting rules.

#### **Who qualifies as a “lobbyist”?**

The statutes specify that any individual who is compensated more than \$2,650 during 2021 for engaging in “lobbying activities” must register as a lobbyist. The definition of compensation is broad and includes “all direct or indirect payments of salaries, fees, wages and benefits.” Simply stated, in addition to salaries, wages and fees, compensation includes payments for health insurance, cars, country club memberships, pensions and other benefits that an employee of your organization might receive as part of their compensation package. Lobbyists must file an L-1 form and pay a fee of \$150.

Any organization – i.e. hospital, nursing home, home health agency, hospice – that spends more than \$2,650 during 2021 on lobbying activities is classified as a “principal” and must register as such. The principal must file an L-2 confirming the lobbyist’s ability to represent it to complete the lobbyist-principal registration. The principal must then file regular reports on its lobbying activities (which issues and legislation are supported, opposed, modified) and expenditures (including compensation to lobbyists, entertainment, travel expenses, etc.).

Travel expenses paid to a lobbyist or an individual engaged in lobbying activities are excluded from determining whether a principal has exceeded the threshold. However, if a principal exceeds the threshold these expenses must be reported.

#### **What is Lobbying?**

Lobbying is defined by statute as: “promoting or opposing the introduction or enactment of legislation before the legislature or members of the legislature.”

The rules specify that lobbying includes any direct communication by an individual engaged in lobbying “with a public official to promote or oppose official action.” Direct communications include face-to-face meetings, telephone conversations, written or e-mail correspondence or communications, testimony before legislative committees, and signing in as a proponent or opponent of official action at a hearing. For reporting purposes, you must report all of the time spent preparing for direct communication as well.

Legislators often contact constituents regarding legislation. The statute is intended to ensure that these direct communications are not considered lobbying activities if the legislator is soliciting information from an individual. Likewise, if individuals are subpoenaed to testify or provide information to a legislative committee, this is technically not considered a lobbying activity. However, if an organization is already reporting lobbying activity, there is no harm in including time spent responding to solicited requests from legislators.

### **What is Grassroots Lobbying?**

Grassroots lobbying is defined as “efforts by a business, political committee or other organization to encourage others, including the general public, to engage in direct communication with a public official to influence official action. Grassroots lobbying often involves letter writing or e-mail campaigns, mailings, phone banks, or other mass communication.”<sup>1</sup> The Commissioner, in dismissing a complaint made against a grassroots lobbying effort in the 2015 Session, further clarified the obligations related to grassroots lobbying. That decision clarified that grassroots lobbying is “generally considered non-legislative lobbying activity that is not required to be reported and disclosed under the” law.<sup>2</sup>

However, “if grassroots lobbying involves [the organization] directly communicating with legislators regarding pending or proposed legislation, this activity has shifted from non-legislative to legislative lobbying and is, therefore, direct lobbying.”<sup>3</sup>

The distinguishing factor is who the facility is communicating to. If you are communicating directly or nearly directly with legislators, the activity will be considered reportable legislative lobbying. If you are communicating with your staff members or the general public and encouraging them to take action on their own, the activity will be considered non-reportable grassroots lobbying.<sup>4</sup>

### **What does this mean for MHA Member Organizations?**

Most MHA member organizations won’t spend enough money on lobbying activities to meet the threshold requiring registration.

However, even if an organization doesn’t meet the \$2,650 threshold, it is expected to keep records of its lobbying expenses. If an organization’s decision not to register and report is challenged, you will be expected to produce records that substantiate your claims that you have not expended more than the

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<sup>1</sup> See *COPP-Lobbying FAQ* at 3, <http://politicalpractices.mt.gov/content/4lobbying/FAQupdated2015> (January 2011).

<sup>2</sup> *Peters v. CSKT*, No. COPP-2015-LOB-001 (July 27, 2018) and *Threlkeld and Morris v. CSKT*, No. COPP-2015-LOB-002 (July 27, 2018), pg 6-7.

<sup>3</sup> *Id.*

<sup>4</sup> **Q. Must grassroots lobbying be reported on lobby spending reports?**

**Generally not.** Consider the following three examples – they describe what’s typically understood to be grassroots lobbying, and no reporting is required under current law for all but the fourth example below:

Corporation X sends postcards to people urging them to contact state officials/legislators to either support or oppose proposed or pending legislation.

Corporation X hires a consultant to go door-to-door and call individuals and retailers of Corporation X’s product to urge them to contact state officials/legislators to support or oppose proposed or pending legislation.

Organization Y-X contracts with a vendor of phone-banking services to call potential supporters or the public to urge them to contact state officials/legislators to support or oppose proposed or pending legislation.

The next example illustrates a more direct form of lobbying and would therefore likely be a reportable expense subject to public disclosure under Montana law:

Organization Y-X sends pre-printed postcards to people, ready for mailing to specified state officials or legislators, urging them to merely sign their names and forward the postcards to the designated recipient.

See *COPP-Lobbying FAQ* at 3, <http://politicalpractices.mt.gov/content/4lobbying/FAQupdated2015>

threshold amount on lobbying activities. You are also required to report all amounts spent on lobbying on your form 990 that is filed with the IRS annually.

If a member facility employs a lobbyist, it will already be required to register and report. If facilities host receptions and/or dinners for legislators, the costs associated with the event must be reported. The facility should also include all time spent by staff preparing testimony, letters, talking points, or other efforts related to direct lobbying on its L-5 disclosure reports.

If a member facility is participating in grassroots lobbying efforts, it should ensure that its efforts do not cross over into direct lobbying where the threshold and reporting is required. For those facilities already filing reports, there is no need to report costs associated with grassroots lobbying. However, if there is an activity that you believe may be in a gray area between grassroots lobbying and direct lobbying, it is recommended that you also report costs associated with that activity.

If you do expend more than the \$2,650 on lobbying activities, go to the new lobbying disclosure and reporting website for the Commissioner of Political Practices – <https://lobbyist-ext.mt.gov/LobbyistRegistration/> – to complete and file the forms electronically. The Commissioner’s office – (406) 444-2942 – can answer specific questions.