

perspectives

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MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight



HealthNet, Inc. is Indiana's largest Federally Qualified Health Center, serving nearly 51,500 patients annually. Since 1968, it has played a vital role in providing access to affordable, quality, integrated health care, behavioral health, outreach and support programs to Indianapolis residents, many of whom are uninsured or underinsured and live at or below the federal poverty level.

HealthNet provides comprehensive primary health care and services at seven centers: Barrington Health & Dental Center, Martindale-Brightwood Health & Dental Center, People's Health & Dental Center, Southeast Health & Dental Center, Eastside Health Center, West Health Center and the Southwest Health & Dental Center. In addition, HealthNet operates the OB/GYN Care Center and Pediatric & Adolescent Care Center at Methodist Tower, Maternal-Fetal Medicine Center, Better Indy Babies and Healthy Families, five school-based clinics and the Homeless Initiative Program.

Improving lives with compassionate health care and support services, regardless of ability

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Lobbying By Charities: Understanding the Rules

By Russell Balthis



Russell Balthis

As the new Ohio General Assembly is being sworn in and the Governor is preparing to introduce his budget, not-for-profit organizations are considering how these events could impact their mission. For many not-for-profit organizations, it is essential to have a voice in the General Assembly. Lobbying permits these organizations to share their expertise and experience with elected representatives. Through lobbying the General Assembly, not-for-profit organizations can accomplish more, but it is important for them to be mindful of all of the laws and regulations governing their lobbying activities. This article focuses on lobbying rules for charitable, scientific and educational organizations exempt under

section 501(c)(3) of the Internal Revenue Code. Other types of exempt entities such as trade associations and social welfare organizations are not subject to the same restrictions on their advocacy activities.

The first question is, what is considered a lobbying expenditure? The Internal Revenue Service defines lobbying expenditures as expenditures (including allocable overhead and administrative costs) paid or incurred for the purpose of attempting to influence legislation through either communication with any member or employee of a legislative or similar body, or with any government official or employee who may participate in the formation of the legislation. In addition, attempting to affect the opinions of the general public in an effort to influence legislation is also considered a lobbying expenditure. It is important to note that to be considered a lobbying expenditure, the expenditure must be incurred for the purpose of attempting to influence legislation. That requirement narrows the definition of lobbying for tax purposes. Advocacy work done to influence the executive branch of government is not lobbying for IRS purposes.

The general rule is 501(c)(3) organizations are permitted to lobby as long as no substantial part of the organization's activities constitute carrying on propaganda, or otherwise attempting, to influence legislation. The real ambiguity of this rule is determining what constitutes a substantial part of the organization's activities. There are two tests to determine if lobbying is a substantial part of an organization's activities. The Internal Revenue Service's default is the *substantial part test*, but there is an alternative *expenditure test*. Most 501(c)(3) organizations are eligible to elect to be subject to the expenditure test, instead of the substantial part test. Churches, conventions or associations of churches, integrated auxiliaries of churches, certain supporting organizations of noncharitable entities, and private foundations are not eligible to elect the expenditure test. Below is a brief summary of each test.

The Substantial Part Test

The Internal Revenue Service has not defined what constitutes a substantial part of an organization's activities for purposes of the substantial part test. Therefore, it is a factual determination as to whether a specific activity or category of activities of a 501(c)(3) organization is substantial. Factors that may be considered in the determination are the time (including

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volunteers' time) and expenditures used to influence legislation. One federal court suggested that 5% of an organization's time and effort that involves legislative activities is not substantial, but it is important to note that another federal court held whether an activity is substantial is a facts-and-circumstances inquiry and not always dependent upon time or expenditure percentages. Attempting to comply with the substantial part test can be challenging because it involves a significant level of uncertainty. An organization should work with its legal counsel to ensure it has documented its lobbying activities. This will help establish a stronger argument, based on the specific facts and circumstances, that lobbying is not a substantial part of the organization's activities.

The Expenditure Test

An alternative test for eligible 501(c)(3) organizations is the expenditure test or the 501(h) election. To be subject to the expenditure test, as opposed to the substantial part test, an eligible 501(c)(3) organization must make an election with the Internal Revenue Service by filing IRS Form 5768. An eligible 501(c)(3) organization may also revoke the election by filing the same form with the Internal Revenue Service. The expenditure test provides a formula for organizations to determine the amount they can expend on lobbying. The formula considers the monetary expenditures of the organization and never permits more than \$1 million in lobbying expenditures. Under this test, a 501(c)(3) organization may be permitted to spend 20% or more of its total expenditures on lobbying.

Which Test is Best for My Organization?

Which test works best for a not-for-profit organization depends on a number of different factors, including its mission, the type of lobbying and whether paid staff or volunteers conduct the lobbying. It may also depend upon the size of the organization. For example, large national organizations that engage in significant lobbying may be better off under the substantial part test, as the expenditure test ceiling may be too low given the organization's size, budget and advocacy needs. As you are making plans for your organization, be sure to consider the

benefits of lobbying. Not-for-profit organizations should be comfortable with lobbying and have appropriate guidance and legal counsel to ensure compliance with applicable laws and regulations.

Additional Information

For more information, please contact **Russell Balthis** at rbalthis@beneschlaw.com or 614.223.9344.

Please also visit the following websites for information pertaining to not-for-profit advocacy:

- **Bolder Advocacy:** An organization that provides not-for-profits and foundations with the resources and tools to help them navigate complex advocacy rules and regulations
- **Ohio General Assembly:** Allows not-for-profits to look up Ohio legislation that may affect their organizations.
- **Indiana General Assembly:** Provides information on legislation affecting Indiana not-for-profits.

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The Health Policy Institute of Ohio Releases Policy Brief on Medicaid Expansion

The Ohio Medicaid Expansion Study (a partnership between the Health Policy Institute of Ohio (HPIO), The Ohio State University, Regional Economic Models, Inc. and the Urban Institute) has released its preliminary findings on the impact of potentially expanding eligibility for Medicaid in Ohio.

A summary of the findings can be downloaded [here](#).

The U.S. Supreme Court decision on the Affordable Care Act last June gave states the option to expand Medicaid eligibility for nearly all residents with incomes up to 138% of the federal poverty level. The preliminary findings provide state policy makers with an analysis of the impact Medicaid expansion may have on:

- The state budget
- Ohio jobs and earnings
- The number of uninsured in Ohio
- Health care costs for Ohio's employers and consumers

In early January, HPIO also released "[Policy Considerations for Medicaid Expansion in Ohio](#)," a policy brief that provides background on the issue of Medicaid expansion, outlines policy considerations and provides a summary analysis of the costs and benefits of a Medicaid expansion. An [abbreviated primer](#) is also available.

American Taxpayer Relief Act of 2012

The American Taxpayer Relief Act of 2012 made a number of changes to the tax code that may affect not-for-profits, including:

- The top tax rate increases from 35% to 39.6% on taxable income above \$400,000 (\$450,000 for couples). Taxpayers who elect to itemize their deductions can continue to deduct charitable contributions at their full marginal income tax rate.
- The top marginal tax rate on capital gains increases from 15 to 20% for taxpayers in the top income tax bracket, increasing the tax benefit for taxpayers that donate appreciated property to charity.
- The overall limitation on itemized deductions (Pease) is reinstated for individuals with adjusted gross income (AGI) above \$250,000 (\$300,000 for couples). The Pease limitation reduces itemized deductions by 3% of the amount by which AGI exceeds the above thresholds, but not more than 80% of the total.
- The estate tax is maintained for estates in excess of \$5 million (\$10 million for couples), indexed since 2010, while the top tax rate increases from 35% (in 2012) to 40%.
- The charitable IRA rollover provision, which allows up to \$100,000 in tax-free distributions to certain public charities from an Individual Retirement Account (IRA) held by individuals age 70½ or older, was extended until December 31, 2013, with special transition rules for certain distributions made in December 2012 and January 2013.
- The enhanced charitable deduction for contributions of food inventory is extended until December 31, 2013. The Joint Committee on Taxation estimates the revenue loss from this provision to be \$314 million.
- The basis adjustment to stock of S corporations making charitable contributions of property is extended until December 31, 2013.

Internal Revenue Service 2013 Exempt Organizations Workplan to Focus on Unrelated Business Income

The plan reveals that the Internal Revenue Service (IRS) will examine a statistically valid sample of organizations reporting substantial gross unrelated business income (UBI) for three consecutive tax years, but reporting no income tax due for any of those years. Exempt Organizations' concern is whether these organizations are accurately reporting their sources of UBI and correctly allocating and deducting expenses associated with it. Please click [here](#) for the full plan.

Not-for-Profit Spotlight: HealthNet, Inc.

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to pay, is central to all that HealthNet does. Staying healthy encompasses so much more than a doctor's visit, which is why HealthNet focuses on caring for the whole person. Health is central to overcoming poverty, and donors are central to helping make that happen.

HealthNet invites businesses, faith groups, schools and other organizations to consider participating in its Design-A-Drive program by collecting items that are consistently needed by its clients at its health centers and through its Better Indy Babies/Healthy Families and Homeless Initiative Programs. For more information, please contact Tricia Tomson, Development Officer, at 317.781.4918 or tricia.tomson@indyhealthnet.org.

To make a monetary donation, visit www.giveacareindy.org/donate. A gift of \$30 would help build literacy by providing books and developmental games to a needy child. A gift of \$70 would purchase a Pack 'n Play® crib to ensure safe sleeping arrangements. And a gift of \$150 covers a well-child checkup, enabling health providers to screen for and address serious developmental and health-related problems.

Five Things That an Eventful Year Taught Charities

As 2013 gets underway, a reflection back upon the events of 2012 can give insight as to the key happenings in the not-for-profit arena and lessons learned from those events. Check out [this article](#) in the Chronicle of Philanthropy to learn more.

Events

The Center for Community Solutions and Maxine Goodman Levin College of Urban Affairs Symposium

Financial Health of Ohio's Not-for-Profit Sector

This symposium will begin with a review of how Ohio not-for-profit organizations have been affected by the recession of the past four years—and how they are responding. A surprising report will be given on how health and social services are funded in Northeast Ohio. The event will culminate in a panel featuring philanthropic and public sector leaders sharing their observations regarding the health of the not-for-profit sector, followed by audience discussion.

Date: February 1, 2013

Location: Maxine Goodman Levin College of Urban Affairs
Roberta Steinbacher Atrium
Cleveland State University
1717 Euclid Avenue, Cleveland OH 44114

Time: 8:30 A.M.—12:30 P.M.

RSVP: Please click [here](#) for more information and to register.

Association of Fundraising Professionals Events

Cleveland

Educational Breakfast Program: Can Bad Decisions Lead to Fundraising Nightmares?

Date: February 21, 2013

Location: Crowne Plaza

Time: 7:30–9:30 A.M.

For more information: Please send an email to admin@afpcleveland.org for further details.

Indianapolis

Luncheon Program: Donor Retention—Current Rates are Plummeting! What Can Every Fundraiser Do to Reverse the Trend!™

This session explores the Fundraising Effectiveness Project report commissioned by AFP and the Urban Project. The dismal news in this report can and should be an eye-opener for every not-for-profit engaged in fundraising. Discussion will focus on what can be done about retaining donors based on the principles of Dr. Adrian Sargeant, the world renowned authority on building donor retention and donor loyalty. Dr. Sargeant's principles are based upon years of research conducted in the sector and can be used by any organization, whether a one-person shop or a large department.

Date: February 20, 2013

Location: Riverwalk, 6729 Westfield Blvd, Indianapolis

Time: 11:30 A.M. Registration and Lunch Buffet Open
12:00–1:15 P.M. Program

RSVP: Please click [here](#) to register.

Ohio Association of Nonprofit Organizations Webinar

Going Beyond the Numbers—Measuring The Greater Impact

Capturing data such as the number of job training sessions a not-for-profit provides or the number of meals a not-for-profit serves is a fairly easy task that can serve as a real benefit to an organization. Specific output data can help document and analyze program activities or create a framework for cost-benefit analysis. However, going beyond the numbers and measuring greater community impact can often be a challenge. For a job training program, this might mean measures of employment and income over time for participants of the program compared to a control group who did not receive training.

Measuring the larger impact demonstrates the value of your programs to stakeholders, such as:

- Program participants
- Supporters, including funding agencies and individuals
- Your board of directors, staff, volunteers and the general public

Date: March 7, 2013

Time: 10:00–11:30 A.M.

Cost: \$50 for OANO members and nonmembers

RSVP: Please click [here](#) for more information and registration.



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