



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

**MEMORANDUM**

TO: Ulder J. Tillman, M.D., MPH  
Montgomery County Health Officer

Peggy Bur  
Staff to Commission on Health

FROM: Marc P. Hansen, Chief *Marc Hansen*  
Division of General Counsel

DATE: August 26, 2004

RE: Lobbying—Commission on Health

As a follow-up to my presentation on June 8<sup>th</sup> concerning lobbying by Boards and Commissions associated with the Department of Health and Human Services, you have posed five follow up questions concerning the applicability to the Commission on Health of the lobbying rules I discussed in June 8<sup>th</sup>. I have set forth the questions you have asked in the order presented in your memorandum and provided my response following each question.

1. “What is the source of the definition of “lobbying” noted at the bottom of the chart? How does “lobbying” outside groups (not the County Executive or County Council) differ from informing or educating them, or is this considered the same thing?”

**Response:** I do not know the specific source of the definition of lobbying used on the chart referred to in your memorandum. I did approve the definition because it is consistent with the standard definition of lobbying. For example, Black’s Law Dictionary states that “lobby” means “to support or oppose (a measure) by working to influence a legislator’s vote” or “to try to influence (a decision-maker)”. The definition used on the Chart is also consistent with the definition of lobbying used in the Montgomery County Public Ethics Law, which states that “lobbying means any attempt to influence any legislative, executive, or administrative action by a County agency.”

The difference between lobbying and educating is that lobbying involves communication that is intended to influence the actions of a decision-maker. By way of contrast, education is intended to develop knowledge through the systematic study of a matter. Unlike lobbying, education contains no specific intent to persuade a decision-maker to undertake a certain course of action.

Moreover, I would point out that the Commission on Health does not appear to have responsibility for educating the public or governmental agencies outside of the County government. The statutory functions of the Commission on Health set out in § 24-24 should be contrasted with the statutory duties of the Commission on Human Rights, which is charged with certain educational responsibilities. Section 27-5 provides that the Commission on Human Rights must “study and investigate, through public or private meetings, conferences, and public hearings, conditions that could result in discrimination ....”

2. “In the case of the Commission’s responding to a request from the Maryland Health Care Commission for comments on their hospital bed need statistical methodology (request came indirectly through DHHS to the Commission), is it “legal” to correspond directly with MHCC or must the Commission go through the executive or the council to communicate?”

**Response:** The Commission on Health may only respond to the Maryland Health Care Commission through the Department of Health and Human Services. Section 24-24 authorizes the Commission on Health to advise the County Executive and the County Council concerning public health programs, services, and facilities. The Commission does not have statutory authority or responsibility for advising, educating, or lobbying other government entities. <sup>1</sup>

As I explained during my presentation on June 8<sup>th</sup>, the County government has assigned to the Office of Intergovernmental Relations responsibility for providing coordination and responding to legislation, regulations, and other policy issues involving other jurisdictions on behalf of the County.<sup>2</sup>

Finally, the Code of Maryland Regulations (COMAR) provides how the Maryland Health Care Commission obtains comments from “interested parties” with regard to an application for a Certificate of Need.<sup>3</sup> An “interested party” includes the local health planning agency designated to represent the governing authority of the jurisdiction in which the proposed service is to be offered. The local health planning agency for Montgomery County is the Department of Health and Human Services. Section 2-42A provides that the Department of Health and Human Services “is responsible for providing a single integrated system for the provision of Health and Human Services with other public and private agencies that provide Health and Human Services in the County.” Accordingly, it would be inconsistent under COMAR for the Commission on Health to send comments concerning a Certificate of Need directly to the Maryland Health Care Commission; instead the appropriate process for the Commission to follow would be to transmit

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<sup>1</sup> By way of contrast § 27-5 provides that the Commission on Human Relations may “advise County residents, the County Council, the County Executive, and the various departments of County, State, and federal governments about...discrimination and... recommend procedures, programs, and laws to promote and protect equal rights and opportunities for all persons....”

<sup>2</sup> See § 2-64J Montgomery County Code.

<sup>3</sup> See COMAR 10.24.01.08.

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its comments on a Certificate of Need to the Department of Health and Human Services. The Department may then consider the Commission's position on the Certificate in preparing its comments as an "interested party" for transmittal to the Maryland Health Care Commission.

2. "In the case of a CON application like the Shady Grove CON for the Upcounty ER center, can the Commission express an opinion directly to MHCCC as a part of its request for public comment?"

**Response:** No, for the reasons stated above the Commission on Health should present its comments concerning a Certificate of Need for the Shady Grove Up-county ER Center through the Department of Health and Human Services.

3. "What may the Commission do without the review, clearance, oversight, or approval of the executive branch, and what may it not do?"

**Response:** Obviously, this is an extremely broad question. Generally, the functions and authority of the Commission on Health are set out in §24-24. I believe a reading of §24-24 as a whole indicates that the Commission on Health may communicate directly with either the County Executive or the County Council, or both, without obtaining the "review, clearance, oversight, or approval" of either branch of government.

4. "Is communication between the Commission and the County Council, irrespective of its form, content, or the nature of the issue in question, in any way subject to the review, clearance, oversight, or approval of the Executive branch?"

**Response:** No. See response to question No. 4, above.

Please understand that my advice is not intended to diminish the importance of the functions performed by the Commission on Health, but rather reflects County policies as set out in the County Code which are intended to provide that the County government speaks in a coordinated and, if possible, unified voice when dealing with outside governmental entities.

I trust you will find this memorandum responsive to your inquiry.

cc: Carolyn Colvin, Director, DHHS  
Melanie Wenger, Director, Office of Intergovernmental Relations  
Kenneth H. Rumsey, Chief Operating Officer, DHHS  
Deborah Goodwin, Special Assistant to County Executive  
Mike Faden, Senior Legislative Counsel  
Joan Planell, Senior Legislative Analyst  
Anne Windle, Associate County Attorney

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