



State Infrastructure Project Fact Sheets

Administrative Advocacy to Achieve SIP Goals

The **State Infrastructure Project** aims to ensure that over the ten-year project, “policies that support equitable access to abortion are advanced, strengthened, and defended; policies that restrict access are exposed, weakened, and reversed.” **To achieve policy change on this scale, all possible policy options should be explored.** Policy change happens at many levels, from Congress to the statehouse, to administrative agencies, with governors, mayors, and county executives, at the county and municipal level, and at and through major institutions.

Many SIP Partners already actively engage in all types of policy work, often with a particular focus on legislative action in the state capital or city government. NIRH and our allies at the state and national level support proactive legislative advocacy on abortion. **As always, NIRH is available to assist our SIP colleagues with proactive abortion legislative work,** and to connect them with other national groups that offer further resources and assistance as well.

The National Institute for Reproductive Health works with advocates at the state and local level to promote proactive abortion-related policy in many different spheres. This set of fact sheets includes an overview of some types of advocacy that can be done outside the legislative arena to influence both day-to-day access to reproductive healthcare and engender broader engagement on the issue among leaders in a variety of fields. SIP partner organizations can use SIP resources to engage in activities that lay the groundwork for and create the right climate for proactive legislative change on abortion, and to directly achieve policy change through executive branch advocacy and institutional policy change. **The following three fact sheets: (1) give an overview of executive branch advocacy and advocacy with large institutions; (2) describe how advocates can develop an executive blueprint and use it as a tool for policy change, messaging and basebuilding; and (3) describe the basic steps for engaging in regulatory advocacy.**

Table of Contents

Executive Branch Advocacy 2
Developing an Executive Blueprint..... 6
How to Impact Regulatory Policy 9

Executive Branch Advocacyⁱ

Influencing the actions of an executive branch at the city, state, or federal level can be an incredibly powerful way to make policy change. Executive orders, statements of policy by attorneys general and department heads, and both formal and informal regulations all create policy that influence people's daily lives. Because administrative agency advocacy is not considered lobbying under the IRS tax rules that govern 501(c)(3) nonprofit organizations, SIP partners can use SIP resources for any type of administrative advocacy, including the following key avenues for policy change:

- *Lobbying for, helping to create, and commenting on draft regulations:* A huge fraction of law in this country is actually made through regulation. SIP partners can influence regulation of reproductive healthcare, ensuring the adoption of regulations that expand access to care or in cases where regulations may limit access, ensure that they take into account scientific evidence, expert perspective and medical best practices to mitigate the impact of laws intended to limit access.ⁱⁱ

For example: SIP Partners in North Carolina, Pennsylvania, Texas, and Virginia have all participated in rulemaking processes at various points through the years to urge adoption of more equitable regulations. North Carolina advocates in particular had a notable success in the rulemaking process that began in 2013, after a state law was passed that could have resulted in extremely harmful TRAP regulations. Through deep understanding of the regulatory process and smart advocacy, including working to place key experts on the right committees within the rulemaking process, advocates in that state were successful in their work to ensure the adoption of TRAP regulations that do not pose a threat to continued provision of care.

- *Implementation and protection of existing laws:* Passing a bill is just a first step in creating public policy – the way that the policy gets implemented is just as critical. Whether it's ensuring that a proactive law gets implemented in a way that best serves those whom the law was intended to help, or working to lessen the burden of a restrictive law, working with the right officials to influence the way a law is applied can make a major difference.

For example, advocates in New York City successfully lobbied for an ordinance requiring crisis pregnancy centers to disclose whether they had a medical provider on staff.

However, passing that bill was just the first step in a long process to enforcement – although adopted in 2011, ensuing litigation and then a regulatory process meant that the law did not go into full effect until June 2016. Even after that, advocates continue to follow up to ensure that it is being complied with, by calling and going directly to CPCs to find out what’s actually happening on the ground, then following up with the relevant enforcement agents if they find that CPCs are not complying.

- *Influencing executive orders:* Executives from mayors to the President issue executive orders that can control a range of public policies, including public funding and policies impacting public employees. Influencing which executive orders get issued and what they require can have a significant impact. Beyond external policies, executive orders can also govern internal workings of an executive agency, which can impact large numbers of city or state employees and can include issues paid family or sick leave, breastfeeding accommodations or expansions of insurance coverage in state employee contracts.

For example, most advocates are familiar with the most infamous executive order about abortion, the “Global Gag Rule,” an executive order put in place by President Reagan in 1984 prohibiting any international funding from the United States going to organizations that provide abortion services or referrals. Although there are fewer examples of proactive executive orders, Presidents Clinton and Obama issued executive orders lifting the Global Gag rule, and Governor Terry McAuliffe of Virginia issued an order to the Board of Health to require them to review the TRAP regulations they had imposed under the previous administration.

- *Influencing administrative policy and program implementation:* The way that a particular agency or administrative program is structured can mean the difference between an effective program that destigmatizes abortion and increases access and an ineffective program that fails to improve access or even reach the target population. Implementation can also mitigate harmful policies.

For example, state law in Virginia requires the state health department to give out a list of facilities that provide free ultrasounds. That list currently contains a large number of crisis pregnancy centers, but SIP partners are advocating with the department to

remove at least those CPCs that routinely mislead or lie to clients and to ensure that only reputable health centers are included on that list.

Advocacy with Major Institutions

Major institutions and organizations such as medical societies, bar associations, and universities frequently issue statements about their position on particular types of policies. Working with an institution like a state medical association to adopt a particular policy statement can help achieve SIP's goals in several ways, including by cultivating relationships with key leaders in the state who can be encouraged to speak up positively about abortion, and by developing proactive position statements about abortion that can be used in other contexts. Nationally, advocates have worked closely with medical groups including the American Congress of Obstetricians and Gynecologists,ⁱⁱⁱ the American Medical Association^{iv} and the National Physicians Alliance,^v to develop institutional positions that clearly oppose legislation that interferes in the doctor-patient relationship, including laws about abortion. These statements can be used at the state level as examples with other institutions considering developing such policies, as well as tools in legislative advocacy.

Participation in legislative advocacy itself can also be a catalyst to develop a general institutional position: For example, after opposing a harmful abortion bill in the Wisconsin legislature in 2013,^{vi} the Wisconsin Medical Society issued a strong general policy statement opposing "government interference in the patient-physician relationship."^{vii} In Pennsylvania, advocates worked with both the ACOG Chapter and the Pennsylvania Medical Society to develop strong institutional positions against interference in the doctor-patient relationship,^{viii} which the two medical groups also relied on as a reason to support the proactive Patient Trust Act.^{ix}

Many large institutions also have key internal policies, such as whether their insurance plans provide coverage for abortion and contraception, which may be influenced by internal and external advocacy. Hospital systems in particular have a number of policies that affect access to abortion, including whether they offer or refer for those services and whether and under what circumstances they will grant transfer agreements. In states like Ohio, where abortion providers are required to have transfer agreements with hospitals or physicians with admitting privileges, internal hospital policies about how those privileges or agreements are granted can make the difference between a clinic staying open or closing.

ⁱ Note that while these activities are not considered lobbying under federal tax law, they may still be defined as lobbying under relevant state laws and therefore may require registration as a lobbyist in your state and compliance with other state lobbying laws and regulations. There may also be a requirement that this activity be disclosed in federal lobbying filings.

ⁱⁱ Keep in mind that if administrators have to submit their plan for approval by a legislative body, then it is no longer administrative – it counts as legislative lobbying.

ⁱⁱⁱ American College and Congress of Obstetricians and Gynecologists, Statement of Policy, Legislative Interference With Patient Care, Medical Decisions, And The Patient-Physician Relationship, May 2013 & July 2016, *available at* <https://www.acog.org/-/media/Statements-of-Policy/Public/89LegislativeInterferenceAug2016.pdf?dmc=1&ts=20161212T1028148073>.

^{iv} American Medical Association, Press Release, High Court Protects Patients from Unjustified Government Intrusion, June 27, 2016, *available at* <https://www.ama-assn.org/high-court-protects-patients-unjustified-government-intrusion> (“The AMA opposes interference in the clinical examination room and calls on policymakers to leave determination of what constitutes medically necessary treatment where it belongs - in the hands of physicians and patients.”).

^v National Physicians Alliance, Policy Statement, Protecting Free Speech between Patients and Physicians, February 2013, *available at* http://npalliance.org/wp-content/uploads/NPA_Policy_Stmt-Protecting_Patient_Physician_Free_Speech-022713.pdf; National Physicians Alliance, Policy Statement, Women’s Access to Health Services, May 2012, *available at* <http://npalliance.org/wp-content/uploads/NPA.Policy-Womens.Access.Health.Services-May.2012.pdf>.

^{vi} In 2013, Wisconsin passed a law requiring all abortion providers to have admitting privileges at a local hospital, as well as requiring that physicians show abortion patients their ultrasound and follow specific steps related to the ultrasound. The Wisconsin Medical Society opposed that law, even though at that time the Society’s only policy position on abortion was fairly neutral. *See* Wisconsin Medical Society, Memo in Opposition to Senate Bill 206, *available at* https://www.wisconsinmedicalsociety.org/WMS/advocacy/at_the_capitol/find_your_issue/society_testimony/2013/pdf/SB206_memo_06052013_a.pdf.

^{vii} *See* Wisconsin Medical Society, Policy Compendium, PHY-014: Government Interference in the Patient-Physician Relationship, *available at* <https://www.wisconsinmedicalsociety.org/policies/phy-014-government-interference-patient-physician-relationship/>; Wisconsin Medical Society, Statement, Legislation infringes on patient-physician relationship, Feb. 20, 2012 (opposing Senate Bill 306, a TRAP bill), *available at* <https://www.wisconsinmedicalsociety.org/news/legislation-infringes-patient-physician-relationship/>.

^{viii} *See* Pocono Record, Editorial, Keep politicians out of medical care, April 13, 2016, *available at* <http://www.poconorecord.com/opinion/20160413/editorial-keep-politicians-out-of-medical-care> (“Last week the Pennsylvania section of ACOG wrote a letter to House members representing its 1,300 doctors and partners, stating the group “strongly opposes governmental interference in the doctor-patient relationship.”).

^{ix} Donna Barry, Andrea Friedman, Sarah Lipton-Lubet, State Laws Can Ensure a Woman’s Right to an Abortion, Newsweek, October 11, 2015, <http://www.newsweek.com/state-laws-can-ensure-womans-right-abortion-381408> (last visited Dec. 12, 2016) (“Leaders in the medical community also supported the Patient Trust Act: The Pennsylvania Medical Society endorsed the bill; the Pennsylvania section of the American Congress of Obstetricians and Gynecologists featured it as a legislative priority; and more than 50 health care providers across the state signed a letter in support of the legislation. A similar bill, H.B. 2635, was introduced in Arizona in February 2015. The sponsors and advocates promoted the bill because of the increase in inappropriate legislative interference in the patient-provider relationship throughout the country.”);

Developing an Executive Blueprint

When a newly elected executive takes office, or begins a new year or term, it presents an opportunity to build a stronger relationship with the executive branch in general and to advocate for policies that can be accomplished by the executive branch acting alone. Advocates should consider creating an “executive blueprint” with a clear executive agenda that highlights their values and the policies that need to be changed in line with those values. These “blueprints” can serve as a tool to help build stronger relationships with executive branch offices, as well as creating a basis for communications and media outreach.”

An executive blueprint is an advocacy tool, generally in the form of a report, that organizations can produce to encourage a newly elected executive and his or her team (or an already-seated executive starting a new term or new year) to take action in priority areas where the executive branch has authority to act independently of other branches of government. Useful executive blueprints generally include specific action steps and can be distributed widely to the targeted executive agents, other advocates, the media and others, and should include specific calls to action via, for example: executive orders, internal policy changes, new or changing executive initiatives, regulations, and/or other, more informal, ways for the executive to reach policy goals, like community outreach and stakeholder involvement.

In considering whether to create an executive blueprint, organizations/coalitions should determine whether and how executive action can be used to achieve their policy goals and which goals they want to focus on. Although the specific scope of executive authority of governors and mayors varies between different state and local governments (see the endnote for state by state resources on executive authority),^x generally, executive authority can be used to promote policy change through:

- Executive orders
- Rulemaking
- Agency management (including powers of appointment for different agency positions, such as Departments of Health and Insurance, Commissions on the Status of Women, Human Rights Commissions, and other relevant agencies)
- Convening and creating public-private partnerships
- Creation of new executive initiatives, such as Task Forces or Commissions or Blue Ribbon Panels convened to address a particular issue
- Data collection

For example, an Everytown for Gun Safety report outlines actions cities can take to reduce gun violence. Although not exclusively focused on executive advocacy, recommended city actions include are similar to those recommended on the state level: data collection, local agency action (ex: development of vacant lots into parks) building coalitions, and bringing attention to important local issues.^{xi}

Notably, there is great variation in the scope of authority for different agencies. Each agency is created by an “enabling act” passed by the legislature that defines the scope of agency authority and sets limits on possible agency action. An agency’s enabling act is the key to determining whether the state agency has the authority to act to achieve the organization’s desired outcome.^{xii} It may be useful to consult with outside experts in determining what falls within the scope of authority for relevant administrative agencies and whether those agencies could help achieve the goals of the organization/coalition.

Creating an executive blueprint can help an organization achieve goals beyond influencing the particular policy changes identified in the document. Even in situations where policy change is initially unlikely, the document itself can serve as a basis for setting up meetings and beginning to develop a “working relationship” with key officials and could allow organizations/coalitions to build trust and later serve as a source of information for those officials or others. For example, the Center for Reproductive Rights & National Latina Institute for Reproductive Rights *Nuestro Texas: A Reproductive Justice Agenda for Latinas* suggests a wide range of actions, but the first point calls for the “participation of impacted communities” in state decision making about reproductive health services.^{xiii} Advocates can start to build these relationships in many ways, using formal or informal channels to reach out to executive branch officials. While advocates can generally contact governors and mayors through both informal and formal mechanisms, executive agencies and commissions may not have any formal channels, so it may be useful to consider approaching agencies or commissions by:

- Leveraging pre-existing relationships
- Directly calling agency staff (after doing some research with allies to try develop a sense of the staffer, their perspective on your issue, and how receptive they might be to your issue)
- Identifying any current and relevant agency action (for example, a proposed regulation)
- Identifying any executive staffers involved with an area of interest (for example, a member of a commission established by the governor or mayor)



Further, release of the blueprint can be timed with other key events such as an inauguration, the beginning of an executive’s year or term, a “state of the state” or “state of the city” speech, or other events that may allow the organization/coalition to get their message included in coverage of the event.

For more information or assistance developing an executive blueprint, contact Jordan Goldberg at jgoldberg@nirhealth.org, or (646) 520-3521.

^x **For state-by-state resources outlining gubernatorial powers**, see: Council of State Governments, *Book of the States: Gubernatorial Executive Orders* (2016), available at <http://knowledgecenter.csg.org/kc/system/files/4.5%202016.pdf>; Council of State Governments, *Book of the States: The Governors Powers* (2016), available at <http://knowledgecenter.csg.org/kc/system/files/4.4%202016.pdf>; Council of State Governments, *Book of the States: Selected State Administrative Officials Methods of Selections* (2016), available at <http://knowledgecenter.csg.org/kc/system/files/4.10%202016.pdf>; Council of State Governments, *Book of the States: State Cabinet Systems* (2016), available at <http://knowledgecenter.csg.org/kc/system/files/4.6%202016.pdf>.

^{xi}Everytown for Gun Safety, Mayors Against Illegal Guns, & National Urban League, *Strategies for Reducing Gun Violence in American Cities* (June 2016), available at <http://everytownresearch.org/documents/2016/06/strategies-reducing-gun-violence-american-cities.pdf>.

^{xii}In some cases, enabling acts may be unclear regarding the full scope of an agency’s authority, or regarding the specific type of authority the agency would need to accomplish your goals. In those cases, it can be useful to look at other relevant regulations promulgated by the agency to determine where the agency believes its authority derives from (usually cited in the regulation) and how broad the agency believes its authority to be. Current regulations can be found in the state code of regulations and proposed regulations can be found on the state register. For links to each state’s administrative rules, see the National Association of Secretaries of State, *Administrative Rules*, ADMINISTRATIVERULES.ORG, <http://www.administrativerules.org/administrative-rules/> (last updated September 6, 2016).

^{xiii} Center for Reproductive Rights & National Latina Institute for Reproductive Rights, *Nuestro Texas: A Reproductive Justice Agenda for Latinas 20 – 39* (2015), available at http://www.nuestrotexas.org/wp-content/uploads/2015/01/CRR_ReproJusticeForLatinas_v9_single_pg.pdf.

How to Impact Regulatory Policy

A huge fraction of law in this country is actually made through regulation. SIP partners can influence regulation of reproductive healthcare, ensuring the adoption of regulations that expand access to care and mitigating the adoption of harmful regulations intended to limit access. This fact sheet gives a basic overview about the process of influencing such regulations.

1. **Identify the regulations you are interested in promoting, repealing, or revising^{xiv}.** For example, if you are working on abortion-related regulations, determine whether the abortion providers in your area are regulated by the State Department of Health? A local department of health? City regulators? Zoning boards? For this step, it will be key to work directly with the providers you are seeking to help (or with other providers if you are one yourself), both to ensure that you keep their perspective and needs front-and-center and also to best determine what types of regulatory advocacy would have the most impact on the clinic and their patients. Providers will often have the best insight into barriers that are impacting their ability to provide services or women's ability to access them. You may also want to involve key coalition partners at this early stage, or you may want wait until you have done the research on steps two and three before approaching most of your allies.
2. **Determine whether you actually need regulations or could achieve the same goal with an internal policy change at the relevant administrative agency.** For this step, you may need to work with policy or legal advocacy partners, such as NIRH or local legal advocacy organizations.
3. **Identify the key bureaucrats and officials needed to move your regulatory change, and make sure you fully understand the entire regulatory process involved.** Later, after you have created your strategy and approached these officials, you will need to ensure that they too understand the process.
4. **Identify other interest groups that will want to weigh in for and against your regulatory changes.** Build relationships with those on your side and anticipate the arguments to be made on the other side. Keep in mind that if you are engaged in advocacy about regulations that are not abortion-specific (for example, those governing zoning in a particular area, or the type of sedation that can be used in a particular type of facility) it's critical to have relationships with other regulated entities.

- 5. Work with coalition partners to come up with your overall advocacy and communications strategy.** For example, if you are seeking amendments to existing regulations, you could plan to meet with relevant officials, suggest relevant regulatory language, continue to meet with the officials until the regulations are drafted and introduced, participate in the public comment process while continuing conversations directly with the agency, and finally work with the providers and agency to ensure appropriate implementation of the regulations. It is also important to consider whether this is a public strategy or a private one – is this regulatory change something that you can use to be “abortion out loud” or will it be much more effective for providers and patients to work with the agency alone?

For Example: In Virginia, a broadly worded state law in 2011 required abortion facilities to be licensed as a type of “hospital” but left all of the details to be determined in regulations issued by the Department and Board of Health. SIP Partners, both before and after the Project began, have dedicated hundreds, possibly thousands, of hours working to ensure that the regulations allow clinics to remain open. Although the original regulatory process ended with harmful regulations, advocates used the opportunity to garner media attention and talk about abortion in a positive way. Then, when a new administration was elected, SIP Partners and others successfully urged the repeal of the original regulations, because they had been promulgated under a biased, politically influenced process. As the regulatory process unfolds, SIP Partners continue to elevate positive messages about abortion and to use this as an opportunity to have a public conversation about abortion while continuing to work on a carefully nuanced strategy toward the final regulations.

For more information or for assistance with a regulatory advocacy project, contact Jordan Goldberg at jgoldberg@nirhealth.org, or (646) 520-3521.

^{xiv} Note that regulations are sometimes “promulgated” or “published” but are not “enacted.”