



ChangeLab Solutions

Law & policy innovation for the common good.

Accountable Communities for Health

Legal & Practical Recommendations

Table of Contents

Executive Summary	3
Summary of Recommendations.....	5
Introduction to the Innovation Plan, Accountable Communities for Health & Wellness Fund	6
ChangeLab Solutions' Role & Research Approach.....	7
Short-Term Constraints & Assumptions	9
Core Components of an ACH.....	10
Guiding Principles of an ACH	12
Table 1. Guiding Principles of an ACH	20
Options for an ACH Structure.....	21
Table 2. Combining or Separating Wellness Fund & Backbone Functions.....	22
Table 3. Existing or New Organization.....	24
Table 4. Strengths & Weaknesses of Nonprofit, Government, & For-Profit Entities.....	28
Risk Assessment & Liability	30
Hypothetical Example of an ACH Structure	35
Framework for an RFP.....	32
Additional Issues to Address	35
Conclusion.....	37
Appendix I: Background Information	38
Appendix II: Legal & Policy Experts	40
Appendix III: Glossary	41

Executive Summary

In March 2014, the State of California issued the California Health Care Innovation Plan (“Innovation Plan”), a comprehensive plan laying out four key initiatives to help California achieve better health, better health care, and lower costs (the “Triple Aim”), as well as demonstrate a return on investment within three years. One of the initiatives proposed in the Innovation Plan is the development of two to three *Accountable Community for Health* (“ACH”) pilots. An ACH is a relatively recent innovation to improve population health by linking the health care delivery system with public health and non-health sectors in order to address the social determinants of health. An ACH is a multi-institutional, collaborative effort that brings together the health care sector, government, and nonprofit and private organizations, including community organizations and social service providers. Each ACH would commit to advancing the goals of the Triple Aim on behalf of the entire community it serves by selecting and implementing specific activities to improve the health of the community. Each ACH would establish a Wellness Fund that would pool and leverage funding from a variety of sources to sustain the initiative.

ChangeLab Solutions has conducted research on existing collaborative efforts to improve population health, researched applicable federal and California law that could impact the development and ultimate sustainability of an ACH, and engaged legal experts to assess both legal and practical considerations for creating an ACH. This report provides guidance on three key questions:

1. What key components make up an ACH?
2. What kind of organization or entity would be best suited to fulfill the functions of each of these components?
3. How can a community put these components together into a functioning ACH, and what are some options for structuring the relationships between the various organizations and entities fulfilling these roles?

ChangeLab Solutions has identified the legal issues and other parameters that should be considered in the creation of an ACH and provided viable options for structuring an ACH based on this research. The guidance in this report is organized into four topics: (1) Basic Structure and Core Components of an ACH, (2) Guiding Principles of an ACH, (3) Options for ACH Structure, and (4) Risk Assessment and Liability.

1. *Core Components of an ACH*

An ACH should be composed of four core components: Community Stakeholders, a Governing Body, a Backbone Organization/Entity, and a Wellness Fund. Each of these components works together to perform the various functions associated with an ACH. Through a governance structure that establishes the roles, responsibilities, and relationships between these components, an ACH can establish a solid foundation to advance population health improvement efforts.

2. *Guiding Principles of an ACH*

There is no one-size-fits-all template for setting up an ACH. In our review of existing initiatives working on population health improvement and health system reform efforts, we found that each collaborative effort was structured differently. It will be important for ACH applicants to have the flexibility to structure their initiative in a way that is responsive to the unique composition of and resources within their community. While the ACH pilots, as a result, may differ in their precise form, there are four guiding principles that should be incorporated into each, and that are critical to the long-term success of an ACH:

- **Neutrality**
Trust among stakeholders is key for success. An ACH that attempts to bring multiple sectors together to advance a common goal must be viewed as neutral in order to gain the trust of a broad group of stakeholders.
- **Accountability to the Community**
An ACH must ultimately be held accountable to the mission of improving the health of a community. It must therefore consider and reflect the needs of the community, with a particular emphasis on low-income and high-risk neighborhoods. An ACH should have representatives from the community in decision-making roles and establish a process for community engagement.
- **Flexibility**
An ACH must have the flexibility to respond to opportunities, receive funding from a variety of sources, and conduct transactions with multiple parties. In addition, an ACH must have experienced staff to undertake any number of fiscal responsibilities to receive funding, comply with laws, and engage in transactions.
- **Sound Governance**
An ACH must establish a sound governance structure that ensures effective decision-making; accountability to the community; representation of stakeholders' interests; proper fiduciary, fiscal, and social responsibilities; and control over funding and staff. To achieve this, an ACH should have a set of rules (bylaws or agreement) to hold stakeholders accountable to their obligations, defined fiduciary duties for the governing body, established controls over activities and finances, and a conflicts of interest policy and procedure.

3. *Options for an ACH Structure*

As communities determine the best structure for their ACH, they will need to address three key questions:

- Whether to locate the backbone and Wellness Fund management duties in a single organization or divide responsibilities among two or more organizations;
- Whether to locate the backbone and Wellness Fund management duties in an existing organization or create a new organization to fulfill these roles; and
- Whether to locate the backbone and Wellness Fund management duties in a nonprofit organization, for-profit organization, or government entity.

This report contains an analysis of the strengths and limitations of each option posed in the questions above, and provides recommendations for accomplishing the short-terms goals of the Testing Grant in addition to the long-term goal of a sustainable collaborative to achieve the Triple Aim.

4. *Risk Assessment and Liability*

An ACH's structure must accommodate the type of liability, risk, and consequences that all participating stakeholders either are willing to share or desire to be protected from. Each community must weigh this issue carefully, with each stakeholder carefully reviewing the legal commitments, potential risks and exposure to liability.

Summary of Recommendations

There is no single recommended template for structuring an ACH. With the key components of a Governing Body, Backbone Organization, Community Stakeholders, and Wellness Fund in place, each Applicant should have the flexibility to establish and structure these components in a way that most effectively maximizes the unique assets and resources of its community. The recommendations in this report lay out key considerations to guide the Work Group through the strengths and limitations of the various options available. This guidance can, in turn, help the Work Group structure an RFP and assess the strengths and potential weaknesses of the ACH structures proposed in the applications received.

Recommendation #1

An ACH should be structured such that a designated Governing Body has decision-making power and the authority to direct the activities of the Wellness Fund and Backbone. This Governing Body, in turn, is ultimately accountable to the broader community of stakeholders. It must establish a process for engaging community stakeholders and soliciting input before making programmatic decisions.

Recommendation #2

The principles of neutrality, accountability, flexibility, and sound governance can be articulated as minimum qualifications for an ACH in the State-issued Request for Proposal. Each Applicant can propose their own ACH structure in their application, but they will be required to outline how their proposed structure meets these qualifications and/or what agreements or legal documents will be put in place to satisfy these principles.

Recommendation #3

There are no legal parameters that would dictate whether an ACH should necessarily combine the Backbone and Wellness Fund functions into a single organization or divide these functions into separate organizations. Applicants should have the flexibility to combine or separate these functions according to the model that best suits their community.

Recommendation #4

While it may be ideal to create a new organization that is built with the explicit mission to support and advance the goals of an ACH, this may not be practical or realistic given the short time frame of the Testing Grant. To resolve this tension, applicants can think of the establishment of an ACH in two distinct phases with a short-term and long-term goal, respectively. In the short term, a fiscal sponsor can serve as a financial intermediary that administers the Wellness Fund and remains accountable to community stakeholders (via the designated Governing Body). By utilizing existing infrastructure and administrative systems, a community can better position itself to hit the ground running. In the long term, and if desired, the ACH can spin off from the fiscal sponsor into an independent 501(c)(3) organization.

Recommendation #5

Given its flexibility to receive funding from diverse sources, a nonprofit organization is the best option for hosting and administering the Wellness Fund. The Backbone functions can be carried out by a nonprofit, government, or for-profit entity. An Applicant should have the flexibility to choose which type of entity is best suited for this role given the community's unique composition.

Introduction to the Innovation Plan, Accountable Communities for Health & Wellness Fund

In April 2013, the State of California was awarded a State Innovation Model (CalSIM) Design Grant from the federal Center for Medicare and Medicaid Innovation (CMMI). The Design Grant supported the development of a State Health Care Innovation Plan (“Innovation Plan”), a comprehensive plan laying out key initiatives that will help California achieve better health, better health care, and lower costs (the “Triple Aim”), as well as demonstrate a return on investment within three years. The Innovation Plan provided the framework for California’s subsequent proposal to receive a State Innovation Model Testing Grant (“Testing Grant”). The Testing Grant, which will be awarded in the fall, provides an opportunity to implement the initiatives laid out in the Innovation Plan.

One of the primary initiatives proposed in the Innovation Plan is the development of Accountable Communities for Health (“ACH”). An ACH would be a multi-institutional, collaborative effort that would bring together the health care system, social services, primary prevention services, and community resources. An ACH would identify and implement action steps to achieve the “Triple Aim” of better health, better care, and lower health care costs. An ACH would commit to advancing the goals of the Triple Aim on behalf of the entire community it serves and would be comprised of key stakeholders, including the health care sector, government, and both nonprofit and for-profit organizations. The portfolio of interventions selected must span both clinical and community settings and link the two settings together.

The State of California intends to release a Request for Proposal (RFP) in April 2015 and will subsequently select two to three pilot sites from among the RFP Applicants to develop an ACH, with the goal of establishing a proof of concept and demonstrating a return on investment within a three-year time frame. As described in the Innovation Plan, key elements of an ACH include:

- Identification and agreement of goals and metrics of success, including an “Impact Equation” or other mechanism to assess the impact of prevention-oriented interventions and quantify savings;
- Explicit attention to addressing health disparities;
- Agreement to share relevant data for tracking and, ultimately, accountability purposes;
- A “backbone” or host entity to provide leadership and administrative support; and
- A governance structure that provides for joint decision-making and prioritization of interventions.

As part of this effort, each ACH will be expected to establish a Wellness Fund. The Wellness Fund would be a sustainable financing mechanism to pool resources from a variety of sources, including: government grants, philanthropic contributions, individual donations, donations from participating stakeholders, captured savings resulting from agreed-upon interventions, and other joint ventures that bridge health care with entities that impact the social determinants of health.

ChangeLab Solutions' Role & Research Approach

The State of California has formed an ACH Work Group to develop the implementation strategy for the ACH initiative of the Innovation Plan. The Work Group has consulted with ChangeLab Solutions to research the potential governance options for an ACH and provide recommendations for establishing a structure that will meet the goals of the Innovation Plan. Providing guidance on these issues requires an assessment of three key questions:

1. What key components make up an ACH?
2. What kind of organization or entity would be best suited to fulfill the functions of each of these components?
3. How can a community put these components together into a functioning ACH, and what are some options for structuring the relationships between the various organizations and entities fulfilling these roles?

With regard to these key questions, ChangeLab Solutions has outlined:

- The legal and other parameters that the Work Group and State should consider in providing guidance on the structure of an ACH as a whole, its associated Wellness Fund, and the relationship between the two; and
- Viable options for structuring an ACH and Wellness Fund based on the legal issues and parameters identified.

To provide guidance on these issues, ChangeLab Solutions has drawn upon:

- *Preliminary research on collaborative approaches to improving population health*
To understand the goals, activities, and outcomes of the ACH initiative specifically, and other collaborative and population health improvement efforts more generally, we have examined three primary sources of information: (i) the California State Innovation Model Innovation Plan and a series of meeting notes from the ACH Work Group's discussions, (ii) literature on a variety of models for collaboration and health delivery system redesign, and (iii) existing community health coalition initiatives, such as accountable care communities and the Centers for Disease Control and Prevention's *Communities Putting Prevention to Work* and *Community Transformation Grants* initiatives. A summary of key themes from this preliminary research is included in Appendix I.
- *Case Studies and Legal Research*
We have examined several large-scale collaborative efforts aimed at improving population health, including the Atlanta Regional Collaborative for Health Improvement (ARCHI), the Massachusetts Wellness and Prevention Trust, Pueblo Triple Aim Corporation, and the Akron Accountable Care Community. We have looked at how these initiatives were structured in order to understand potential benefits and limitations of various options that could inform the development of an ACH and Wellness Fund. Because there are many ways to establish an ACH under California law to, our analysis has also focused on best practices and practical considerations for implementing an ACH. Several key takeaways, as they relate to the development of an ACH and associated Wellness Fund, emerged from this assessment:
 - There was no uniform governance structure among the models examined. Each had established a different structure to guide their collaborative effort.

- A “Wellness Fund” is a unique concept that has not been considered by most other collaborative efforts. Most collaborative efforts do not have a governance structure to oversee a pool of funding for community health initiatives.
 - Collaborative efforts of this scale, which aim to link health care with community health and well-being, are relatively new. Innovators in this field are still testing ideas to determine “what works.”
- *Consultation with Legal Experts*

We conducted interviews with five legal and policy experts to identify any legal or practical constraints that would dictate an ACH’s structure, limit its activities, or otherwise impact its effective governance. Michelle Sexton, Esq., and Eric Gorowitz, Esq., provided advice and guidance regarding the governance structure of an ACH. Luis Rodriguez, Esq., provided guidance on community development financing and the intersection between community development and health prevention in financial transactions. Maureen Byrnes, MPA, and Sara Rosenbaum, JD, provided guidance on achieving flexibility and innovative financing methods within health delivery systems. Additional background information on our legal experts is in Appendix II.

Short-Term Constraints & Assumptions

Constraints

Several practical constraints must be taken into consideration in the short term. This report has accounted for the following constraints:

- Short Time Frame**
 The Testing Grant will fund a three-year demonstration period—a relatively short period of time to establish a new, complex initiative that can demonstrate a return on investment. The Work Group has established short-, medium-, and long-term goals, which must also be applied to the development of an ACH's structure.
- Variable and Unknown Community Resources**
 California is a large, diverse state with a mix of resources and experienced institutions. Because of this variation, each ACH will need to be structured in a way that maximizes its community's unique assets and addresses its community's unique needs. There is no single model that can apply to every community in the State.
- Unknown Funding Sources**
 Because an ACH is intended to cross multiple sectors, it could potentially tap into several different funding sources to support its Wellness Fund. Individual funding sources have their own compliance requirements that are difficult to predict. Although we have analyzed an ACH based on general types of funding we anticipate an ACH will likely seek, it is difficult to determine specific challenges or limit any structure based on the types of available funding.

Assumptions

Under California law, an ACH could take a variety of different forms. As a result, there are thousands of laws, regulations, and rules that may apply to an ACH. We have made several assumptions in order to focus this report:

- A community's local laws (City and County) do not further restrict the formation of an ACH and Wellness Fund. This report focuses on federal law and California law, and the analysis of local law is outside the scope of this report. For example, cities that have adopted their own charter (governing law) must determine whether their charter would undertake public health activities or permit the creation of a Wellness Fund.
- Specific requirements for federal, state, and local funding opportunities have not been analyzed. In general, we assume that government grants are restricted to government or nonprofit organizations. Philanthropic grants, including hospital community benefits distributed in that manner, are normally distributed to nonprofit organizations, but government entities are not precluded. Potential sources of funding for a Wellness Fund are discussed below.
- Each applicant that responds to the State-issued RFP to establish an ACH ("Applicant") will propose its own structure for an ACH and Wellness Fund. The State will prescribe certain minimum requirements and parameters for each Applicant regarding the structure of an ACH but will not further dictate the particular form it should take.
- There are many different types of nonprofit organizations. For the purpose of this report, a "nonprofit organization" refers to a public benefit corporation under California law and exempt from income taxation as a public charity under Section 501(c)(3) of the Internal Revenue Code.

Core Components of an ACH

There are four core components that, collectively, make up an ACH: Community Stakeholders, a Governing Body, a Backbone Organization/Entity, and a Wellness Fund. Because an ACH is a collaborative effort involving multiple stakeholders in various roles, the term ACH broadly refers to the sum of its parts. After methods of governance have been established, these parts can work together to achieve a structure with the capacity to create systems change. We have broadly described each of the four components below, and we have included more detailed descriptions of these terms (along with other key terms and concepts introduced throughout this document) in the Glossary in Appendix III.

- **Community Stakeholders (“Stakeholders”)**

As defined by the California Department of Public Health, “An ACH is responsible for improving the health of the community, with particular attention to reducing disparities.” This broad, multi-disciplinary community of stakeholders, therefore, includes both:

- entities operating within the geographic region defined by the ACH whose work impacts health (including major health care systems, providers, health plans, public health, social services organizations, community advocacy organizations, equity and social justice groups, schools, businesses, etc.); and
- the broader population of community members within the ACH’s defined region who may ultimately benefit from the ACH’s activities.

Stakeholders’ specific roles and levels of engagement within an ACH will vary. Some may play more active roles (e.g., by providing “backbone” services or implementing a specific intervention), while others may serve in an advisory role or contribute to the broader vision of the ACH. Ultimately, the ACH’s operations are accountable to its stakeholders.

- **Governing Body**

The governing body is the entity responsible for setting the strategic direction for the overall ACH initiative, selecting specific activities or interventions, and making decisions about how and to whom funds should be allocated. The Governing Body serves as the conduit between the broader community of stakeholders and the ACH. Therefore, it should accurately represent the community the ACH serves and make decisions in the best interests of the community.

- **Backbone Organization/Entity**

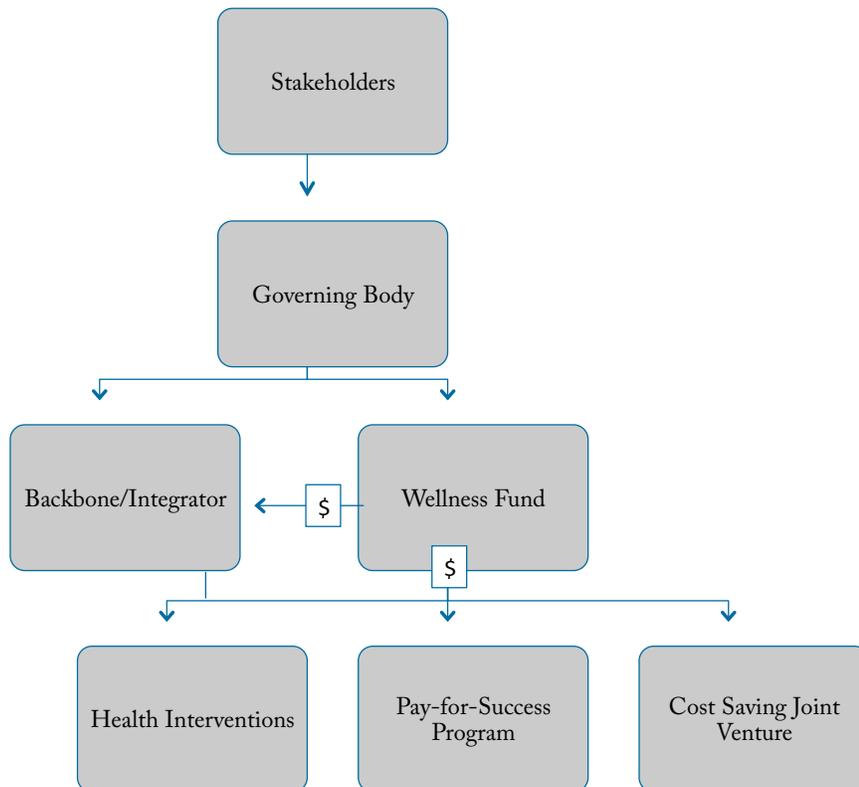
The Backbone entity is a neutral coordinator that serves as the administrative and operations arm of the ACH. It is responsible for the day-to-day management of the overall ACH initiative and holds the bird’s-eye view of its many moving parts. The Backbone provides the necessary staffing to support a collaborative effort of this breadth and scale. It must have adequate staff capacity and robust in-house administrative systems to manage multiple priorities simultaneously and align activities among multiple partners. General functions of the Backbone include facilitation and coordination of the ACH’s stakeholders and decision-making body, establishing a data management process for the ACH’s interventions, managing internal and external communications, and supporting fundraising efforts to ensure long-term sustainability of the ACH.

- **Wellness Fund**

The Wellness Fund represents a source of funding intended to (1) sustain the operations of the ACH (e.g., by funding the backbone entity), and (2) fund specific community-wide interventions identified by the ACH. The Wellness Fund requires a “host” or administrator that can provide fiscal and compliance services in addition to investment and grant distribution services. In

concept, a Wellness Fund would be similar to the corpus of a philanthropic foundation or an investment fund (i.e., a pooled source of money) that has the flexibility to make grants and investments in furtherance of a specific purpose. An ACH's governing body must judiciously exercise fiduciary oversight and control over the Wellness Fund in order to balance the funding needs of the Backbone with the health interventions and community investments the ACH decides to implement.

Basic ACS Structure



Recommendation #1

An ACH should be structured such that a designated Governing Body has decision-making power and the authority to direct the activities of the Wellness Fund and Backbone. This Governing Body, in turn, is ultimately accountable to the broader community of stakeholders. It must establish a process for engaging community stakeholders and soliciting input before making programmatic decisions.

Guiding Principles of an ACH

There is no one-size-fits-all template for setting up an ACH. We understand that each pilot community will ultimately structure its ACH in a way that best fits their community. Throughout this report, we have grouped potential ACH participants into three high-level categories: nonprofit organizations, government entities, and for-profit organizations.¹ The analysis and recommendations throughout this report outline the qualifications, strengths, and limitations of each category. We did not include a narrower analysis of specific types of organizations that fall under each of these categories, for several reasons:

1. Focusing the analysis at the level of nonprofit, government, and for-profit provides sufficient information to guide the development of an ACH.
2. The conclusions drawn from this level of analysis can be applied to all communities without inadvertently excluding or emphasizing a specific type of organization (e.g., a community foundation or community development financial institution).
3. Focusing on specific organizations does not take into account the variations of such organizations that may exist across the State. For example, a community foundation in one region may have vastly different capacities and community standing than one in another region.

For these reasons, it is important for Applicants to understand the high-level legal and practical implications of involving nonprofits, governments, and for-profits in an ACH. With that foundation in place, Applicants should have the flexibility to select the specific types of organizations that will be involved given their community's unique composition and assets.

Despite differences in structure, four guiding principles are critical to the long-term success of an ACH:

- Neutrality;
- Accountability to the Community;
- Flexibility; and
- Sound Governance.

Therefore, the question of what kind of organization or entity would be best suited to fulfill the functions of each component listed above, along with the question of how to structure an ACH for maximum effectiveness, should be guided by these underlying guiding principles.

Neutrality

The health of a community is a dynamic and complicated issue, impacted by multiple sectors (including health, education, government, economic development, and more). A key factor among all collaborative efforts is the development of trust among stakeholders, especially among competitors. An ACH that attempts to bring multiple sectors together to advance a common goal must be viewed as neutral (i.e., not having a vested interest in advancing the goals of any individual participant) in order to gain the trust of a broad group of stakeholders. Although they are critical factors, neutrality and trust are subjective qualifications that must be assessed by each community; it is difficult to establish a uniform standard that would apply to the unique inter-relationships among stakeholders in each community.

¹ The original research approach proposed the analysis of specific organizations, such as a hospital, community development financial institution, or county government, as potential hosts of a Wellness Fund or that could play the role of a Backbone. This was a small list of 6-8 types of organizations.

Accountability to the Community

As the name suggests, an ACH must ultimately be held accountable to the mission of improving the health of a community, and it must therefore consider and reflect the needs of the community, with a particular emphasis on low-income and high-risk neighborhoods. Decisions about specific interventions, as well as when and how to distribute available funds, should be made with the best interests of the community in mind. Each Applicant should demonstrate how community input will be integrated into the decision-making process and how the broader community will be represented within the governing body. For example, to be eligible for funding under the Section 330 of the Public Health Services Act (known as a “§330 Grant”), federally qualified health centers (FQHCs) are required to have a governing board with a majority of its members as patients of the FQHCs. This unique requirement ensures that FQHCs are responsive to the needs of the community, and generally prevents FQHCs from becoming part of a larger enterprise or government agency with such accountability to the community.² An ACH may also form and delegate authority to a steering committee that contains representatives from the community. To be accountable to the community, an ACH should have representation by community members on a governing body with delegated authority to make key programmatic decision and have a process for community engagement.

Flexibility

To create a sustainable initiative, an ACH and its associated Wellness Fund must have the flexibility to both receive funding from a variety of sources and conduct transactions with multiple parties to accomplish its goals. The level of flexibility afforded is, in many ways, dependent upon the type of entity that administers the Wellness Fund.

- **Operations**

An ACH will always need to balance adhering to sound governance processes and responding nimbly to emerging, and sometimes non-traditional, opportunities. These two functions may come into conflict when it comes to implementation. For example, an ACH and Wellness Fund that are hosted by a unit of government are subject to numerous state and local laws and processes intended to protect the interests of public funds and limit liability. Government entities also tend to process transactions slowly (e.g., as a result of multi-tiers of review and approval, public input processes, and compliance with open government laws), which increases the cost of doing business and inhibits the implementation of projects. In contrast, a for-profit company tends to have fewer legal limitations and decision-making procedures and may engage in transactions quickly. However, this may lead to a higher degree of risk and liability.

- **Eligible for Various Types of Funding**

In order to engage in both traditional and unconventional transactions, an ACH must be eligible to receive various types of funding from multiple sources. These sources of funding include but are not limited to:

- **Grants**

A grant is a contribution of funding from one entity (grantor) to another (grantee) without a direct benefit back to the grantor. In most cases, the grantee is required to provide a good or service that benefits the public or specific beneficiaries. In general, nearly all government and philanthropic grants are awarded to nonprofit organizations and government entities because the grantor can have assurances that the grantee is restricted by its charitable or public purpose, respectively. Government funders must spend their funds for public or governmental purposes prescribed by state and local law. Philanthropic foundations must ensure that

² “The Fundamentals of Community Health Centers,” National Health Policy Forum. Jessamy Taylor. Page 4. Published August 31, 2004.

distributions are used in furtherance of its charitable purpose. Because nonprofit organizations and governments must expend funding in furtherance of their purpose, government and foundations can ensure grant funds will be used for a charitable and/or public purpose rather than a purely for-profit mission.

- *Nonprofit organizations* are eligible to receive philanthropic foundation grants (in fact most, if not all, philanthropic foundation grants are directed to nonprofit organizations). Nonprofits are also eligible to receive government grants.
- *Governments* are eligible to receive philanthropic foundation grants, though most of these grants are directed to nonprofit organizations. Governments are also eligible to receive grants from other government entities.
- *For-profit organizations* are eligible for such grants, but the philanthropic foundation is required to take additional steps to ensure the grant funds are used in furtherance of the charitable purpose. For-profit entities are rarely eligible for government grants.

○ Contracts

Contracts are an exchange of services (or products) and fees between two parties: one party pays another a fee in return for services. Any organization may engage in contracts to earn revenue, but some limitations may apply.

- *Nonprofit organizations* must ensure that a fee-for-service activity furthers its charitable purpose.
- *Government entities* must demonstrate that any fee-for-service activity does not conflict with current activities paid for by tax dollars, and that it is not characterized as the type of fee that must be approved by voters under the California Constitution (Proposition 26).³ While it is common for counties to provide services for a fee, such as police services or tax collection, fee-for-services outside of a county's normal government operations are more challenging to implement.
- *For-profit organizations* have no limitations on them.

○ Hospital Community Benefits

The Hospital Community Benefit Program (HCBP) is a result of legislation (SB 697) stating private not-for-profit hospitals “assume a social obligation to provide community benefits in the public interest” in exchange for their tax-exempt status. One key way for an ACH to plug in to a HCBP is to find alignment between the ACH goals and the goals identified in the HCBP's Community Health Needs Assessments. According to California law, community benefit activities include but are not limited to:

- Health care services rendered to vulnerable populations, including but not limited to, charity care and the unreimbursed cost of providing services to the uninsured, underinsured, and those eligible for Medi-Cal, Medicare, California Childrens Services Program, or county indigent programs.
- The unreimbursed cost of services included in subdivision (d) of Section 127340.
- Financial or in-kind support of public health programs.
- Donation of funds, property, or other resources that contribute to a community priority.
- Health care cost containment.
- Enhancement of access to health care or related services that contribute to a healthier community.

³ See Cal. Constitution Art. XIII §1(e). www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Proposition-26-Implementation-Guide.aspx

- Services offered without regard to financial return because they meet a community need in the service area of the hospital, and other services including health promotion, health education, prevention, and social services.
- Food, shelter, clothing, education, transportation, and other goods or services that help maintain a person's health.⁴

If hospital community benefits are distributed to other organizations, the distributions are generally in the form of a grant or donation to undertake activities that benefit the community. Hospitals have flexibility under California law to determine the recipients of community benefits and the form of distribution.

- *Nonprofits* are permissible recipients of community benefit funding, provided the hospital demonstrates that the funding directed to the nonprofit benefits the community.
- *Government agencies* are permissible recipients of community benefit funding, provided the hospital demonstrates the funding directed to the government agency benefits the community.
- *For-profits* are permissible—though uncommon—recipients of community benefit funding, provided the hospital demonstrates the funding directed to the for-profit entity benefits the community. There is generally more scrutiny when funding is provided to a for-profit venture.

○ Shared Cost Savings Programs

Most shared cost savings programs (e.g., Accountable Care Organizations) are for-profit ventures entered into by payers and providers (usually in the form of a limited liability company). This structure allows for easy distribution of profit upon meeting cost savings goals.

- *Nonprofits* may take part in for-profit joint ventures or become an owner of a limited liability company, provided that the activity furthers its charitable purpose.
- *Government agencies* will have more difficulty engaging in for-profit ventures as an owner of a limited liability company or partner in a joint venture because of the legal limitations on activities to the public purposes set forth in a charter or the California Government Code.
- *For-profits* may engage in these activities.

○ Community Development Funding

An emerging trend is the integration of health considerations into community development projects (e.g., housing and job creation projects) in low-income. Recently, community development projects have included new community health centers and sports fields with an associated healthy eating education campaign. Not only can projects address the social determinants of health, but they are increasingly integrating healthy eating and active living strategies.

As an ACH looks to improve the health needs of a community, it can consider leveraging sources of funding available through community development projects. The New Markets Tax Credits (NMTC) Program is a federal program that encourages investment in low-income census tracts that have typically had trouble attracting investment. By becoming certified as a community development entity (CDE), an ACH can leverage NMTC funding and attract investment from large commercial banks. Similar to hospitals, the use of NMTC usually have an associated “community benefits agreement” that documents certain

⁴ Cal. Health & Safety Code §127345(c).

community objectives, such as the number of jobs provided by a project and the number of people served by a project. The community benefits agreement can be aligned with a community health needs assessment. Other sources of funding may include community development block grants and loans from a community development financial institution (CDFI).

- *Nonprofit organizations* are eligible for various types of community development financing, including NMTC, government grants, and CDFI loans.
- *Government agencies* generally do not receive NMTC allocations, but may establish a separate CDE for that purpose. Government agencies are generally eligible for many types of community development financing, such as federal block grants.
- *For-profit organizations* may become a CDE, but it must demonstrate that its primary mission is serving a low-income community. For-profit organizations are generally not eligible for grants from the federal government, but they may partner with government or nonprofit organizations that receive such funding. For-profits receive loans from CDFI's to undertake new business ventures that improve low-income communities.

○ Individual Contributions

As a community organization, an ACH can receive contributions from members of the community.

- *Nonprofits* are able to receive individual contributions (indeed, the vast majority of charitable contributions are given to nonprofit organizations). Contributions/gifts to a nonprofit organization are tax deductible for individuals under the Internal Revenue Code,⁵ providing a major incentive for individuals to contribute to nonprofit organizations.
- Similar to nonprofits, *government agencies* are able to receive individual contributions that are tax deductible. As noted above, charitable contributions to government agencies are far less common.
- *For-profit organizations* are eligible to receive individual contributions, though these contributions are not tax deductible. For-profits have the ability to offer other incentives, such as investment opportunities through shares. Issuing such investment opportunities to the public, however, is a highly regulated and complicated task.⁶

It is important to note that while it may be legally permissible for a for-profit entity to receive funding through the mechanisms outlined above, this arrangement may not be preferable for practical reasons. By definition, a for-profit's ultimate accountability is to its shareholders and bottom line, while the guiding principles of an ACH call for ultimate accountability to the community.

• Fiscal Responsibility & Compliance

To maintain the flexibility to receive and distribute various types of funding, a Wellness Fund must be managed to comply with the legal, reporting, and fiscal requirements of funders and governing standards, such as Generally Accepted Accounting Principles (GAAP). In addition to these fiscal responsibilities, proposals for grants or joint ventures must be carefully vetted, and the financial terms must be assessed to weigh the risks and liabilities. The provision of these services

⁵ 26 USC §170(b)(1)(A).

⁶ Requires compliance with both Securities Exchange Commission Regulations and California Department of Corporations Regulations and Enforcement.

requires a certain level of staff expertise in financial analysis, accounting, and law to provide a Wellness Fund with the flexibility to engage in the activities outlined above.

Therefore, an Applicant must propose a structure that has the flexibility to engage in transactions in an efficient manner, a legal entity that is eligible for several different types of funding, and has experienced staff that can manage the fiscal responsibilities of different sources of funding and comply with legal requirements.

Sound Governance

Governance refers to the act, process, or power to direct and control the actions, affairs, policies, and functions of an organization. An ACH must establish a sound governance structure that ensures effective decision-making; accountability to the community; representation of stakeholders' interests; proper fiduciary, fiscal, and social responsibilities; and control over funding and staff. There are four standards, described below and summarized in Table 1, that set the foundation for good governance of an organization.

- **Accountability**

Accountability refers to the standard, method, agreement, or common understanding that ensures participating stakeholders follow through on commitments made to an ACH and/or comply with goals, objectives, directives, or delegated actions. Accountability ensures that the stakeholders undertake and complete the activities necessary for the success of an ACH and the Backbone and Wellness Fund are responding to the needs of stakeholders and the community. To establish accountability, two key questions must be asked:

- What are the obligations of each party (namely, the governing body, the backbone entity, the entity administering the Wellness Fund, and the broader community of stakeholders)?
- How are such obligations enforced by the parties?

Accountability can be created through an agreement, which can take the form of a contract or set of rules. For example, a nonprofit organization will have bylaws that set forth rights of directors, voting procedures, powers given to the officers, accountability of the officers to the board of directors, and limits prescribed by the California Corporations Code.⁷ In many cases, participants within a collaboration expect the other participants to perform their obligations based on personal relationships, good faith, and mutual respect. In the event that these informal mechanisms of accountability break down, a written contract or set of rules provides enforcement mechanisms and penalties for failure to perform. Therefore, it is important to have written documentation of agreed upon obligations and the parties responsible for those obligations.

- **Fiduciary**

A fiduciary is a group or an individual entrusted with undertaking a high standard of care in managing another's money or property and owes a duty of good faith, trust, confidence, and candor in undertaking such management. California law requires directors of both for-profit and nonprofit corporations to uphold the fiduciary standards of the "Duty of Care" and "Duty of Loyalty." The Duty of Care requires a director to perform his or her duties in good faith, in a manner the director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.⁸ The Duty of Loyalty requires an individual director to be candid about

⁷ Cal. Corp. Code §5151.

⁸ Cal. Corp. Code 309(a); Cal. Corp. Code 5231(a).

any financial transactions with the corporation and to follow procedures that would ensure the corporation is receiving a fair deal.⁹ In addition, directors of nonprofit corporations are also required to follow the “Duty of Purpose.” Because nonprofit organizations are established for a charitable purpose, the directors must ensure that the corporation’s activities are in furtherance of its charitable purpose.¹⁰ Therefore, it is important to establish fiduciary duties that meet (or exceed) California law to ensure funding is used appropriately, in furtherance of an ACH’s mission and purpose.

- **Control**

Establishing who has control over the activities and finances of an organization is fundamental to ensure decisions are made by the appropriate people. Within an ACH, control starts at the governing body, which acts as the fiduciary. Through a set of bylaws, control can be delegated by the governing body to certain individuals, such as officers, senior management, or key employees. For example, the bylaws of an ACH may state that the Chief Executive Officer of the Backbone entity may sign contracts on behalf of the corporation, but the governing body must approve the execution of any debt instruments. Although control over an organization’s activities and finances may be delegated to certain individuals, procedures or agreements must be established for such individuals to report to the governing body and seek additional authorization if needed. Internal controls are also established under Generally Accepted Accounting Principles. Therefore, ultimate control should be maintained by a governing body of an ACH, with written documentation stating when and how control over certain decisions is delegated to others.

- **Conflicts of Interest**

Because it is highly likely that an ACH will undertake transactions with stakeholders (through grants, contracts, joint ventures, and/or other means), a conflicts of interest policy and a set of procedures will be necessary. In compliance with the Duty of Loyalty requirement described above, a conflicts of interest policy identifies and establishes procedures for an organization to engage in financial transactions with individuals that have influence and control over the organization (namely board members and family members). For example, suppose a hospital’s community benefits manager sits on the governing body of an ACH, and the ACH would like to engage in a joint venture with the hospital to implement a project. While the director may engage in some of the planning for the project, a conflicts of interest policy may require that the director: (i) disclose whether she would receive any financial benefit from the joint venture (as a hospital employee), (ii) recuse herself from discussions about the financial transaction that could provide the hospital an advantage in negotiations, and (iii) recuse herself from deliberations and voting on the matter. Decision-making over the transaction is done candidly, fairly, and without the influence of the individual director who may benefit from the transaction. In addition, government agencies have been exploring “Anti-Nepotism” laws to curb the abuse of large contracts given to friends and family by government employees.¹¹ Therefore, sound governance ensures that the best interests of an ACH take precedence over any potential individual benefit, particularly among the participating stakeholders.

⁹ Cal. Corp. Code 310(a); Cal. Corp. Code 5233(a).

¹⁰ Cal. Corp. Code 5142(a).

¹¹ See www.contracostatimes.com/west-county-times/ci_26606706/hercules-moves-ahead-anti-nepotism-ordinance

Therefore, an ACH should have a written document, such as bylaws or an operating agreement, to set forth the decision-making process and delegation of authority. Most common forms of bylaws or operating agreements contain the basic governance structure, but an ACH will need to carefully think through conflicts of interest and accountability to the community within the governance structure. The chart on the following page presents the categories of organizations under consideration—nonprofit, government, and for-profit—and their capacity to uphold these guiding principles.

Recommendation #2

The principles of neutrality, accountability, flexibility, and sound governance can be articulated as minimum qualifications for an ACH in the State-issued Request for Proposal. Each Applicant can propose their own ACH structure in their application, but they will be required to outline how their proposed structure meets these qualifications and/or what agreements or legal documents will be put in place to satisfy these principles.

Case Study: Pueblo Triple Aim Coalition

The Pueblo Triple Aim Coalition is a large group of community stakeholders that established goals to improve health, reduce the per capita cost of care, and improve the experience of care—otherwise known as the “Triple Aim”—in Pueblo County, Colorado.

The Coalition concluded that a key task was to “create a neutral, expertly staffed, not-for-profit, grant-funded, ‘backbone’ organization to coordinate planning and evaluation; provide technical assistance; pursue funding; and raise community awareness.” (Pueblo Triple Aim Coalition Case Statement) The Coalition agreed that a new organization could provide neutrality and represent stakeholders better than an existing stakeholder undertaking the backbone functions.

The Board of Directors is a mix of health and non-health members with “C” suite representation to provide support and strategic guidance. There is also a steering committee of “boots on the ground” to assess and recommend programs. The bylaws provide for permanent board members representing specific health organizations and non-permanent members open to non-health stakeholders. The Coalition has taken a long-term approach for standing up the new organization and expanding collaboration with non-health stakeholders.

Table 1. Guiding Principles of an ACH

	<i>NEUTRAL</i>	<i>FLEXIBLE</i>	<i>ACCOUNTABLE</i>	<i>SOUND GOVERNANCE</i>
<i>NONPROFIT</i>	A nonprofit organization is capable of being a neutral body within a community. Because nonprofit organizations are permitted to have a variety of stakeholders, members, and board members, a nonprofit organization can sufficiently represent various groups and act independently of other major institutions.	As a public benefit corporation, a nonprofit can engage in many different types of transactions to further its charitable purpose and mission, including grant-making, loans, joint ventures, program-related investments, and other financial transactions. Nonprofits are constrained by their charitable purpose, so for-profit activities unrelated to a charitable purpose are potentially subject to taxation.	A nonprofit organization can be directly accountable to a community through its form, mission and/or activities. Some nonprofit organizations have community members sit on their board of directors, such as federally qualified health centers. Nonprofits may focus their mission on assisting a specific community or addressing a particular issue within a community.	A nonprofit organization can provide sound governance under California law and develop additional policies or procedures to ensure accountability.
<i>GOVERNMENT</i>	In most circumstances, it will be very difficult for a government entity to maintain neutrality within a community. The nature of politics will generally influence major financial decisions related to the Wellness Fund, and most elected and appointed officials are influenced by the overall dynamics of the government and any related special interests. The potential exception is the creation of a special purpose district (e.g., health care district) or joint powers authority that may not be directly subject to the local politics of a city or county.	Government entities have some flexibility to engage in innovative projects, though have less flexibility than nonprofit and for-profit entities. Governments may set up enterprise funds to provide certain services to the public, such as water and sewage facilities, airports, and convention centers. A Wellness Fund can be established as an enterprise fund, but it would be subject to control by the elected body of government.	A government's board is usually composed of a limited number of elected or appointed individuals. While it is possible to have a board or commission composed of stakeholders or community members, ultimate authority still resides with the political body (i.e., city council, county board of supervisors, etc.). Thus, a government enterprise cannot fully delegate control and decision-making authority to a separate governing body. The only exception is a voter-approved initiative that fundamentally alters a government.	Government agencies have established governance procedures that are prescribed by law (either state or local). An ACH would not need to create new governance rules, but it would not have the flexibility to change the governance rules.
<i>FOR-PROFIT</i>	A for-profit organization is considered a single purpose entity. Its primary purpose is to earn profit for its owners. In this sense, a for-profit organization can be neutral if it focuses on one goal. However, power by owners can be shifted through acquisitions of additional ownership shares.	For-profit organizations have the greatest flexibility to engage in many different types of transactions. However, they typically engage in profit-driven business transactions, and generally do not distribute funding through grants. Similarly, it is highly unusual for a for-profit organization to be eligible for government or philanthropic grants.	While there are no restrictions on forming a for-profit organization, a for-profit organization is generally accountable to its owners, not a community. Because its primary purpose is to generate profit, conflicts may arise between the profit-making purpose of the entity and the interests of the community.	A for-profit organization can provide sound governance under California law and develop additional policies or procedures to ensure accountability.

Options for an ACH Structure

As previously mentioned, there is no single way to organize an ACH or Wellness Fund. Applicants will determine the structure and composition that best fits their community. To guide this decision, there are three high-level questions that each community must address. In Tables 2, 3, and 4, we have outlined legal and practical benefits and limitations to guide Applicants through the three initial decisions that must be made when determining an ACH structure:

- Whether to locate the backbone and Wellness Fund management duties in a single organization or divide responsibilities among two or more organizations;
- Whether to locate the backbone and Wellness Fund management duties in an existing organization or create a new organization to fulfill these roles; and
- Whether to locate the backbone and Wellness Fund management duties in a nonprofit organization, for-profit organization, or government entity.

Single vs Multiple Organizations

One key question the Work Group has posed is whether the Wellness Fund and Backbone functions should be implemented by a single organization or these functions should be separated into two or more organizations. Either option is viable and should be available to Applicants, but each comes with a unique set of considerations, as summarized in Table 2.

Table 2. Combining or Separating Wellness Fund & Backbone Functions

WELLNESS FUND AND BACKBONE	PROS	CONS
SEPARATE OPERATIONS IN TWO DIFFERENT ORGANIZATIONS	<ul style="list-style-type: none"> • allows the Backbone to focus solely on the administrative functions of the ACH; • removes fiduciary responsibilities from the Backbone; • could allocate one function within a nonprofit and the other within a government or for-profit, providing more flexibility; • may not be possible to find a single organization with the capacity or experience to fill both roles, so distributing these functions may make the most practical sense; • enables multiple organizations with specialized capacities and expertise to combine their unique strengths; and • organizations best suited to fulfill a particular role will be selected. 	<ul style="list-style-type: none"> • potential for breakdown in communication; more difficult to coordinate complementary operations across multiple organizations; • requires ACH to “apply” to backbone for funding of programs which may inhibit implementation of programs; • entities could develop different purposes with no unifying voice; • no inherent checks and balances between separate entities; • either component could direct funding for an individual goal rather than a collective goal; and • potential for conflicts of interest to arise among multiple organizations.
COMBINED OPERATIONS IN A SINGLE ORGANIZATION	<ul style="list-style-type: none"> • no need to coordinate activities across multiple organizations, which can lead to greater efficiency; • one entity = one purpose; • program development and implementation are consistent; and • internal checks and balances. 	<ul style="list-style-type: none"> • greater administrative burden for a single organization to handle multiple operations; • may not be possible to find a single organization with the capacity or experience to fill both roles; and • corporate governance under bylaws may offer less control over an ACH’s activities than direct legal agreements among stakeholders.

There is no strong evidence to indicate one option is necessarily better than the other. The decision about whether to combine functions into a single organization or to separate them will depend upon the strengths and capacities of specific organizations within the Applicant’s community.

If the Applicant proposes to separate the Backbone and Wellness Fund operations into multiple organizations, two or more organizations may collaborate in a joint venture or teaming arrangement to conduct the activities of an ACH. Governance rules would be established through a series of agreements among the participating organizations. These agreements would set forth the specific roles and

responsibilities of each organization, the shared goals of the participating organizations, and procedures for decision-making and resource-sharing. Accountability would be accomplished through the specific terms of each agreement, and liability would be shared equally among each individual organization. Legal agreements may include the following:

- Teaming Agreement or Operating Agreement (including mutual responsibilities and indemnity)
- Resource Sharing Agreement
- Fiscal Sponsorship Agreement (to obtain grants)

One way in which the separation of the Backbone and Wellness Fund functions can play out in a community is through the use of a fiscal sponsor. In a fiscal sponsorship arrangement, an existing entity manages the financial and administrative affairs of a specific program or project, conferring the benefit of its IRS tax-exempt status on the sponsored project. This arrangement is created through a contract between the fiscal sponsor (a 501(c)(3) organization) and the group implementing the project. The fiscal sponsor can delegate decision-making authority to the entity with which it has entered into an agreement. Thus, while the fiscal sponsor can host the Wellness Fund and engage in transactions as needed, its actions are directed by the ACH, and it cannot make independent programmatic decisions regarding use of the funds. The fiscal sponsor, in this scenario, would provide fiscal administrative support for the Wellness Fund, while another organization would carry out the Backbone activities.

Case Study: Teaming Agreement

The Atlanta Regional Collaborative for Health Improvement (ARCHI) was founded by three regional institutions in the Atlanta Metro area: United Way of Greater Atlanta, Atlanta Regional Commission and Georgia Health Policy Center (Co-Conveners). The Co-Conveners developed ARCHI as a cross-sector collaborative of organizations using a collective impact approach to improve health in the region.

The Co-Conveners make up a three-part Executive Leadership Team, providing overall leadership and management of the backbone functions and fiduciary responsibilities. The Executive Leadership Team members are currently in the process of developing a teaming agreement that will formally set forth the responsibilities of each organization.

The Executive Leadership Team convened a steering committee composed of 15 members. This steering committee (which includes the Executive Leadership Team) serves as the decision-making body of the collaborative, develops a common agenda to improve health, assesses opportunities, and monitors overall progress. In addition, ARCHI has a broad, distributed membership of nonprofit organizations, government agencies and for-profit organizations across many sectors within the Atlanta Metro area. These members agree to align their activities with the agenda developed by the steering committee.

Recommendation #3

There are no legal parameters that would dictate whether an ACH should necessarily combine the Backbone and Wellness Fund functions into a single organization or divide these functions into separate organizations. Applicants should have the flexibility to combine or separate these functions according to the model that best suits their community.

Existing vs New Organizations

An ACH can be formed as a new legal entity, a joint venture of existing organizations, or a combination of both. This choice will likely be driven by the existing composition of organizations, resources, and expertise within the Applicant's community. There are no legal parameters dictating whether an ACH should necessarily be formed as a new organization or as an extension of an existing organization. There are, however, some practical considerations that may lead an Applicant to choose one option over the other. The pros and cons of these options are outlined in Table 3.

Table 3. Existing or New Organization

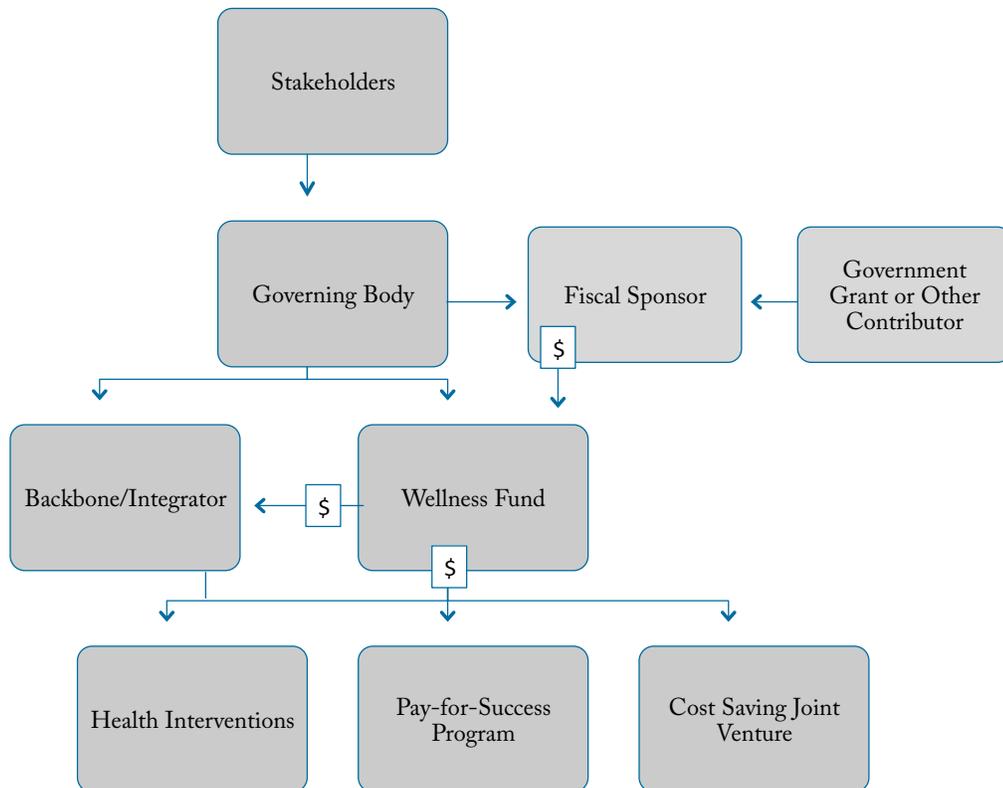
	<i>PROS</i>	<i>CONS</i>
<i>EXISTING ORGANIZATION</i>	<ul style="list-style-type: none"> utilizes existing resources, systems and experience; minimizes number of new employee hires; capitalizes on strengths and specialization of an existing organization; and minimizes overall time to start up if existing organizations are ready. 	<ul style="list-style-type: none"> more difficult to find a truly "neutral" organization that will put a broad, community-wide mission ahead of its own organizational preferences; primary accountability to their own governing bodies, superseding any accountability to other stakeholders or the community; sometimes less adaptable to new ideas or innovation; and developing and finalizing a written agreement among key stakeholders may take time.
<i>NEW ORGANIZATION</i>	<ul style="list-style-type: none"> only accountable to the governing body and stakeholders that create the organization; if all (or many) stakeholders are represented, then can be a neutral organization; and not required to change any existing system to implement an ACH. 	<ul style="list-style-type: none"> time consuming to establish stable operations: hire staff, establish internal systems (i.e., HR, accounting, etc.), management; developing and finalizing governing documents may take time; and if project fails, burdensome to wind down a legal entity.

The fiscal sponsorship model introduced in the previous section is one viable solution for jump-starting and sustaining an ACH. This model bridges the immediate efficiency of utilizing an existing organization’s systems and infrastructure to get an ACH up and running (an important consideration, given the short time frame of the Testing Grant) with the longer-term benefit of establishing a new, independent organization that is solely dedicated managing and sustaining the ACH.

Fiscal sponsorship can be a temporary arrangement. In order to “hit the ground running,” an Applicant may initially opt to use a fiscal sponsor as a neutral body that can host the Wellness Fund. This arrangement can allow the Applicant to bypass the potentially time-consuming process of establishing a new organization. With a fiscal sponsorship agreement in place, ACH project staff can (if desired) begin the process of creating an independent legal entity (applying for tax exempt status, establishing organizational infrastructure and systems, hiring as needed, etc.) while simultaneously moving forward with the ACH’s programmatic activities. Once these systems are in place, and the ACH has obtained its tax exempt status, the ACH can end the fiscal sponsorship agreement and spin off from the fiscal sponsor as an independent 501(c)(3) organization.

It is also possible that a new legal entity is established to host the Wellness Fund, but it does not hire additional staff to carry out the Backbone functions. In this case, the Backbone and Wellness Fund operations are separated into two organizations: a newly-created legal entity that administers the Wellness Fund and an existing organization (e.g., a nonprofit or government agency) that provides Backbone services via a joint venture agreement.

Fiscal Sponsorship Model



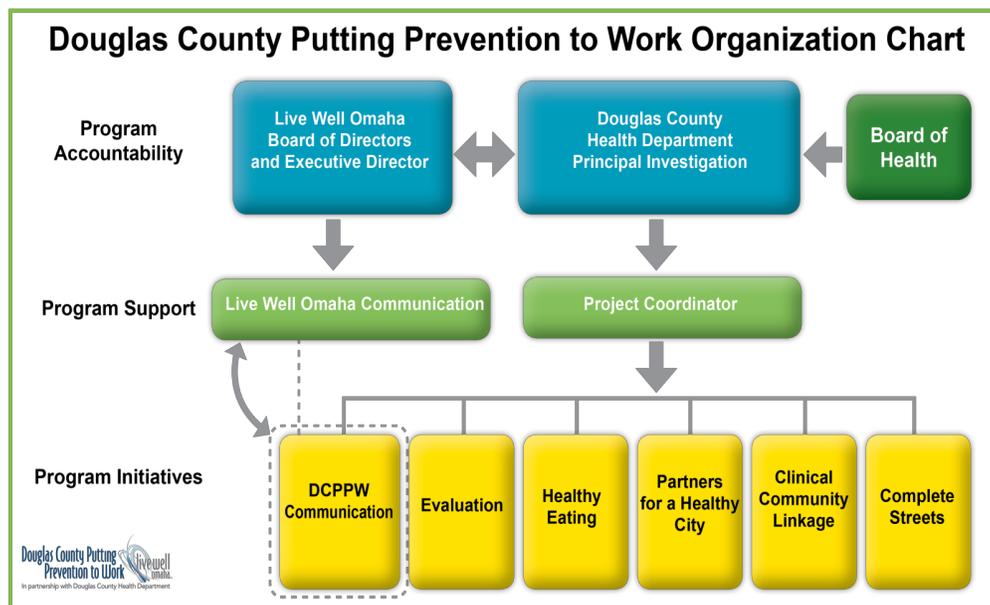
Case Study: Nonprofit & Government Joint Venture

The Douglas County Health Department and Live Well Omaha (a nonprofit organization) formed the Douglas County Putting Prevention to Work (a joint venture) to reduce the incidence obesity and chronic disease and make Douglas County, Nebraska, “the healthiest community in the nation.”

Under a Community Transformation Grant, the health department undertakes many functions of a Backbone, including organizing meetings of partners, coordinating the work of partners, collecting health data, and monitoring progress.

Live Well Omaha has a diverse membership that includes health care providers, insurers, large businesses, health department officials, nonprofit organizations, and education institutions. Live Well Omaha uses a collective impact approach to convene community stakeholders (annual health summit), choose health strategies, and disseminate information. Live Well Omaha and the health department work closely to align strategies and undertake projects through agreements with various partners, such as health care providers and payers. Live Well Omaha is supported through membership dues and contributions.

Organizational Structure



Recommendation #4

While it may be ideal to create a new organization that is built with the explicit mission to support and advance the goals of an ACH, this may not be practical or realistic given the short time frame of the Testing Grant. To resolve this tension, applicants can think of the establishment of an ACH in two distinct phases with a short-term and long-term goal, respectively. In the short term, a fiscal sponsor can serve as a financial intermediary that administers the Wellness Fund and remains accountable to community stakeholders (via the designated Governing Body). By utilizing existing infrastructure and administrative systems, a community can better position itself to hit the ground running. In the long term, and if desired, the ACH can spin off from the fiscal sponsor into an independent 501(c)(3) organization.

Nonprofit vs Government vs For-profit

As previously mentioned, this report has focused its analysis of potential participants in an ACH on three high-level categories (nonprofit, government, and for-profit) because we determined this level of analysis was both sufficient to guide the development of an ACH and applicable to communities across California. We did not include a narrower analysis of specific types of organizations within these categories (e.g., a hospital, community development financial institution, or community foundation), as we found no legal restrictions—based on these organizations' business operations, nature of services, or industry regulations—that would necessarily preclude them from serving as a Backbone. Table 4 summarizes the overarching strengths and limitations for Applicants to consider as they structure their community's ACH.

Table 4. Strengths & Weaknesses of Nonprofit, Government, & For-Profit Entities

LEGAL ENTITY	STRENGTHS	WEAKNESSES
NONPROFIT	<ul style="list-style-type: none"> • 501(c)(3) designation provides eligibility for government grants, philanthropic grants, and tax-deductible private contributions • Can conduct joint ventures with other organizations • Recognized structure by most other organizations • Able to issue tax-exempt debt or obtain commercial lines of credit • Composition of a governing board is not restricted by law • Not constrained by geography or jurisdiction 	<ul style="list-style-type: none"> • Not subject to same transparency requirements as government agencies • Profit sharing (e.g., shared cost savings program) is not permitted by board members or employees • Cannot raise capital as easily as a for-profit company • Obtaining 501(c)(3) tax exemption determination can be a slow process
GOVERNMENT	<ul style="list-style-type: none"> • Subject to many transparency laws (Brown Act, Fair Political Practices Rules) that create accountability • Power to tax or levy fees • Experienced fiscal services are readily available • Long history of providing public health, health care, and social services • Public service purpose is aligned with the goals and objectives of an ACH 	<ul style="list-style-type: none"> • Ultimate authority resides in the elected governing body and not the stakeholders (cannot delegate decision-making to another entity) Risk of funds being diverted to other uses, as needed (particularly during hard economic times) • Implementation of projects may be slow due to existing procedures or laws • Local politics may supersede an attempt to be neutral • Might be limited to geography or territorial jurisdiction • Difficult to take part in a for-profit venture
FOR-PROFIT	<ul style="list-style-type: none"> • Can be established and begin implementing work quickly • Allows for the distribution of earnings to stakeholders • Allows an ACH to raise capital through equity, which is not allowed by nonprofit organizations or government entities • Governance could be similar to a nonprofit organization • Very flexible structure that could conform to any desired requirements 	<ul style="list-style-type: none"> • Will not be eligible for many grants from philanthropic foundations and governments. • For-profit purpose supersedes any other social purpose. • Only accountable to its owners/shareholders and not to the broader community • Hospitals may not receive community benefit credit for work with a for-profit entity • Tax implications, if any, must be analyzed because of lack of tax exemption

As indicated in Table 4, a nonprofit organization has the greatest degree of flexibility to engage in different types of transactions and receive funding from a variety of sources. Although nonprofit organizations cannot raise capital like a for-profit organization can, a nonprofit's ability to raise funds from governments, foundations, and individuals will compensate. While a nonprofit organization must answer to—and is ultimately held accountable by—its own board of directors, a separate agreement can be put in place to delegate decision-making authority over a designated fund (i.e., the Wellness Fund) to a separate governing body that is accountable to the broader community. This arrangement can help ensure the nonprofit organization managing the Wellness Fund does so in a way that supports the needs of the community the ACH serves, rather than its own organizational interests.

One significant factor when considering a government entity's participation in an ACH—particularly as the host of a Wellness Fund—is the structure of a political body and potential interference from local politics. In general, a government entity's political body cannot delegate decision-making authority to another entity; therefore, while community stakeholders can provide guidance and input on use of the funds, the government entity maintains the control to use the funds at its discretion. In the face of hard economic times, there is a risk that these funds can be diverted to other uses as needed. On the other hand, government agencies do benefit from their existing infrastructure, including administrative and financial services and staff capacity. This infrastructure can minimize the time and cost associated with establishing this infrastructure from the ground up. In comparison to nonprofit organizations, however, government agencies lack the flexibility to engage in innovative business ventures and transactions that may be desired by the ACH's stakeholders. Existing laws and regulations regarding government procedures may result in a government entity being slower to implement ACH activities than nonprofit or for-profit entities.

Although a for-profit organization has a high degree of flexibility regarding business transactions and raising capital, it typically is not eligible to receive grants, effectively shutting out a significant source of potential funding for an ACH. In addition, a for-profit's ultimate accountability is to its shareholders and bottom line, whereas the guiding principles of an ACH call for ultimate accountability to the community.

Recommendation #5

Given its flexibility to receive funding from diverse sources, a nonprofit organization is the best option for hosting and administering the Wellness Fund. The Backbone functions can be carried out by a nonprofit, government, or for-profit entity. An Applicant should have the flexibility to choose which type of entity is best suited for this role given the community's unique composition.

Risk Assessment & Liability

An ACH's structure must accommodate the type of liability, risk, and consequences that all participating stakeholders are either willing to share or desire to be protected from. Each Applicant must weigh this issue carefully, with each stakeholder's legal counsel carefully reviewing the legal commitments, potential risks and exposure to liability. Nonprofit organizations, government agencies, and for-profit organizations each have their own threshold for risk associated with activities or investments and such individual risk assessment will play a role in an ACH's activities. An ACH may engage in various health interventions that carry different levels of risk, and the risks of any activity will vary based on the expertise and skill of the Backbone/Integrator staff and/or stakeholders undertaking a particular health intervention. For example, education of community members may carry minimal risk, but a demonstration of return on investments that requires a transfer of patient records and compliance with Health Insurance Portability and Accountability Act (HIPAA) has higher risk and potential liability. Compliance with HIPAA is complicated and time-consuming, and failure to comply carries the risk of penalties and litigation. As an ACH develops its portfolio of activities and potentially ventures into activities with higher compliance requirements and/or risks, the structure of an ACH may need to evolve accordingly to protect the stakeholders.

The benefit of a new, separate legal entity to operate both the Backbone and Wellness Fund functions is the liability protection under California law. A legal entity (corporation or limited liability company) that undertakes a business venture is held liable for its actions, but such liability is not passed through to the owners (shareholders/members). This applies to nonprofit organizations and government agencies as well (e.g., individual board members have liability protections for the organization's activities). This is the reason most new business ventures are formed as a new limited liability company or corporation. However, an ACH is not a common business venture based on the ideas of a few individuals. Establishing any governing documents (e.g., bylaws, conflicts of interest policy, etc.) will take time to develop.

If an ACH is structured as a joint venture, the stakeholders must come to an agreement of how each stakeholder will share liability or indemnify (protect) the other stakeholders. A joint venture is only an agreement between parties to undertake a project; it is not a recognized legal entity under California law. In a joint venture, stakeholders must be aware of any ACH activities that might jeopardize their own legal status. For example, nonprofit organizations must be vigilant that a joint venture does not engage in any political activities that would run afoul of the Internal Revenue Code.¹² This would also apply to government agencies that have restrictions on funding or activities. For-profit organizations may have more flexibility in this area. The members of a joint venture must agree to the management of activities, establish how liability (losses or legal action) will be shared or transferred by indemnity, and comply with rules and regulations. Establishing a new legal entity to implement an ACH will shield stakeholders from liability, except in cases involving failure of the stakeholders to undertake fiduciary duties.¹³

Applicants (and awarded grantees) should consider a few key questions:

1. What activities will be (or have been) proposed, and what are the associated compliance requirements, if any?

¹² 26 USC 501(c)(3).

¹³ See Cal. Corp. Code §5238(b).

2. For proposed activities, what expertise is needed to comply with any laws or ensure no damage to community members? What are the penalties and chance of litigation if anything goes wrong?
3. What types of risk of penalties or litigation are stakeholders willing to bear? What liability protections are needed for the stakeholders?

Framework for an RFP

The Glossary in Appendix III can be used as a starting point for defining critical terms and concepts that apply to an ACH. Below are key questions that each Applicant will need to work through as they develop their ACH. These questions can be used to frame the information requested in the RFP.

Foundational Elements of an ACH

- **Core Components:** Each Applicant should identify the organization(s) that will serve in each of the following roles: Backbone Organization, Wellness Fund host, Governing Body, Community Stakeholders. If the specific organizations filling a particular role have not been confirmed, the Applicant should indicate the proposed strategy for engaging partners and securing commitments to participate in these roles.
- **Guiding Principles:** Each Applicant should indicate how its proposed ACH structure meets the four guiding principles: Neutrality, Accountability to the Community, Flexibility, and Sound Governance. Key questions to evaluate adherence to these principles include:
 - **Neutrality**
 - What agreements exist to ensure that the ACH makes decisions in the best interest of the community, rather than advancing the goals of any individual participant?
 - **Accountability to the Community**
 - Are the key participating organizations in the ACH representative of the community it serves?
 - What is the process by which the Governing Body engages the broader community prior to making decisions?
 - **Flexibility**
 - Does the proposed structure allow the ACH to engage in different types of transactions?
 - Is an ACH's legal form eligible to receive various types of funding? If not, what limitations exist?
 - Do the Backbone Organization and/or Wellness Fund host have staff with the experience to manage compliance requirements?
 - **Sound Governance**
 - What is process by which the Governing Body makes decisions?
 - Have you established written bylaws?
 - Is there a conflict-of-interest policy?
 - What other documents or agreements will be used to establish the governance structure and hold stakeholders accountable?

Additional Structural Considerations

- Applicants may formalize an existing collaboration through four structures: (a) nonprofit organization, (b) government agency, (c) for-profit organization or (d) joint venture among existing collaborators. What is the Applicant's plan to formally organize their collaborators into an ACH? How will the formal organization ensure accountability to the community and uphold the governance principles? What is the plan for community engagement?
- Will the Applicant create a new organization or utilize existing organizations to form an ACH and implement the programmatic requirements of this grant?
- Will the proposed ACH structure implement the Wellness Fund and Backbone/Integrator operations under a single organization or through two or more organizations?
- Does the Applicant anticipate creating a temporary structure for the purposes of the Testing Grant (e.g., using a fiscal sponsor) with the intent to transition to a different structure in the long-term? If so, what are the short- and long-term structures proposed?

Benchmarks

While it is hoped that each successful Applicant will build a sustainable ACH with a sound governance structure and ability to attract continued funding, the establishment of such a sophisticated entity will take time. For this reason, we have laid out several requirements that we expect a strong Applicant should be able to meet in the initial application in order to demonstrate their capacity to lead and sustain an ACH. In addition, we have included a series of suggested benchmarks, highlighting the structures and agreements Applicants will be expected to put in place during the course of the three-year testing grant (with additional guidance and technical assistance, as needed and available). For the purpose of illustration, a schedule of benchmarks could include the following:

Upon Submission of a Grant Application (pre-requisites)

1. Teaming Agreement between the Applicant and key role players for an ACH.
2. Letters of commitment from additional key stakeholders/partners of an existing collaboration.
3. Provide documentation and successes of an existing collaboration led by the applicant.
4. Letters of reference for the backbone organization.
5. If applicable, demonstration of governance rules for the existing collaboration (desired).

End of Year 1

1. Decide on final structure of an ACH (integrated organization or two partner organizations). Provide list of agreements needed to create the structure, such as fiscal sponsorship agreement, fiscal services agreement, resource sharing agreement, and/or other agreements between the main role-players. Must demonstrate flexibility of the structure.
2. Develop a proposed Governance Plan for the ACH (can establish and convene a work group to make recommendations). The Governance Plan outlines:
 - a. Recommended composition of the governing body for an ACH or Wellness Fund;
 - b. Key components of bylaws
 - c. Number of directors and terms
 - d. Officers
 - e. Voting procedures

- f. Committees
 - g. Conflicts of interest and anti-nepotism policy.
 - h. Mechanisms to ensure accountability to the community, including participation by stakeholders and transparency of activities/spending.
3. Develop a preliminary Financing Plan for the period following the Testing Grant. The Financing Plan includes:
 - a. Budget for the operation of an ACH (Backbone + Wellness Fund activities) for the period following the Testing Grant
 - b. Identification of potential funding/resource commitments from stakeholders and the community at-large to support activities beyond the Testing Grant period.
 - c. A preliminary “sustainability plan” that examines various revenue sources (i.e., earned revenue, grants, and private contributions) for supporting the operating budget and desired investments of an ACH after the Testing Grant period ends.

End of Year 2

1. Formalize the establishment of a Governing Body in accordance with the Governance Plan developed at the end of Year 1.
2. Finalize additional governance documents and agreements to guide the processes and procedures of the ACH. Such agreements can include:
 - a. Bylaws
 - b. List of Governing Body members
 - c. Committees
 - d. Conflicts of Interest and Anti-Nepotism Policy
 - e. Fiscal Sponsorship Agreement, if applicable
 - f. Agreement with the Backbone organization in the form of a grant or contract that sets forth the continued funding and services.
 - g. *Note: The key decision-makers may consider at this time whether or not to establish the ACH as a corporate entity and whether to file for tax-exempt status.*
3. Revise the preliminary Financing Plan developed at the end of Year 1 to complete a final Financing Plan
 - a. Written commitments from stakeholders for resource/funding of ACH.
 - b. Final Budget and Work Plan for activities after end of grant period.
 - c. Sustainability Plan to generate revenue for an ACH/Wellness Fund after the Testing Grant period ends.
 - d. Preliminary “growth plan” to identify opportunities for expanding the activities of an ACH/Wellness Fund and growing revenue to support expansion to the identified opportunities.

End of Year 3

1. Receive funding/resources from Stakeholders.
2. Commence funding of activities through the Wellness Fund and activities of the new work plan.
3. Finalize Growth Plan to guide planning activities.

Hypothetical Example of an ACH Structure

Government Agency as Backbone Organization/Lead Applicant & Nonprofit Organization as Wellness Fund

A county health department (“County”) has engaged in CDC grant-funded community health initiatives for the last five years. The County has facilitated regular meetings among stakeholders, collaborated with health care providers on community health needs assessments and monitored overall progress of improving health within the county. The County desires to apply for a grant to create an ACH to further this work and establish a Wellness Fund. The County approaches two key partners in the community:

- **Community Foundation:** A 501(c)(3) public benefit corporation that provides grants throughout the County and incubates new local projects and is well-respected among major community institutions.
- **Hospital:** The major health care provider in the county that provides funding to community health centers.

The County, hospital and community foundation agree to work together under a teaming agreement and to jointly respond to the Request for Proposal (“RFP”) issued by the State. The teaming agreement establishes the following:

1. The County will be the lead applicant for the RFP and undertake the Backbone functions (e.g., facilitate stakeholder meetings, monitor progress, track data, manage the communications and undertake community outreach). If awarded, the County—as the lead applicant—will receive the grant funds, manage any fiscal responsibilities required by the state and provide other financial administrative support services. The County will execute a subgrant (or subcontract) to the community foundation to undertake the Wellness Fund. County staff will take the lead on writing grant applications in collaboration with the community foundation.
2. The community foundation will fiscally sponsor the creation of an ACH Wellness Fund. Upon receipt of a grant from the County, the community foundation agrees to delegate decision-making to an ACH/Wellness Fund governing body and to issue grants or contracts as directed by the governing body. The governing body will be composed of a diverse stakeholder group.
3. The hospital’s Senior Vice President of External Relations will initially chair the ACH/Wellness Fund governing body. The hospital will align community benefits activities with its community health needs assessment and the overarching goals of the ACH. The Senior Vice President, along with the community foundation and County staff, will assist in recruiting additional community leaders to the ACH governing board.

Application Process

In its initial application in response to the RFP, the County will submit:

- teaming agreement between the County, the community foundation, and hospital that defines each organization’s role
- demonstrated track record of working with the community foundation and hospital, and outcomes or successes associated with their collaborative efforts (if applicable)
- letters of support from various stakeholders verifying the County’s capability and success as a backbone organization.

Key Milestones

By the end of Year 1

- Determine the structure for the ACH, and provide justification for why this structure best meets the needs of the community. In this scenario, the grantee will opt to establish the ACH as two separate organizations: the County will continue as the provider of Backbone services, and the community foundation will fiscally sponsor a new Wellness Fund.
- Develop and adopt a fiscal sponsorship agreement between the community foundation and key stakeholders (County, Hospital, and other interested organizations) for supporting the Wellness Fund and establishing a governing body. Locating the Wellness Fund with the community foundation provides the benefit of 501(c)(3) tax exempt status, fiscal services and technical support for community investments.
- Develop a governance plan that includes:
 - A list of community sectors to be represented on the governing body of the Wellness Fund,
 - an outline of key components of bylaws to establish the number of directors, a community investment committee, and a policy for conflicts of interest and anti-nepotism.
 - a document outlining how accountability to the community will be achieved and maintained (e.g., by reserving board and committee slots for community residents and providing annual reports on activities and spending).
- Develop a preliminary financing plan estimating the annual operating budget for an ACH and its community health investments. The preliminary financing plan will also identify potential funding sources for supporting such activities (sustainability), such as support from the government programs, contributions from the business sector, and possibility of receiving grants/contributions from philanthropic foundations and individuals.

By the end of Year 2

- Establish the Wellness Fund as a corporate entity as follows:
 - (i) Articles of Incorporation are filed with the Secretary of State,
 - (ii) the Governing Body adopts Bylaws,
 - (iii) a Board of Directors is established,
 - (iv) Committees to inform the Board of Directors are established, and
 - (v) Conflicts of Interest and Anti-Nepotism Policy is adopted.
- Establish agreement between the community foundation and the County to continue funding for the Backbone services in the form of a grant (or contract).
- Develop three-year Financing plan that contains written commitments from stakeholders for resource contributions and funding of ACH, a proposed budget and work plan for activities after end of grant period, and a plan to financially sustain the ACH's activities with potential new funders from business and banking sectors. The ACH also develops a preliminary "growth plan" that identifies potential new opportunities for health interventions that can create a return on investment or attract new funding. An ACH may examine growing into pay-for-success investments, community development programs, policy strategies or shared cost-savings programs.

By the end of Year 3

- Secure additional funding/resources from Stakeholders for the Wellness Fund
- Finalize Growth Plan to guide activities over the long-term of the ACH. This may include a decision by the ACH governing body to end the fiscal sponsorship arrangement with the community foundation and spin-off into an independent, 501(c)(3) organization, with Backbone duties and a Wellness Fund co-located in a single tax-exempt organization.

Additional Issues to Address

Because of time constraints, several issues are either outside the scope of this report or require further research and deliberation by the Work Group. We have identified the following issues:

- What waivers, if any, are needed by the state to implement the proposed activities of an ACH?
- Could an ACH support experimental activities such as clinical research or new technology?
- Could an established ACO evolve into an ACH?

Conclusion

Communities across the country have been experimenting with different models for structuring collaborative efforts, and the range of models we have explored indicate there is no single template for structuring an ACH. With the key components of a Governing Body, Backbone Organization, Community Stakeholders, and Wellness Fund in place, each Applicant should have the flexibility to establish and structure these components in a way that most effectively maximizes the assets and resources of its community. The recommendations in this report are intended to lay out key considerations to guide the Work Group through the strengths and limitations of the various options available. This guidance can, in turn, help the Work Group structure an RFP and assess the strengths and potential weaknesses of the ACH structures proposed in the applications received.

Appendix I

Background Information

Improving Population Health

In November 2013, Trust for America's Health (TFAH) convened a group of national experts to discuss what could be done to improve population health. The discussion and recommendations generated during this convening provide a valuable framework for envisioning the role and elements of an ACH.

A published summary of this meeting (*Twin Pillars of Transformation: Delivery System Redesign and Paying for Prevention*) defined a population health initiative (such as an ACH) as one that:

1. Is organized to improve the health of a population;
2. Partners with multiple sectors;
3. Is redesigning processes and systems to transform care and, in particular, to link clinical care with community prevention and social services;
4. Demonstrates results, both improved outcomes and evidence of utilization reductions and/or cost savings in the health care system;
5. Invests in prevention, including addressing causal factors in community health through policy and environmental change; and
6. Is supported by an “integrator” that convenes and coordinates.

Attendees at this convening identified four key elements that are critical to the launch of a population health initiative:

1. A major, easily identifiable health problem or initiative;
2. Clear, consensus-based goals;
3. A coalition or integrator that leverages the partners' commitment of time and resources and helps change the way business is done; and
4. Funding and/or dedication of in-kind resources.

Additionally, attendees identified nine elements integral to sustaining a population health initiative:

1. A dedicated integrator that is resourced and has a governance structure;
2. A broad coalition that can exert influence from both the top down (via key community leaders) and the bottom up (via pressure from local neighborhoods);
3. A sustained commitment and willingness from the partners to have some give and take among the partners over the process;
4. An ability to listen and respond to the community's needs;
5. Adaptability to create the workforce required (e.g., community health workers) even if the competencies and curricula are not yet defined;
6. Bi-directional referral linkages among clinical, community, and social systems;

7. A business model that includes cost transparency, reinvests in the integrator, and rewards improved health outcomes and reduced health care utilization/costs;
8. The ability to braid various funding streams together; and
9. Hard work.

Collective Impact

Collective Impact is another framework that can be applied to the development and maintenance of an ACH. First introduced in the Winter 2011 issue of the *Stanford Social Innovation Review*, Collective Impact refers to a model for achieving large-scale social change. It takes the concepts of collaboration and partnership one step further calling for a more structured and coordinated effort. The five key principles of collective impact are:

1. Common Agenda;
2. Shared Measurement System (Metrics);
3. Mutually Reinforcing Activities;
4. Continuous Communication; and
5. Dedicated Backbone Organization.

There is a great deal of overlap between the key elements for launching and sustaining a population health improvement initiative (identified during the Trust for America's Health convening, listed above) and the five key principles of Collective Impact.

Appendix II

Legal & Policy Experts

Maureen Byrnes, MPA, has over 30 years of experience serving in leadership positions in the federal government, philanthropy, and nonprofit sector. She currently serves as Senior Policy Advisor at PolicyLab at The Children's Hospital of Philadelphia (CHOP), and she is a member of PolicyLab's leadership team. Ms. Byrnes works with PolicyLab faculty and staff to design and implement strategies that ensure PolicyLab research is used to inform policies and programs that improve health outcomes for children and families. Ms. Byrnes also serves as a Lead Research Scientist in the Department of Health Policy in the School of Public Health and Health Services at The George Washington University (GWU). Her work at GWU focuses on a range of public health and health care policy issues, including implementation of the Affordable Care Act.

Eric Gorovitz, JD, MPH, is a principal with the law firm Adler & Colvin and has more than 20 years of experience advising and representing nonprofit, tax-exempt organizations regarding state and federal tax law, business ventures, corporate governance, and compliance. His practice spans the full range of nonprofit and tax-exempt legal issues, with emphasis on political advocacy and nonprofit corporate governance. Mr. Gorovitz represents public charities, private foundations, and community foundations regarding complex business transactions, compliance with Treasury Regulations and corporate governance. Prior to joining Adler & Colvin, Mr. Gorovitz has served as Director of the West Coast office of Alliance for Justice; Policy Director at the Coalition to Stop Gun Violence, the Million Mom March, and the Trauma Foundation.

Luis Rodriguez, JD, is a partner with the law firm Goldfarb & Lipman and has more than 10 years of experience advising and representing nonprofit organizations regarding affordable housing projects, community development projects (i.e., New Markets Tax Credits), and public-private partnerships. He provides legal advice to public agencies on administrative and transactional matters, and he works with housing developers on the structuring of affordable housing transactions and New Markets Tax Credit transactions. His work includes reviewing and drafting of agreements, including disposition and development agreements, purchase and sale agreements, ground lease agreements, and assisting in closing real estate transactions. In the past, Mr. Rodriguez has organized and conducted affordable housing and New Markets Tax Credit workshops for agencies and nonprofit groups.

Sara Rosenbaum, JD, is the Harold and Jane Hirsh Professor of Health Law and Policy and Founding Chair of the Department of Health Policy, George Washington University School of Public Health and Health Services. She also holds a Professorship by Courtesy in the GW Law School and is a member of the faculty of the School of Medicine and Health Sciences. Professor Rosenbaum has devoted her professional career to issues of health justice for populations who are medically underserved as a result of race, poverty, disability, or cultural exclusion. An honored teacher and scholar, a highly popular speaker, and a widely read writer on many aspects of health law and policy, Professor Rosenbaum has emphasized public engagement as a core element of her professional life, providing public service to six Presidential Administrations and 15 Congresses since 1977. Professor Rosenbaum is best known for her work on the expansion of Medicaid, the expansion of community health centers, patients' rights in managed care, civil rights and health care, and national health reform.

Michelle Sexton, JD, is a partner with the law firm Rosales Law Partners and has more than 25 years of experience advising and representing government agencies in complex public-private partnerships, public finance transactions, and government operations. She has represented numerous public entities in connection with the redevelopment and revitalization of blighted areas and the structuring, acquisition and/or issuance of municipal debt. Ms. Sexton has provided advice and negotiated and drafted redevelopment plans, blight and feasibility studies, implementation plans, documents for acquisition and construction of residential and commercial property. From 2004 through February 2009, Ms. Sexton was a member of the Redevelopment, Real Estate and Housing Group with Meyers Nave. Prior to joining Meyers Nave, Ms. Sexton was a Deputy City Attorney for the City of Oakland and a Deputy City Attorney for the City and County of San Francisco.

Appendix III

Glossary

Below are definitions of several key concepts and terms that relate to the functioning of an ACH.

Accountability

The standard, method, agreement, or common understanding that ensures stakeholders/participants complete commitments made to the ACH and/or comply with goals, objectives, directives, or delegated actions. Enforcement of commitments or rules may be undertaken by the backbone organization and the governing body.

Backbone Organization/Entity

The Backbone entity is a neutral coordinator that is responsible for the behind-the-scenes coordination and management of the overall ACH initiative. It holds the bird's-eye view of the ACH's many moving parts and connects the dots between individual efforts. The Backbone entity must demonstrate strong, adaptive leadership with the ability to bring cross-sector leaders together. It must have adequate staff capacity and robust in-house administrative capacity and systems to manage multiple priorities simultaneously and align activities among partners.

General Functions

(Note: Depending on the capacity and characteristics of the organization selected as the Backbone, the functions below may be fulfilled by in-house staff of the Backbone organization, or they may be delegated to a sub-committee of the governing body or other external partners as appropriate.)

1. Facilitation & coordination

- Facilitate the convening of the ACH governing body and member organizations
- Coordinate continuous communication and interaction among all entities involved in the ACH (e.g., scheduling and facilitating meetings, transcribing and distributing meeting notes, providing timely updates to relevant partners, etc.)
- Maintain historical and current roster of all participating individuals and entities and all ongoing ACH-related activities
- Coordinate and align efforts across ACH participants to increase effectiveness, promote transparency, and decrease risk of duplication

2. Data management

- Conduct assessment of current community conditions and health statistics to gather baseline data
- Establish shared infrastructure and processes for collecting, managing, and analyzing data related to ACH intervention impact
- Track intervention progress, measuring impact against predetermined targets
- Establish system for tracking and capturing potential savings
- Track ROI/potential cost-savings that result from intervention
- Establish mechanism for sharing this data with stakeholders on a regular basis

3. Fiscal responsibility

- Document all revenues and expenditures and provide regular financial reports to the governing body

- Fulfill grant reporting and billing requirements

4. Communications

- Manage external communications to amplify the overall efforts and interim successes of the ACH throughout the broader community, through vehicles including: regular newsletter or email updates, social media presence, other multimedia (e.g., videos, infographics), earned media, presence at relevant community events or conferences, etc.
- Develop suite of outreach and communications tools to share successes and progress, tell the story of the ACH, highlight partners' efforts and contributions, and make the case for additional funding

5. Sustainability

- Monitor government and foundation grant opportunities
- Develop and submit grant applications on behalf of the ACH
- Research and identify potential opportunities to leverage additional funding sources, including individual donors, social impact bonds, other public/private partnership financing mechanisms, hospital community benefits, etc.
- Monitor current events, relevant policies, and other issues that impact the ACH community in order to identify potential opportunities or barriers to ACH goals
- Ensure the governing body and ACH membership reflect the evolving characteristics of the community
- Develop a policy for replacing governing body members as needed
- Recommend a strategy to ensure the long-term institutionalization of the ACH effort (e.g., by developing a new corporate legal entity to manage all Backbone responsibilities).

Community Stakeholders/Members

The goal of an ACH is to include as many “stakeholders” who can influence the health of a community as possible. Because health is determined a number of factors, such as environmental, social, economic, mental and physical issues, a broad base of stakeholders is needed to improve the overall health of communities.

As part of an ACH, stakeholders would commit to certain obligations determined by an ACH's founding members, though some may play a more active role within the ACH than others.

An ACH could consist of the following groups:

Health Focused Organizations

Local Public Health Department
 Health Care Providers, including ACO's
 Insurers (Payers)
 Federal Qualified Health Clinics
 Foundations
 Nonprofit Organizations

Community-Based Organizations

Social Service Providers
 Housing Organizations
 Community Development Organizations
 Legal Services
 Faith-Based Organizations

An ACH may also consider regional organizations that are directly involved in a particular geographic area:

Business

Business Associations and major employers
Trade Unions
Banking Institutions
Agriculture and/or Food Enterprises

Education

Local School Districts
Nonprofit educational organizations
Universities

Convener/Lead Organization

A group or individual that is well known and well respected in the community and has the ability (community capital) to bring many community stakeholders together for the ACH. A Backbone Organization may play the role of a convener or the initial Chair of a governing body may have the needed trust and community capital to convene many stakeholders.

Evaluation

The systematic collection of information about the activities, effects, influence, and impacts of programs or initiatives to inform learning, decision-making, and action. The evaluation effort builds upon, but is distinct from, the performance measurement process. Performance measurement occurs in real time and is maintained and facilitated by partners actively engaged in the ACH. In contrast, the evaluation is a retrospective analysis of the entire ACH effort, conducted by a third party evaluator. While the data collected through the performance measurement process will directly inform the overall evaluation, the evaluation will go a step further by putting those data into context. It can address broader questions regarding the effectiveness of the backbone entity in its role as convener and integrator, the strength of the partnerships among ACH organizations and the structure of the collaborative, the extent to which ACH interventions collectively improved conditions in the broader community, contextual or intervening factors that may have bolstered or hindered progress. In addition, it can include qualitative lessons learned and successes that may not be reflected in a performance measurement system, such as securing additional funding or bringing a critical new partner on board.

Fiduciary

Group (e.g., board of directors) or individual (e.g., a trustee) entrusted with undertaking a high standard of care in managing another's money or property and adheres to a duty of good faith, trust, confidence, and candor. See Fiscal Responsibility below.

Fiscal Responsibility

Responsibility for the financial matters of any undertaking, such as accounting systems, compliance with regulations, internal controls, managing accounts, and filing reports or tax returns. The Fiduciary may undertake the fiscal responsibilities or delegate them, such as when a Board of Directors delegates fiscal management to a chief financial officer or finance director.

For-Profit Organization

Any business entity formed under the laws of California (Corporations Code), including a traditional corporation, benefit corporation, limited liability company or partnership and is permitted to engage in any business activity not otherwise prohibited by law. The primary purpose is to undertake business activities to generate revenue and profit for the owners.

Governing Body

The governing body is the active working group and decision-making entity of the ACH. It sets the strategic direction for the overall ACH initiative and makes decisions about how and to whom available funds should be allocated.

Composition

Ideally, the governing body would be composed of executive or senior management-level persons who provide strategic direction to their own organizations.

General Functions

1. Strategic planning & decision-making

- Use best available evidence and stakeholder input to develop a comprehensive strategic plan for the ACH that includes:
 - mission statement;
 - shared vision, goals, metrics, and targets for the ACH; and
 - short-, medium-, and long-term goals.
- Identify initial priority area(s) to address desired population-level outcome(s)
- Identify mutually reinforcing programs, interventions, and/or policies that can lead to the desired outcome(s)
- Assess and prioritize potential interventions using specific criteria, including:
 - alignment with overall ACH goals;
 - the extent to which the intervention reflects community needs and priorities;
 - cost of implementation and potential to demonstrate return on investment;
 - feasibility of measuring outcomes; and
 - potential for population-level impact.
- Determine how and to whom available funds will be allocated in order to implement selected interventions

2. Ongoing involvement with and assessment of ACH activities

- Meet regularly to check in about ongoing progress and new opportunities
- Form and facilitate sub-committees as needed to investigate specific issues, such as investments/grants, metrics, and evaluation
- Review and assess results of an Evaluation conducted by third-party

3. Fiduciary responsibility

- Draft and approve governance documents including: decision-making protocol, defined roles and responsibilities of each participant organization, MOUs, etc.
- Provide high-level oversight to ensure ACH efforts align with the vision and goals set forth in the strategic plan and meet the needs of the target population
- Provide oversight over the Wellness Fund and ensure appropriate and effective use of resources and funding
- Assess the performance of ACH-funded activities
- Assess and avoid conflicts of interest

4. Representation of the broader population of community stakeholders

- Provide opportunities for engagement of community stakeholders and the broader population served by the ACH

- Represent the needs and interests of community stakeholders and the broader population served by the ACH in decision-making processes

Government Agency

A public body formed under the California Government Code for the purpose of governing a particular jurisdiction, providing public services, establishing laws, and/or administering federal and state law. Public bodies include, but are not limited to, the state, counties, cities/towns, special districts, joint powers authorities and the judicial court system. The primary purpose is to fulfill duties that serve or benefit the public.

Health Care Provider

An individual (e.g., a physician, physician assistant, nurse, community health worker, therapist, etc.) who is responsible for the provision of medical and other health-related services. Health care providers operate in a variety of settings, including hospitals, health clinics, and other private practice settings.

Investments

A financial commitment to implement the activities of an ACH that meet the “Triple Aim.” This may include grants to nonprofit organizations, contracts with service providers, or other resource commitments made by ACH members. In addition, it is conceivable that an ACH may engage in more sophisticated transactions, such as social impact bonds, housing rehabilitation, or new market tax credits.

Joint Venture

A business undertaking by two or more persons (or legal entities) engaged in a single defined project. A formal joint venture includes: (1) a written agreement, (2) a common purpose the group intends to carry out, (3) shared profits, losses, and liability, and (4) each member’s equal voice in controlling the project.

Mutually Reinforcing Activities

The presence of mutually reinforcing activities is one of the five principles of Collective Impact. In an ACH, partner organization efforts should be differentiated yet coordinated through a mutually reinforcing plan of action. Complementary efforts that advance a shared vision and are grounded in a common understanding of success can build upon each other and may ultimately move the needle on a particular health outcome.

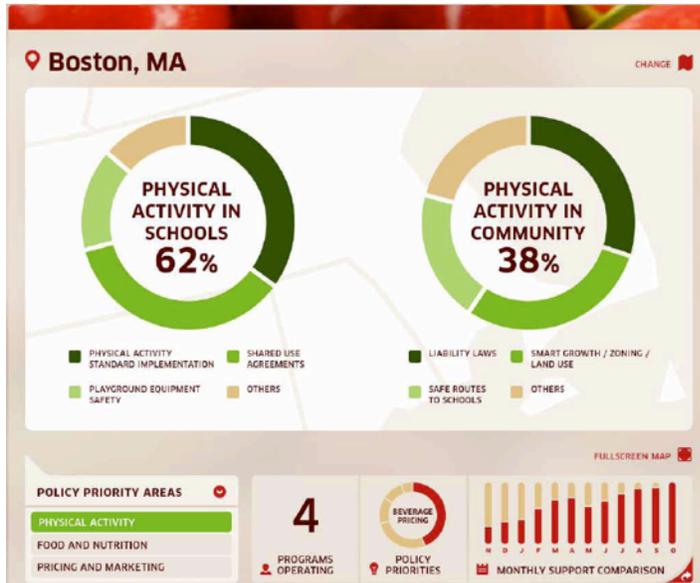
Nonprofit Organization

A term applied broadly to refer to a business entity that is formed as a public benefit corporation under California law and has been granted tax-exempt status by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. A nonprofit organization may be a public charity, private foundation, or private operating foundation. The primary purpose of a nonprofit is to advance a charitable mission.

Performance Measurement

The ongoing monitoring and reporting of an intervention’s progress, through the systematic collection of relevant data. Data points can be converted into appropriate metrics, which in turn can be assessed against the ACH’s ultimate targets and goals. The Backbone organization will play an active role in developing the infrastructure (e.g., a standardized data collection tool or database system) and process for retrieving data from multiple entities that may be collecting it on a regular basis. The Backbone can facilitate continuous communication among all partners via a web-based dashboard (see sample dashboard below). A dashboard can illustrate—in real-time and in an easy-to-digest format—current progress toward an

initiative's goals. The kind of data collected will vary according to the intervention selected, but it may include metrics related to health-related behaviors or events, health-related outcomes, and corresponding health-related costs and savings. ACH partners must define and agree upon performance measures at the outset of the initiative, with the understanding that the performance measurement process may need to evolve as the ACH initiative evolves and adapts.



Sample performance measurement dashboard

Resource Commitments

Financial or in-kind support to the ACH. This could range from financial contributions to the Wellness Fund to in-kind support of staff capacity. The backbone organization and convener could facilitate the securing of resource commitments from partners/members and obtain additional funding from third-parties, such as federal or state grants.

Shared Goals, Metrics, & Targets

Progress and success of ACH activities will be assessed by the collection of data and the measurement of this data against predetermined metrics or benchmarks. Goals, metrics, and targets are related but distinct concepts.

- Goal: A broad statement describing the overall purpose of a specific project, activity, or intervention. (e.g., *Improve the integration of asthma care outside the health care setting with schools and child care settings.*)
- Metric: Unit or terms by which progress will be measured. (e.g., *Percentage of children with asthma who have an asthma action plan on file with their school nurse.*)
- Target: The ultimate metric an initiative would like to achieve as a result of the intervention. (e.g., *By 2018, 20% of children with asthma will have an asthma action plan on file with their school nurse.*)

In an ACH, the development of *shared* goals, metrics, and targets is a critical component. It ensures all partners involved are tracking toward the same outcome, measuring progress in a standardized way, and defining success by the same terms.

Wellness Fund

The Wellness Fund serves as a vehicle to pool and leverage funding from a variety of sources. This fund represents a dedicated source of financing for all ACH-related activities. It will be embedded within—and administered by—an organization within the ACH. The governing body of the ACH will establish a process for determining when, for what purpose, and to whom funds will be disbursed. While initial seed funding for the Wellness Fund may come from the State Innovation Model Testing Grant, ACH members will play an active role in sustaining and expanding this funding source. Partner organizations may be expected to contribute resources from their respective organizations to the Fund. Additional sources of funding may include but are not limited to:

- Captured savings that result from successful ACH interventions (via a mechanism to measure, capture, and reinvest such savings)
- Grants from public and private entities
- Philanthropy
- Hospital community benefits
- Health plans
- Community reinvestment

The Wellness Fund will be used for grants or investments in prevention activities that meet the goals of the Triple Aim. In addition, the Wellness Fund will be a source of funding for the backbone activities.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Support for this document was provided by a grant from The California Endowment.

© 2014 ChangeLab Solutions