



**ChangeLab Solutions**

Law & policy innovation for the common good.

# **Accountable Communities for Health**

*Legal & Practical Recommendations*

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## Executive Summary

Throughout the United States, communities are engaged in innovative efforts to improve population health outcomes. The most ambitious projects address the social determinants of health and equity that are so powerful in shaping population health outcomes. These projects are using multidisciplinary, holistic approaches that are organized around collaborative infrastructures designed to have transparent governance, to be highly responsive to community needs, and to manage Wellness Funds on behalf of multiple and diverse stakeholders. In March 2014, the State of California issued the California Health Care Innovation Plan that proposed the development of Accountable Communities for Health (ACH) to achieve better health, better health care, and lower costs in California. One of the primary initiatives proposed in the Innovation Plan is the. The California ACH Work Group's definition of an ACH is as follows:

*An Accountable Community for Health is a multi-payer, multi-sector alliance of the major health care systems, providers, and health plans, along with public health, key community and social service organizations, schools, and other partners servicing a particular geographic area. An ACH is responsible for improving the health of an entire community, with particular attention to achieving greater health equity among its residents.*

*The goals of an ACH are to (1) improve community-wide health outcomes and reduce disparities with regard to particular chronic diseases; (2) reduce costs associated with the health care and, potentially, non-health sectors; and (3) through a self-sustaining Wellness Fund, develop financing mechanisms to sustain the ACH and provide ongoing investments in prevention and other system-wide efforts to improve population health.*

Under this framework, an ACH must have a structure that provides a representative decision making process that upholds fiduciary standards and accountability for managing projects and a Wellness Fund in the best interest of the community. This is a key for building trust within the community and, in turn, attracting more investment (both funding and resources) from stakeholders and partners. As the Wellness Fund grows, the structure must support and govern different funding opportunities while being accountable to the community.

ChangeLab Solutions has conducted research on existing collaborative efforts to improve population health and assessed both legal and practical considerations for creating an ACH under applicable federal and California law. 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 comprise 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 and responsibilities of these components, as well as the relationships between them, 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, we found each collaborative effort was structured differently. Communities must have the flexibility to structure their initiative in a way that is responsive to the unique composition, needs,

and resources of their community. While each ACH may differ in its precise structure, 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 brings 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 and for prudently **managing the community's resources**. It must therefore consider and reflect the needs of the community, with a particular focus on low-income and high-risk neighborhoods and populations that have the greatest burden of disease. 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; to receive funding from a variety of sources; to conduct transactions with different parties; and to adapt to changes in political, social, and economic landscapes. 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 conflict of interest policy and procedure.

### 3. *Options for an ACH Structure*

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

1. Should the ACH locate the Backbone and Wellness Fund management duties in a single organization or divide responsibilities among two or more organizations?
2. Should the ACH locate the Backbone and Wellness Fund management duties in an existing organization or create a new organization to fulfill these roles?
3. Should the ACH 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 above, and provides recommendations for accomplishing short-term and long-term goals 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. Each ACH has the flexibility to establish and structure the four core components—Governing Body, Backbone Organization, Community Stakeholders, and Wellness Fund—in a way that most effectively maximizes the unique assets and resources of its community. The recommendations in this report can guide ACH development; they lay out the strengths and limitations of the various options available.

### *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 Organization. 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 are minimum requirements for the long-term success of an ACH. Each ACH may have a unique structure, but each structure should uphold these principles through written documentation, including agreements or legal documents. An ACH that is accountable for managing projects, funding and resources in the best interest of the community will build trust within the community and in turn attract more investment from stakeholders and partners.

### *Recommendation #3*

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

### *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 existing resources or an initiative's short-term goals. To ensure planning for the future does not delay the **ACH's immediate objectives**, communities can establish an ACH in two distinct phases with short-term goals and long-term goals, 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 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. A nonprofit organization, government entity, or for-profit entity can carry out the Backbone functions. Communities have the flexibility to choose which type of entity is best suited for this role given the **community's unique composition**.

## Introduction to an Accountable Community for Health & Wellness Fund

Throughout the United States, communities are engaged in innovative efforts to improve population health outcomes. The most ambitious projects address the social determinants of health and equity that are so powerful in shaping population health outcomes. These projects are using multidisciplinary, holistic approaches that are organized around collaborative infrastructures designed to have transparent governance, to be highly responsive to community needs, and to manage Wellness Funds on behalf of multiple and diverse stakeholders.

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”).**<sup>1</sup> One of the primary initiatives proposed in the Innovation Plan is the development of Accountable Communities for Health (ACH).<sup>2</sup> The California ACH Work Group’s definition of an ACH is as follows:

*An Accountable Community for Health is a multi-payer, multi-sector alliance of the major health care systems, providers, and health plans, along with public health, key community and social service organizations, schools, and other partners servicing a particular geographic area. An ACH is responsible for improving the health of an entire community, with particular attention to achieving greater health equity among its residents.*

*The goals of an ACH are to (1) improve community-wide health outcomes and reduce disparities with regard to particular chronic diseases; (2) reduce costs associated with the health care and, potentially, non-health sectors; and (3) through a self-sustaining Wellness Fund, develop financing mechanisms to sustain the ACH and provide ongoing investments in prevention and other system-wide efforts to improve population health.*

An ACH uses a formal structure and process that links the health system with community stakeholders to address a chronic health condition(s) on a community-wide basis. Explicit in the structure of an ACH is the coordination of a portfolio of interventions that span five key domains—clinical, community, clinical-community linkages, policy and systems, and environment—in order to improve community health and, in particular, reduce health disparities. Under this framework, an ACH must have a structure that provides a representative decision making process that upholds fiduciary standards and accountability for managing projects and a Wellness Fund in the best interest of the community. This is a key for building trust within the community and, in turn, attracting more investment (both funding and resources) from stakeholders and partners. An ACH must demonstrate that it can prudently manage both projects and fiscal responsibilities.

As part of this effort, each ACH should establish a Wellness Fund to sustain itself over the long term and fill gaps in financing prevention interventions. It is estimated that only three percent (3%) of total national health expenditures is associated with prevention activities, even though prevention activities could drastically reduce (prevent) health care costs and morbidity from chronic disease.<sup>3</sup> **Trust for America’s Health estimates that for every dollar (\$1) spent annually on evidenced-based prevention programs, communities could see a “return” of \$5.60 through**

<sup>1</sup> Donald M. Berwick, Thomas W. Nolan and John Whittington. “The Triple Aim: Care, Health, And Cost.” *Health Affairs*, 27, no.3 (2008):759-769.

<sup>2</sup> The Innovation Plan and related ACH Work Group research reports are available here: <http://www.chhs.ca.gov/pages/pritab.aspx>

<sup>3</sup> Lambrew, Jeanne M. *A Wellness Trust to Prioritize Disease Prevention*. The Hamilton Project of The Brookings Institution. Discussion Paper 2007-04, pg. 21.

cost savings.<sup>4</sup> By investing in prevention activities, communities have the opportunity to both improve health and lower costs.

The Wellness Fund pools resources from a variety of sources: 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 services and efforts to address the social determinants of health. In addition, the Wellness Fund is a mechanism for sustaining and growing investments in prevention interventions without relying on any single source of funding (thus avoiding unpredictable or short-term budget horizons) and allowing a community to decide on the best allocation of resources to improve health. **As the Wellness Fund grows, an ACH's structure must support and govern different funding opportunities while being accountable to the community.**

Thus, the mission of an ACH is to create an expansive, inclusive, and connected health system that links together all sectors and stakeholders of a community, and to implement a community-centric, multidisciplinary approach for addressing seemingly intractable problems to improve community health and wellness. To support this mission, an ACH must have an organizational structure that can facilitate a portfolio of interventions and a governance structure that supports a decision-making process and upholds fiduciary responsibilities for prudently managing a Wellness Fund.

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. Based on this research, there is no single recommended template for structuring an ACH, and each community has the flexibility and local knowledge to establish and structure an ACH in a way that most effectively maximizes the unique assets and resources of its community. 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, including the strengths and limitations of the various options available, as follows: (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. This report provides a legal framework for communities to consider their options and establish a governance structure that will create the foundation for an ACH and management of its Wellness Fund.

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<sup>4</sup> Trust for America's Health. *Prevention for a Healthier America: Investments in Disease Prevention Yield Significant Savings, Stronger Communities*. Pg. 3. February 2009.

## Research Approach & Methodology

The California Endowment has consulted with ChangeLab Solutions to research the potential governance options for an ACH and provide recommendations for establishing a structure. Providing guidance on these issues requires an assessment of three key questions:

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

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

- Core principles for establishing the governance of an ACH and managing the financial responsibilities of a Wellness Fund;
- The legal and other parameters that a community 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 the **central legal and infrastructure issues related to ACH's**, ChangeLab Solutions has drawn upon the following:

- ***Preliminary research on collaborative approaches to improving population health***  
To understand the goals, activities, and outcomes of an ACH initiative specifically and other collaborative and population health improvement efforts more generally, we have examined three primary sources of information: (1) the Innovation Plan and a series of meeting notes from Work Group discussions; (2) literature on a variety of models for collaboration and health delivery system redesign; and (3) 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, our analysis has also focused on best practices and practical considerations for implementing an ACH and managing a Wellness Fund.
- ***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. In addition, we asked for guidance on



structures that will effectively manage the Wellness Fund and attract long term investments. 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 included in Appendix II.

## Assumptions

An ACH can take a variety of different forms based on the structure of government, nonprofit, or for-profit entities involved in an ACH initiative. **In addition, California's communities are diverse and unique.** As a result, we have made several assumptions in order to focus this report:

1. **No Defined Jurisdiction or Territory**  
With some parameters, communities will define their own population size for an ACH and Wellness Fund. A community is not just a particular jurisdiction or territory, but a broad collaborative (see Appendix III) formed to improve the health of its self-defined population.
2. **Variable and Unknown Community Resources**  
Each community has a different mix of resources and experienced institutions. Because of this variation, each ACH should 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.**
3. **Balancing Short-Term Goals and Long-Term Goals**  
A community must establish short-term and long-term goals, which it must also apply to the development of the **ACH's structure.** Seed funding might be available to meet short-term goals, but a community must establish a long-term lens for sustainability. This **report assumes ACH's will balance the needs between short-term and long-term goals.**
4. **Unknown Funding Sources**  
Because an ACH is intended to cross multiple sectors, it can 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 our analysis is based on general types of funding an ACH might seek, it is difficult to determine specific challenges or limit any ACH structure because every community has access to different funding streams. Potential sources of funding for a Wellness Fund are discussed below.
5. **Local Laws**  
**A community's local laws (City and County) do not further restrict the formation of an ACH and Wellness Fund, or restrict particular stakeholders from participating in an ACH.** This report focuses on federal law and California law; 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.
6. **Nonprofit Organization**  
For the purpose of this report, a **nonprofit organization** refers to a public benefit corporation under California law and is exempt from income taxation as a public charity under Section 501(c)(3) of the Internal Revenue Code.

## Core Components of an ACH

An ACH comprises four core components: Community Stakeholders, a Governing Body, a Backbone Organization/Entity, and a Wellness Fund. We have broadly described each of the four components below, and included 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”)**

The California ACH Workgroup’s **report states that** “an ACH is responsible for improving the health of an entire community, with particular attention to achieving greater health equity among its residents.” To be successful, an ACH therefore must be comprised of a multidisciplinary community of stakeholders, including the following:

- 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.).
- **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 can 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 (“Backbone”)**

The Backbone Entity is a neutral coordinator that serves as the administrative and operations arm of the ACH.<sup>5</sup> It is responsible for the day-to-day management of the overall ACH initiative and holds the bird’s-eye view of **the ACH’s** 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. The Backbone is tasked with facilitating and coordinating 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**

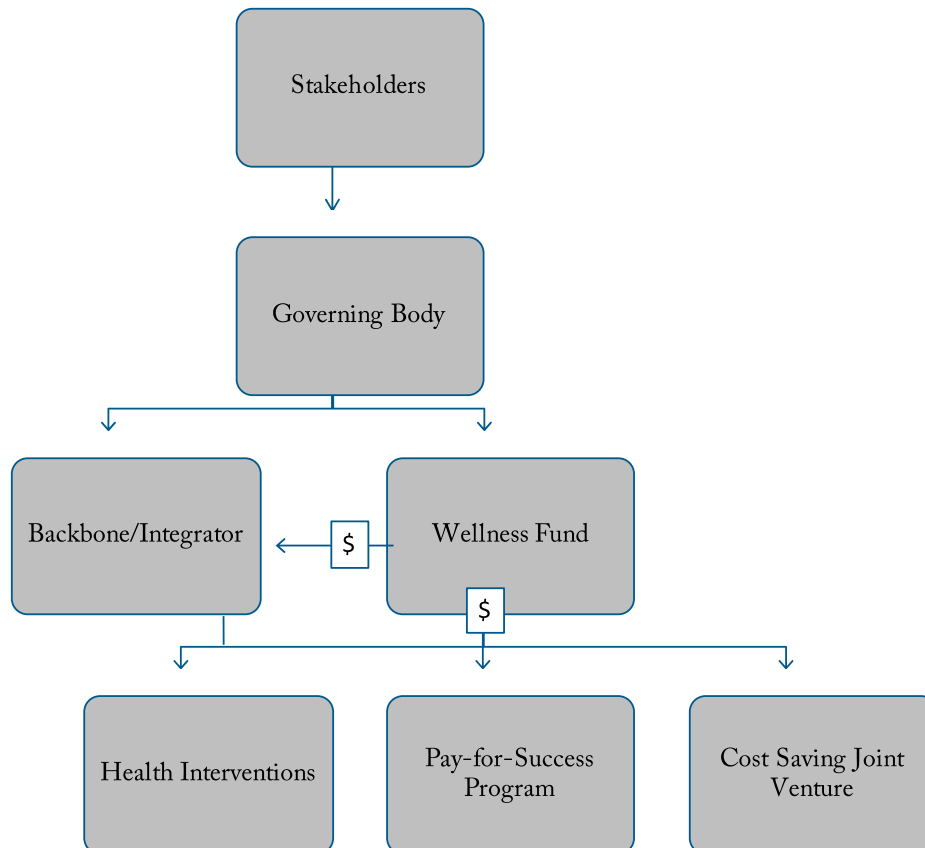
The Wellness Fund represents a source of funding intended to support specific community-wide interventions identified by the ACH and sustain the operations of the ACH (e.g., by funding the Backbone Entity). The Wellness Fund **requires a “host” or administrator** that can provide fiscal and compliance services in addition to investment

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<sup>5</sup> This role has also been referred to as an integrator or hub.

and/or grant distribution services. In concept, a Wellness Fund functions like 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 to support improving community health and wellness, especially prevention activities. 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 ACH 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

Currently, there is no one-size-fits-all template for setting up an ACH. ChangeLab Solutions examined several sophisticated collaboratives and ACH-like programs across the United States, and every collaborative and program were unique. 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 the collaborative effort based on local dynamics and stakeholders.
- **A “Wellness Fund” is a unique concept that most other collaborative efforts have not considered.** 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.”**

We understand that stakeholders must ultimately structure their 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.<sup>6</sup> The analysis and recommendations in this report outline the qualifications, strengths, and limitations of each category. It is important for communities to understand the high-level legal and practical implications of involving nonprofits, governments, and for-profits in an ACH. Using this knowledge, communities have the flexibility to select the specific types of organizations to be involved, given their **communities’** unique composition and assets.

ACHs may be structured differently in different communities, but these four principles are critical to any **ACH’s** long-term success:

- Neutrality;
- Accountability to the community;
- Flexibility; and
- Sound governance.

Communities should use these principles to guide and identify the kind of organization or entity best suited to fulfill the functions of each component listed above and to answer the question of how to structure an ACH for maximum effectiveness.

### *Neutrality*

The health of a community is a dynamic and complicated issue, affected by multiple sectors (including health, education, government, economic development, and more). A key issue of all collaborative efforts is the development of trust among stakeholders, especially when some stakeholders might be 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

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<sup>6</sup> We did not include a narrower analysis of specific types of organizations that fall under each of these categories for these 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); and (3) focusing on specific organizations does not take into account the variations of such organizations that exist (e.g., a community foundation in one region may have vastly different capacities and community standing than one in another region).

that must be assessed by each community. An ACH, especially the Backbone Organization, must assess the unique relationships among stakeholders and determine the appropriate methods for developing and sustaining neutrality to maintain trust among stakeholders.

### *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. It must consider and reflect the needs of the community, with a particular focus 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 community 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.

There are many ways to establish community accountability within an organization. For example, to be eligible for funding under Section 330 of the Public Health Services Act (known as a §330 Grant), federally qualified health centers (FQHCs) are required to have their patients represent the majority of the governing board. This unique requirement ensures that FQHCs are responsive to the needs of the community, and generally prevents FQHCs from becoming part of or merging with a larger enterprise or government agency that lacks the same type of accountability to the community.<sup>7</sup> An ACH may also delegate authority to a steering committee that contains representatives from the community. To remain accountable to stakeholders, an ACH should ensure community members are represented in a Governing Body with delegated authority to make key programmatic decisions. It must also have a process for meaningful community engagement.

### *Flexibility*

To create a sustainable initiative, an ACH and its associated Wellness Fund must have the flexibility to respond to opportunities; receive funding from a variety of sources; conduct transactions with different parties to accomplish its goals; and adapt to changes in the political, social, and economic landscapes. The level of flexibility afforded is, in many ways, dependent upon the type of entity that administers the Wellness Fund. In addition, an ACH needs capable staff who can negotiate, navigate, and respond to opportunities and complicated community dynamics.<sup>8</sup>

- **Operations**

An ACH must balance adhering to sound governance processes and responding to emerging, and sometimes non-traditional, opportunities. These two functions may come into conflict when it comes to implementation. For example, an ACH and its constituent 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 (typically as a result of multiple 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.

<sup>7</sup> “The Fundamentals of Community Health Centers,” National Health Policy Forum. Jessamy Taylor. Page 4. Published August 31, 2004.

<sup>8</sup> For more information on sustainability, see *Accountable Communities for Health: Strategies for Financial Sustainability*. JSI Research & Training, Inc. [www.jsi.com/JSIInternet/Inc/Common/\\_download\\_pub.cfm?id=15660&lid=3](http://www.jsi.com/JSIInternet/Inc/Common/_download_pub.cfm?id=15660&lid=3). May 2015.

- **Eligibility 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. Possible sources of funding for an ACH include:

- **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 goods or services that benefit 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. Government funders must spend their funds for public or governmental purposes prescribed by state and local law. Philanthropic foundations must ensure that distributions are used to advance their charitable cause. Because nonprofit organizations and governments must expend funding in furtherance of their purpose, grant makers (government and philanthropic foundations) can ensure their funds are 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.
- **Government entities** 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.<sup>9</sup> For example, while it is common for counties to provide services for a fee, such as police services or tax collection to other local governments, fee-for-services **outside of a county's normal government operations** will require additional legal analysis to ensure compliance with the law.
- **For-profit organizations** have no limitations on what they can do under a contract provided that an activity is otherwise legal.

- **Hospital Community Benefits**

The Internal Revenue Service requires private not-for-profit hospitals to provide

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<sup>9</sup> The California Constitution requires governments to obtain voter approval for any fee imposed on the public, unless the local government determines a specific exception applies. For example, local governments are allowed to charge fees for processing licenses or permits without voter approval. Cal. Constitution Art. XIII C §1(e). [www.cacities.org/Resources/Documents/Policy-Advocacy-Section/Hot-Issues/Proposition-26-Implementation-Guide.aspx](http://www.cacities.org/Resources/Documents/Policy-Advocacy-Section/Hot-Issues/Proposition-26-Implementation-Guide.aspx)

community benefits to the population that they serve as a condition for maintaining their tax exempt status.<sup>10</sup> **Similarly, California's** the Hospital Community Benefit Program requires private not-for-profit hospitals to “**assume a social obligation to provide community benefits in the public interest**” in exchange for their tax-exempt status under California law.<sup>11</sup> One key way for an ACH to partner with a nonprofit hospital is to find alignment between the ACH's goals and the goals identified in a hospital's Community Health Needs Assessments. In addition, hospitals may report **community benefits in the form of “community building” activities that address the social determinants of health.**<sup>12</sup> 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 IRS Rules and California law to determine the recipients of community benefits and the form of distribution.

- **Nonprofit organizations** are permissible recipients of community benefit funding, provided the hospital demonstrates that the funding directed to the nonprofit benefits the community.
- **Government entities** are permissible recipients of community benefit funding, provided the hospital demonstrates the funding directed to the government agency benefits the community.
- **For-profit organizations** are permissible—though less common—recipients of community benefit funding, provided the hospital demonstrates the funding directed to the for-profit entity benefits the community.

#### ○ **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.

- **Nonprofit organizations** 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 entities** 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-profit organizations** 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 areas. Recently, community development projects have started including new community health centers and sports fields with an associated healthy eating education campaign into their design. Not only can community projects address social and economic issues, but they are increasingly integrating strategies that improve health outcomes.

As an ACH looks to improve the health of a community, it can consider leveraging sources of funding available through community development projects. For example,

<sup>10</sup> IRS Revenue Ruling 56-185; IRS Revenue Ruling 65-545. See also 26USC501(r) and Schedule H of Form 990 regarding community benefits.

<sup>11</sup> Cal. Health & Safety Code §127345(c).

<sup>12</sup> For more information on Hospital Community Benefits Programs, see the resources from the Hilltop Institute (summaries, issue briefs, legal analysis and technical assistance). [www.hilltopinstitute.org/hcbp.cfm](http://www.hilltopinstitute.org/hcbp.cfm).



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. The use of NMTC usually has **an associated “community benefits agreement”** that documents certain 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 entities** 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.
- **Nonprofit organizations** 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,<sup>13</sup> providing a major incentive for individuals to contribute to nonprofit organizations.
  - **Government entities** 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.<sup>14</sup>

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, an ACH and its Wellness Fund must be managed to comply with the legal, reporting, and fiscal

<sup>13</sup> 26 USC §170(b)(1)(A).

<sup>14</sup> Requires compliance with both Securities Exchange Commission Regulations and California Department of Corporations Regulations and Enforcement.



requirements of funders and governing standards, such as Generally Accepted Accounting Principles (GAAP). In addition to handling these responsibilities, an ACH must carefully vet proposals for grants or joint ventures and assess the financial terms in order to weigh the risks and potential liabilities. The provision of these services 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, a community should structure its ACH so it has the flexibility to engage in transactions in an efficient manner; receive several different types of funding; and retain experienced staff who can manage the fiscal responsibilities of different sources of funding, comply with legal requirements, and navigate complex community dynamics.

### *Sound Governance*

Governance refers to the processes for directing and controlling 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 ACH to be successful. It also works the other direction, ensuring the Backbone and Wellness Fund respond to the needs of stakeholders and the community at large through reporting, transparency and engagement. 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 do the parties enforce such obligations?

Accountability can be created through a written agreement, which can take the form of a contract or set of rules. For example, a nonprofit organization has bylaws (or other instrument) 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.<sup>15</sup> 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**. Someone in this position owes a duty of good faith, trust, confidence, and candor in undertaking such management. California

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<sup>15</sup> Cal. Corp. Code §5151.

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.<sup>16</sup> The Duty of Loyalty requires an individual director to be candid about any financial transactions with the corporation, and to follow procedures that would ensure the corporation is receiving a fair deal.<sup>17</sup> In addition to the duties noted above, directors of nonprofit corporations are also required to follow the **“Duty of Purpose.” Because nonprofit organizations are established for a charitable purpose, directors of these organizations must ensure that their organization’s activities advance its cause.**<sup>18</sup> 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**

To ensure the appropriate people or bodies are making various decisions, it is critical to establish who has control over the activities and finances of an organization. Within an ACH, control starts at the Governing Body, which acts as the fiduciary. Through a set of bylaws, the Governing Body can delegate control 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 can 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, the organization must establish procedures or agreements 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, the Governing Body of an ACH should maintain ultimate control, with written documentation stating when and how control over certain decisions is delegated to others.

- **Conflict 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 conflict of interest policy and a set of procedures are necessary. In compliance with the Duty of Loyalty requirement described above, a conflict of interest policy identifies and establishes procedures for an organization to engage in financial transactions with individuals that have influence in 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 is interested in pursuing a joint venture with the hospital to implement a project. While the director may engage in some of the planning for the project, a conflict of interest policy may require that the director: (1) disclose whether she would receive any financial benefit from the joint venture (as a hospital employee); (2) recuse herself from discussions about the financial transaction that could provide the hospital an advantage in negotiations; and (3) recuse herself from deliberations and

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<sup>16</sup> Cal. Corp. Code 309(a); Cal. Corp. Code 5231(a).

<sup>17</sup> Cal. Corp. Code 310(a); Cal. Corp. Code 5233(a).

<sup>18</sup> Cal. Corp. Code 5142(a).

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 limit or monitor government employees awarding large contracts to friends and family.**<sup>19</sup>

Therefore, sound governance ensures that the best interests of an ACH take precedence over any potential individual benefit, particularly among the participating stakeholders.

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. The most common forms of bylaws or operating agreements contain the basic governance structure, but an ACH should carefully consider incorporating a conflict of interest policy and an accountability mechanism into its 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 are minimum requirements for the long-term success of an ACH. Each ACH may have a unique structure, but each structure should uphold these principles through written documentation, including agreements or legal documents. An ACH that is accountable for managing projects, funding and resources in the best interest of the community will build trust within the community and in turn attract more investment from stakeholders and partners.

### *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.”**<sup>20</sup> The Coalition agreed that a new, independent organization could provide neutrality and represent stakeholders better than any existing stakeholder organization could.

The board of directors is a mix of health and non-**health members with “C” suite** representation (high level executives of an organization) 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 in setting up the new organization and expanding collaboration with non-health stakeholders.

<sup>19</sup> See [www.contracostatimes.com/west-county-times/ci\\_26606706/hercules-moves-ahead-anti-nepotism-ordinance](http://www.contracostatimes.com/west-county-times/ci_26606706/hercules-moves-ahead-anti-nepotism-ordinance)

<sup>20</sup> Pueblo Triple Aim Coalition Case Statement

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, such as federally qualified health centers, have community members sit on their board of directors. 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 is very difficult for a government entity to maintain neutrality within a community. The nature of politics generally influences major financial decisions related to the Wellness Fund. In addition, the overall dynamics of government and any related special interests often influence elected and appointed officials. 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 they typically 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 the elected body of government's <b>control</b> . | <b>A government's board usually</b> comprises 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 does not necessarily need to create new governance rules, but it <b>doesn't</b> 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, <b>the owners'</b> power can shift through acquisitions of additional ownership shares.   | For-profit organizations have the greatest flexibility to engage in many different types of activities. 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. Community stakeholders should 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 communities through the three initial decisions they must make when determining an ACH's structure:

1. Should the ACH locate the Backbone and Wellness Fund management duties in a single organization or divide responsibilities among two or more organizations?
2. Should the ACH locate the Backbone and Wellness Fund management duties in an existing organization or create a new organization to fulfill these roles?
3. Should the ACH locate the Backbone and Wellness Fund management duties in a nonprofit organization, for-profit organization, or government entity?

### *Single Organization vs. Multiple Organizations*

One key question is whether to task one organization with implementing the functions of both the Wellness Fund and Backbone Entity, or to separate **the components' functions** into two or more organizations. Both options are viable and available to communities, but each comes with a unique set of considerations, as summarized in Table 2.

**Table 2. Combining or Separating Wellness Fund & Backbone Functions**

| <b>WELLNESS FUND AND BACKBONE</b>                                 | <b>PROS</b>   | <b>CONS</b>   |
|---|---|---|
| <b>SEPARATE OPERATIONS IN TWO OR MORE DIFFERENT ORGANIZATIONS</b> | <ul style="list-style-type: none"> <li>• Allows the Backbone to focus solely on the administrative functions of the ACH</li> <li>• Removes fiduciary responsibilities from the Backbone</li> <li>• Could allocate one function within a nonprofit and the other within a government or for-profit, providing more flexibility</li> <li>• 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</li> <li>• Enables multiple organizations with specialized capacities and expertise to combine their unique strengths</li> <li>• Organizations selected are best suited to fulfill their particular roles</li> </ul> | <ul style="list-style-type: none"> <li>• Potential for breakdown in communication; more difficult to coordinate complementary operations across multiple organizations</li> <li>• <b>Requires ACH to “apply” to Backbone</b> for funding of programs, which may inhibit implementation of programs</li> <li>• Entities could develop different purposes with no unifying voice</li> <li>• No inherent checks and balances between separate entities</li> <li>• Either component could direct funding for an individual goal rather than a collective goal</li> <li>• Potential for conflicts of interest to arise among multiple organizations</li> </ul> |
| <b>COMBINED OPERATIONS IN A SINGLE ORGANIZATION</b>               | <ul style="list-style-type: none"> <li>• No need to coordinate activities across multiple organizations, which can lead to greater efficiency</li> <li>• One entity means one purpose; no conflict of interest among entities handling different functions</li> <li>• Program development and program implementation are consistent</li> <li>• Internal checks and balances</li> </ul>  | <ul style="list-style-type: none"> <li>• Greater administrative burden for a single organization to handle multiple operations</li> <li>• May not be possible to find a single organization with the capacity or experience to fill both roles</li> <li>• Corporate governance under bylaws may offer less control <b>over an ACH’s activities than</b> direct legal agreements among stakeholders</li> </ul>   |

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 depends upon the strengths and capacities of specific organizations within the ACH’s collaborative group.

If a community desires 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 should be established through a series of agreements among the participating organizations. These agreements set

forth the specific roles and responsibilities of each organization, the shared goals of the participating organizations, and the procedures for decision-making and resource-sharing. The specific terms of each agreement should address accountability, and the participating organizations should share liability equally. 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 501(c)(3) nonprofit organization 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, provides fiscal administrative support for the Wellness Fund, while another organization carries out the Backbone activities.

### *Case Study: Teaming Agreement*

In the Atlanta Metro area, three regional institutions—known as the Co-Conveners—founded the Atlanta Regional Collaborative for Health Improvement (ARCHI): United Way of Greater Atlanta, Atlanta Regional Commission, and Georgia Health Policy Center. 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, which provides overall leadership and manages 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 the steering committee develops.



**Recommendation #3**

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

**Existing Organization vs. New Organization**

An ACH can be formed as a new legal entity, a joint venture of existing organizations, or a combination of both. The existing composition of organizations, resources, and expertise within the community should help drive this decision. 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 a community 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**

|                              | <b>PROS</b>   | <b>CONS</b>  |
|------------------------------|---|--|
| <b>EXISTING ORGANIZATION</b> | <ul style="list-style-type: none"> <li>Utilizes existing resources, systems, and experience</li> <li>Minimizes number of new employee hires</li> <li>Leverages strengths and specialized expertise of an existing organization</li> <li>Minimizes overall time to start up if existing organizations are ready</li> </ul> | <ul style="list-style-type: none"> <li>More difficult to find a truly <b>“neutral” organization</b> that will put a broad, community-wide mission ahead of its own organizational preferences</li> <li>Primary accountability to its own governing body, which could supersede accountability to other stakeholders or the community</li> <li>Sometimes less adaptable to new ideas or innovation</li> <li>Developing and finalizing a written agreement among key stakeholders may take time</li> </ul> |
| <b>NEW ORGANIZATION</b>      | <ul style="list-style-type: none"> <li>Only accountable to the Governing Body and stakeholders that create the organization</li> <li>If all (or many) stakeholders are represented, then can be a neutral entity</li> <li>Not required to change any existing system to implement an ACH</li> </ul>                       | <ul style="list-style-type: none"> <li>Takes time to establish stable operations: hire staff, establish internal systems (e.g., HR, accounting, etc.), management</li> <li>Developing and finalizing governing documents may take time</li> <li>If project fails, burdensome to wind down a legal entity</li> <li>Forming a new government entity is a complicated and time-consuming process</li> </ul>   |

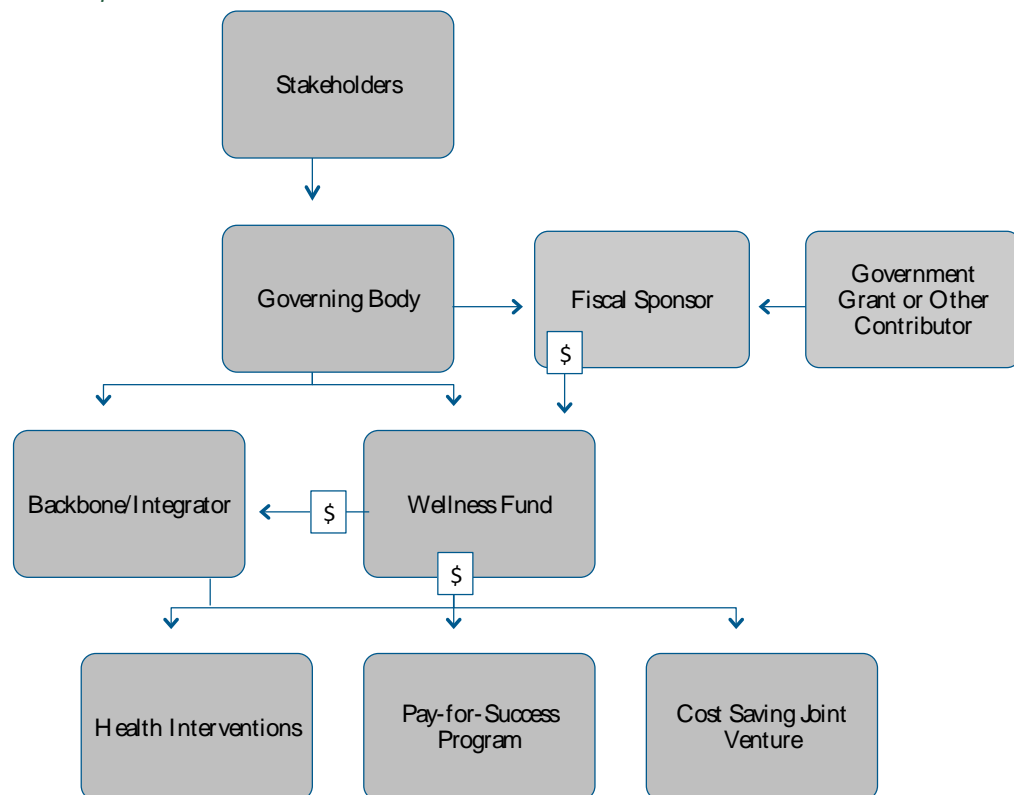


The fiscal sponsorship model introduced in the previous section is one viable solution for jump-starting and sustaining an ACH. This model bridges the immediate efficiency of utilizing an **existing organization’s systems and infrastructure to get an ACH up and running** (an important consideration for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

**Fiscal sponsorship can be a temporary arrangement.** In order to “hit the ground running,” a community may initially opt to use a fiscal sponsor as a neutral body that can host the Wellness Fund. This arrangement can allow the ACH to implement its activities and prevent the potentially time-consuming process of establishing a new organization from stalling progress. 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 to establish a new legal entity to host the Wellness Fund but not to 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, for-profit, or government agency) that provides Backbone services via a joint venture agreement.

*Fiscal Sponsorship Model*



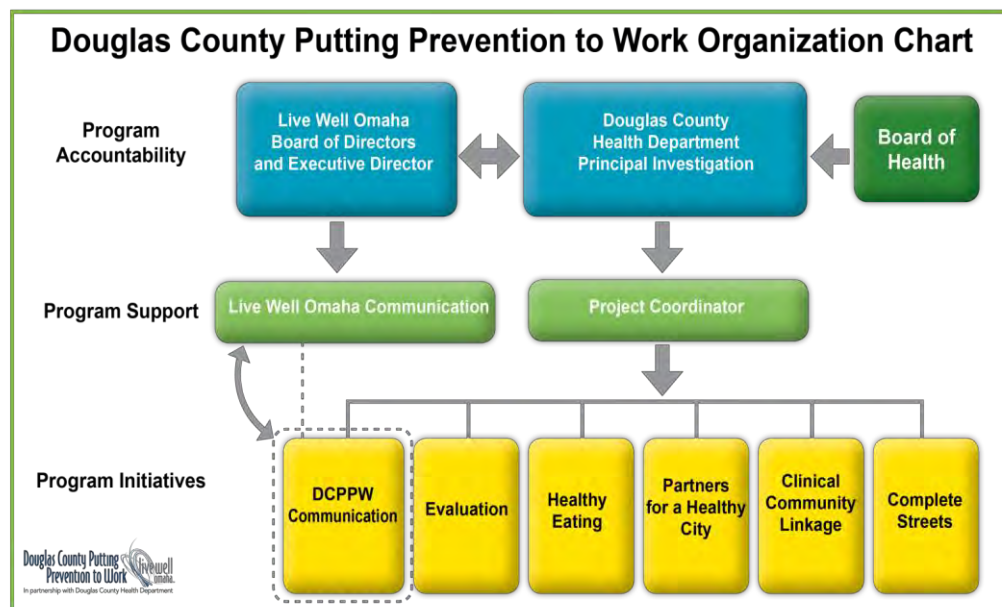
### Case Study: Nonprofit & Government Joint Venture

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

Under a Community Transformation Grant, the health department took on 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. It uses a collective impact approach to convene community stakeholders at an 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 existing **resources or the initiative's short-term** goals. To ensure planning for the future does not delay **the ACH's immediate** objectives, communities can think of the establishment of an ACH in two distinct phases with short-term goals and long-term goals, 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, in this report, we focused our 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 of these entities for community stakeholders to consider as they structure their ACH.

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

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

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 can 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 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.

When contemplating a government entity's participation in an ACH—particularly as the host of a Wellness Fund—one important consideration 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, an ACH may benefit from a government agency's existing infrastructure, including administrative and financial services and staff capacity. This infrastructure can minimize the time and costs associated with establishing this infrastructure from the ground up. In comparison to nonprofit organizations, however, government agencies lack the flexibility to engage in the innovative business ventures and transactions that the ACH's stakeholders may be interested in pursuing. Existing laws and regulations regarding government procedures may result in a government entity being slower to implement the ACH's 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. Although a for-profit entity may not be ideal for a Wellness Fund, a highly regarded for-profit could act as a Backbone 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. A nonprofit organization, government entity, or for-profit entity can carry out the Backbone functions. Communities 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 stakeholder must weigh this issue carefully, and each **stakeholder's legal counsel** should carefully review 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; such individual risk assessment plays **a role in an ACH's activities. An ACH may engage in various health interventions that carry** different levels of risk. The risks of any activity can vary based on the expertise and skill of the Backbone Entity's staff and/or the stakeholders who are 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 undertakes 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).<sup>21</sup> 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 limited liability company or corporation. However, an ACH is not a common business venture based on the ideas of a few individuals. Developing any governing documents (e.g., bylaws, conflict of interest policy, etc.) takes time.

If an ACH is structured as a joint venture, the stakeholders must come to an agreement of how each stakeholder should 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.<sup>22</sup> This also applies 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) is shared or transferred by indemnity, and comply with rules and regulations. Establishing a new legal entity to implement an ACH can shield stakeholders from liability, except in cases involving failure of the stakeholders to undertake fiduciary duties.<sup>23</sup>

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<sup>21</sup> Partnerships are another type of business entity, but are less favored and not as common with the development of a limited liability company.

<sup>22</sup> 26 USC 501(c)(3).

<sup>23</sup> See Cal. Corp. Code §5238(b).

Communities should consider a few key questions:

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

Several issues either are outside the scope of this report or require further research and deliberation by a community to determine the direction and activities of its ACH. We have identified the following issues:

- How do Medicare and Medicaid regulations affect the activities of an ACH? What waivers, if any, are needed to implement the proposed activities of an ACH?
- Could an ACH support experimental activities, such as clinical research or new technology?
- Could an established accountable care organization (ACO) evolve into an ACH?

These issues and potential activities may arise early or later in the development of an ACH, and it will largely depend on the evolving landscape of health care and public health. As communities determine the range of activities for an ACH to either undertake and/or financially support, legal and risk assessments are key fiduciary responsibilities.

## Framework for Developing an ACH

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 communities must work through, recommended foundational elements, and suggested benchmarks to help guide progress. These questions and considerations can be used to frame the discussion about ACH structure.

### *Foundational Elements of an ACH*

- **Core Components:** Each community should identify the organization(s) to serve in each of the following roles: Backbone Organization, Wellness Fund host, Governing Body, and Community Stakeholders. If the specific organizations filling one or more of these roles have not been confirmed, a community (or lead organization) should indicate the proposed strategy for engaging partners and securing commitments to participate in these roles.
- **Guiding Principles:** Each community should indicate how its proposed ACH structure meets the four guiding principles: Neutrality, Accountability to the Community, Flexibility, and Sound Governance. Here are key questions to evaluate adherence to these principles:



- **Neutrality**
  - What agreements exist to ensure that the ACH makes decisions in the best interest of the community and not to advance 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 staff in the Backbone Organization and/or Wellness Fund have the experience to manage compliance requirements?
- **Sound Governance**
  - What is the 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*

- Communities may formalize an existing collaboration through four structures: (1) a nonprofit organization; (2) a government agency; (3) a for-profit organization; or (4) a joint venture among existing collaborators. What is the **community's** plan to formally organize the 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 community create a new organization or utilize existing organizations to form an ACH and implement the programmatic requirements?
- Will the proposed ACH structure implement the Wellness Fund and Backbone operations under a single organization or through two or more organizations?
- Does the community anticipate creating a temporary structure for the purpose of obtaining seed funding (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-term and long-term structures proposed?

### *Benchmarks*

Ideally, communities will build a sustainable ACH with a sound governance structure and the ability to attract continued funding. However, the establishment of such a sophisticated entity takes time, and we recommend that communities develop a schedule of actions and benchmarks to keep the process moving forward. For the purpose of illustration, we have laid out several initial actions to implement and lead an ACH as well as a series of suggested benchmarks during



the course of a three-year period. These actions and benchmarks highlight the structures and agreements communities should put in place. It is important to note that the actual time period will vary with each community based on available resources and readiness, such as the amount of available seed funding, ability to leverage existing coalitions or collaboratives, pre-existing ground work on an ACH-type entity, identification of a Backbone Organization, and/or working relationship of stakeholders. For example, communities starting anew may find that gathering stakeholders takes longer than expected, while other communities may find that pre-existing ground work will allow for a condensed schedule of benchmarks. Nevertheless, we recommend communities establish benchmarks to create goals and accountability for moving tasks forward.

### Initial Actions

1. Develop a teaming agreement for an ACH between community stakeholders and key players.
2. Obtain letters of commitment from additional key stakeholders/partners from any existing collaborative(s) and the broader community.
3. Research and build upon the successes of an existing community collaboration.
4. Obtain support for the proposed Backbone Organization.
5. If applicable, utilize governance rules from an existing collaboration (desired).

### End of Year 1

1. Decide on the final structure of the ACH (integrated organization or two partner organizations to manage Backbone and Wellness fund operations). Provide list of agreements needed to create the structure, such as fiscal sponsorship agreement, fiscal services agreement, resource sharing agreement, and other agreements between the main entities. 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 several important points:
  - 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. Conflict of interest and anti-nepotism policies
  - 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 the following:
  - a. Budget for the operation of an ACH (Backbone and Wellness Fund activities) for the period following the Testing Grant
  - b. Identification of potential funding/resource commitments from stakeholders and the broader community to support activities beyond the Testing Grant period
  - c. A preliminary Sustainability Plan that examines various revenue sources (e.g., 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 the following:
  - a. Bylaws
  - b. List of Governing Body members
  - c. Committees
  - d. Conflict of interest and anti-nepotism policies
  - e. Fiscal sponsorship agreement, if applicable
  - f. Agreement with the Backbone Entity in the form of a grant or contract that sets forth the continued funding and services

***Note: The key decision makers may consider at this time whether 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. Confirm and solidify the following:
  - a. Written commitments from stakeholders regarding resources/funding for the 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 ACH activities 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, including activities of the new Work Plan.
3. Finalize Growth Plan to guide planning activities.

## Hypothetical Example of an ACH Structure

### *Government as Backbone Organization & 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 create an ACH to further this work and establish a constituent 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, 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:

1. The community foundation will fiscally sponsor the creation of an ACH Wellness Fund, manage any fiscal responsibilities, and provide other financial and administrative support services. Upon receipt of a grant or contribution, 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.
2. The County will undertake the Backbone functions (e.g., facilitate stakeholder meetings, monitor progress, track data, manage the communications, and undertake community outreach). The County will execute a contract or grant agreement with the community foundation to undertake the Backbone functions. With support from staff of the community foundation and hospital, County staff will take the lead on writing grant applications to obtain more funding.
3. **The hospital's** executive in charge 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.

### Initial Convening Phase

The team members will tackle the following during the initial convening phase:

- Finalize a teaming agreement between the County, the community foundation, and hospital that **defines each organization's role**.
- Demonstrate a track record of working with a broad group of community stakeholders and achieving successes associated with their collaborative efforts.
- Obtain letters of support from various stakeholders verifying participation in the ACH.

### 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, stakeholders support 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 as well as fiscal services and technical support for community investments.
- Develop a Governance Plan that includes the following:
  - 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, meetings, voting procedures, a community investment committee, and conflict of interest and anti-nepotism policies.
- 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 the ACH and its community health investments. The preliminary Financing Plan also identifies potential funding sources for supporting such activities (sustainability), such as support from government programs, contributions from stakeholders, 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) Conflict of interest and anti-nepotism policies are adopted.
- Establish an agreement between the community foundation and the County to continue funding for the Backbone services in the form of a grant or contract.
- Develop a three-year Financing Plan that contains written commitments from stakeholders for resource contributions and funding of the ACH, a proposed budget and Work Plan for activities, **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, and 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. 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.

## Conclusion

Communities across the country are experimenting with different models for structuring collaborative efforts, and the range of models we have analyzed indicate there is no single template for structuring an ACH. Each community has the flexibility to establish and structure the four core components of an ACH—Governing Body, Backbone Organization, Community Stakeholders, and Wellness Fund—in a way that most effectively maximizes local assets and resources. The recommendations in this report are intended to lay out key considerations to guide stakeholders of a community through the strengths and limitations of the various options available.

## 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

- is organized to improve the health of a population;
- partners with multiple sectors;
- is redesigning processes and systems to transform care and, in particular, to link clinical care with community prevention and social services;
- demonstrates results, both improved outcomes and evidence of utilization reductions and/or cost savings in the health care system;
- invests in prevention, including addressing causal factors in community health through policy and environmental change; and
- **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
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
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 *Stanford Social Innovation Review* in the winter of 2011, 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. There are five key principles of collective impact:

1. Common agenda
2. Shared measurement system (metrics)
3. Mutually reinforcing activities
4. Continuous communication
5. Dedicated Backbone organization

There is a great deal of overlap between the key elements for launching and sustaining a population health improvement initiative and the five key principles of Collective Impact.

## Appendix II

### Legal & Policy Experts

**Maureen Byrnes, MPA**, has more than 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 Milken Institute School of Public Health 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 served as Director of the West Coast office of Alliance for Justice as well as 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 the 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 at The 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 1978. 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 early 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 formation and 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 such as regular newsletter or email updates, social media presence, other multimedia (e.g., videos, infographics), earned media, and presence at relevant community events or conferences
- 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, such as individual donors, social impact bonds, other public/private partnership financing mechanisms, and hospital community benefits
- Monitor current events, relevant policies, and other issues that impact the ACH community in order to identify potential opportunities or barriers to the **initiative's** 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 by 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 commit to certain obligations determined **by an ACH's** founding members. However, 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 ACOs  
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 partners actively engaged in the ACH maintain and facilitate it. 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 directly informs the overall evaluation, the evaluation goes a step further by putting this 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; and 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 is 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 the following:
  - Mission statement
  - Shared vision, goals, metrics, and targets for the ACH
  - Short-term, medium-term, 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:
  - Alignment with overall goals of the ACH
  - 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
  - Potential for population-level impact
- Determine how and to whom available funds are 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 a third-party

### **3. Fiduciary responsibility**

- Draft and approve governance documents, including decision-making protocol, defined roles and responsibilities of each participant organization, and MOUs
- 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 the ACH serves

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

### ***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 ultimately move the needle on a particular health outcome.

### ***Nonprofit Organization***

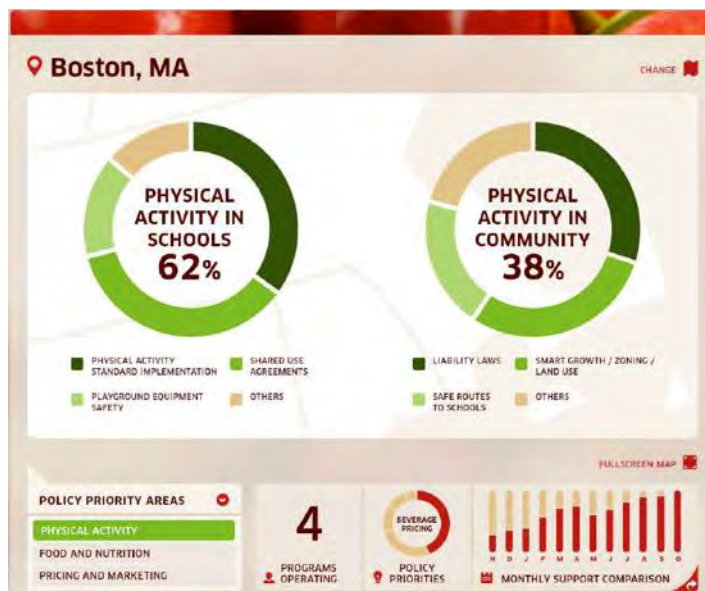
A term applied broadly to refer to a business entity that is formed as a public benefit corporation under California law and has been granted tax-exempt status by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. A nonprofit organization may be a public charity, private 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 plays 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 varies 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 securing 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 is 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 paramount. It ensures all partners involved are tracking toward the same outcome, measuring progress in a standardized way, and defining success by the same terms.

### **Triple Aim**

The interdependent goals of (1) improving the individual experience of care, (2) improving the health of populations, and (3) reducing the per capita costs of care for populations.<sup>24</sup>

### **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 and to whom funds will be disbursed, as well as what activities those funds will support.

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 to the following:

- 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.

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*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.*

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<sup>24</sup> *Supra*, Footnote 1.