

Considering Starting a 501(c)4?

CASE STUDIES



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THE ALLIANCE FOR JUSTICE ACTION CAMPAIGN (AFJAC) serves as the nation's leading resource on the legal framework for 501(c)(4) nonprofit advocacy efforts. AFJAC provides invaluable resources, training, and technical assistance to help nonprofit organizations and their donors advocate more efficiently and effectively.

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Introduction

Deciding whether—or when—to establish a 501(c)(4) organization is never an easy decision. Questions about purpose, scope, funding, perception, timing, and legal compliance all come into play. There are few definitive “right” and “wrong” answers. Each group needs to determine what is right for it.

Since private foundations are much more limited in their ability

to fund (c)(4)s, activists looking to start a (c)(4) should consider alternative funding sources, such as individuals, labor unions, or corporations.

In the Strategy and Discussion Guide, we explored the questions to ask. Here, we describe how three different groups, with different structures, needs, and pressures, answered the questions for themselves.

The Urgency of Now

CARING ACROSS GENERATIONS ACTION FUND¹

Caring Across Generations (CAG) advocates on the federal and state levels for **families, caregivers, people with disabilities, and older adults**. By employing online action, grassroots organizing, and narrative change work toward policy solutions, the campaign seeks to shift how the U.S. values caregiving so all Americans can “live and age with dignity and independence.”

Established in 2011 by Ai-Jen Poo and Sarita Gupta—who lead the National Domestic Workers Alliance and Jobs with Justice, respectively—CAG’s staff of nine relies greatly on its field partners at the state level. Rather than spend the time and resources on the process of becoming a 501(c)(3) public charity, the founders opted for a fiscal sponsor, Bend the Arc.

Caring Across Generations uses three strategies to accomplish its goals:

1. Organiz[ing] and develop[ing] policy on the local, state, and federal levels to expand care options for seniors, people with disabilities, and their caregivers while improving the quality of home care jobs.
2. Creat[ing], seed[ing] and distribut[ing] caregiving narratives to shift cultural values around aging, caregiving and intergenerational connection
3. Run[ning] online and on-the-ground campaigns to reach and mobilize broad and diverse audiences

Lobbying, community organizing, research, administrative advocacy, and litigation, all of which can be accomplished by (c)(3) public charities, are some of the tactics used to advance these strategies. CAG currently runs campaigns urging the U.S. presidential candidates to focus on care issues; push Congress to protect and expand Medicare,

1. Thank you to Kevin Simowitz, Political Director, Caring Across Generations

Social Security, and Medicaid; and force states to implement new rules to extend workplace protections to home health workers.

CAG regrants to its field partners, such as Maine People's Resource Center (MPRC) and Michigan United, to ensure advocacy is accomplished at the state level. Many of these key field partners have (c)(4) affiliations, and thus can participate in voter engagement activities beyond GOTV. For instance, leading up to the 2014 election, Maine People's Alliance, MPRC's (c)(4) arm, attempted to appeal to swing voters. CAG's efforts were hampered in that it could not fund such persuasion conversations within its (c)(3) status. Consequently, CAG felt it was not supporting its partners effectively and comprehensively.

Despite its status as a robust and successful movement, CAG realized it could only go so far in mobilizing voters and meeting the needs of its field partners this election year without an affiliated 501(c)(4). In particular, the candidates' "scorecard" on caregiving issues was vital to the core principles of the campaign. Due to the advocacy successes of CAG and the movement it supports, candidates at the federal and state levels were beginning to address care issues,

and CAG wanted to capitalize on this momentum by educating candidates about the key issues, and encouraging them to support those issues, though they can't highlight who does. A (c)(4) component would enable the campaign to go much further to connect the dots—between an organization's position, the candidates' views, and the importance of voting. (C)(4)'s can be "sharper" and more direct in their communications, and their impact on voters is more visible.

However, there were an equal number of "cons" to consider. While a (c)(4) would allow CAG to expand the scope of permissible activity, establishing a new organization has its challenges. The campaign had to weigh whether a (c)(4) was something they need for their organizational infrastructure, or simply a time-limited benefit. Two staff members had worked at (c)(4)s previously, and they worried about the administrative capacity needed to create and sustain the infrastructure to operate both a (c)(3) and a (c)(4). The costs were balanced against missed opportunities to push for pro-caregiving policies at the state and federal level. For example, CAG often got stuck being left out of certain meetings or coalition spaces because of its (c)(3) status. Additionally, the staff felt frustrated that they could

not support their 501(c)(4) field partners in meaningful ways during the election year to connect CAG priorities with candidates. There were frustrations at the federal level, too: when one of the major presidential candidates took a public position on caregiving, Caring Across was unable to highlight her work to its (c)(3) list.

In order to make the decision, CAG required an alignment of certain factors for establishing a (c)(4) to make sense. The political director had been thinking about the need for a (c)(4) for about a year, but as the political climate and their field partners' needs changed, establishing a (c)(4) seemed right and the benefit outweighed the compliance burden and cost. In fact, it "seemed urgent." The urgency was helped by a donor who wanted to fund (c)(4) work. Those opportunities don't happen often enough—and when they do, advocacy groups may choose to leverage them. Taking into account the capacity and infrastructure concerns, CAG opted to house its (c)(4) arm within the (c)(4) of its fiscal sponsor, Bend the Arc Jewish Action. Their desire to be up and running immediately—partly to weigh in on the 2016 election—meant that the campaign couldn't answer all the big strategic questions up front. Questions that didn't require an immediate

answer, like how the 501(c)(4) will specifically influence national policy not only in election years, but in off-years, will be answered over time, and in fact the answers (and probably even the questions) will evolve as the staff become more attuned to the capacity of a (c)(4).

Although the upcoming election spurred the timing of establishing Caring Across Generations Action Fund, the primary purpose of the (c)(4) is non-electoral. Its primary purpose is to support the advocacy activities of its field partners. It will make lobbying grants to its (c)(4) state partners to push legislation and may also do some lobbying at the federal level (to complement the lobbying done by CAG). Now, with the power of a (c)(4), 2016 will look different for CAG because it will be able to reach out to a different set of voters with the intention of shifting their vote based on care issues.

As a (c)(4), Caring Across Generations Action Fund will be able to expand the reach of its sister organization, Caring Across Generations. Kevin Simowitz, CAG's political director, noted that while there is a lobbying component, creation of the (c)(4) was really about developing the political power. Although CAG didn't necessarily feel the pressure to enter the par-

tisan political realm with a (c)(4) when they established themselves five years ago, it became clear to them that (c)(3) advocacy was not enough to push their agenda—they also need the (c)(4) capabilities to support their field partners in increasing accountability from candidates and elected officials. The (c)(4) will not endorse candidates itself, focusing more on supporting the field partners to do political work at the state level.

The (c)(3) and (c)(4) organizations share staff, and training for all staff has been critical to “protect the (c)(3)” —to ensure no (c)(3) resources are spent on (c)(4) political activity or that any (c)(4)

political activity is attributed to the (c)(3). While all staff should understand the rules, the organization recognized it is more critical for some positions than others. For instance, the director of development and communications staff need to have a clear understanding of the boundaries between the two organizations, to avoid reporting on (c)(4) work in a (c)(3) grant report or putting out a press release touting the (c)(4)'s political activities on (c)(3) letterhead.

The Caring Across Generation Action Fund is still in its early stages, but the campaign recognized an opportunity to expand its impact, and seized it.

To (c)(4) or Not (c)(4)

THE HEALTH CARE FOUNDATION OF GREATER KANSAS CITY EXPLORES THE QUESTION²

The Health Care Foundation of Greater Kansas City (HCF or Foundation) is a 501(c)(3) public foundation based in Kansas City, Missouri. It was established by then-Missouri Attorney General Jay Nixon after the sale of a nonprofit health care provider to HCA, a for-profit healthcare system, in 2003. It has over \$518 million in assets, and provided almost \$19 million in grants in 2014. The Foundation's mission is to “provide leadership, advocacy, and resources to eliminate barriers and promote quality health for uninsured and underserved” in its service area in parts of Missouri and Kansas—Kansas City, MO, and Cass County, Jackson County, and Lafayette County in Missouri and three counties in Kansas: Allen County; Johnson County; Wyandotte County.

Advocacy is an integral part of the Foundation's purpose. In fact, according to the Foundation's values and ethics, “We will advance the public health interest of uninsured and underserved individuals who live in our service area. HCF supports and participates in activities that inform relevant public debate and policy development, foster healthy behaviors and environments, and promote more effective systems of care for the target population.”³ The Foundation has a policy agenda, policy-focused staff, and a public commitment to advocacy.

As a public foundation (legally, a public charity), the Foundation can—and does—spend money for lobbying. In fact, over the last three years (Forms 990 for 2012–2014), it spent more than \$2,450,000 on lobbying, mostly by making grants

2. Thank you to Jessica Hembree, Program and Policy Officer, Health Care Foundation of Greater Kansas City

3. <http://hcfgkc.org/about/who-we-are/mission/>

to other organizations for lobbying purposes.

In 2014–2015, the Health Care Foundation of Greater Kansas City explored the idea of establishing a (c)(4). The Foundation is a strong health-care advocate and wondered whether it could engage in more advocacy through an affiliated (c)(4). Several factors combined to spark the exploration. 2014 was a time of transition for the Foundation, as a new CEO joined after the original CEO retired after almost 10 years. The political climate in Missouri and Kansas made it difficult for the Foundation to accomplish its mission and find victories in public health policy battles. The Foundation also bumped up against its lobbying limit when it funded a tobacco tax ballot measure in 2012. After hearing about the Colorado Health Foundation's creation of a (c)(4), HCF staff wondered if a similar (c)(4) that could make unlimited lobbying expenditures and would make sense for Kansas City.

While intrigued by the notion of establishing a (c)(4), HCF's staff and board did not want to make the decision carelessly. It knew it could legally establish a (c)(4), but

wasn't sure whether it *should*. The Foundation grappled with several fundamental questions: **Will a (c)(4) divert funding from existing grantees? Will a (c)(4) affect the Foundation's and its grantees' reputations and credibility? Will grantees feel pressured to align their work with the (c)(4)'s priorities? Who else would fund the (c)(4)? How closely associated with the foundation would be the (c)(4)? What would be the scope of the (c)(4)'s programmatic activities?**

The Foundation didn't want to make the decision in a vacuum—it wanted input from not just the board and staff, but from other funders, grantees, community leaders, other advocacy groups, existing (c)(4)s, and others.

Stakeholders were invited to participate in a focus group. The Foundation said “While we recognize that this is something that we are legally able to do, we want to ensure it is something we should do, something that would complement the work that you are doing.”⁴ It asked these stakeholders to “share your thoughts on the gaps in advocacy for health issues and

4. Letter from Dr. McCandless to invited stakeholders.

whether a 501(c)(4) entity might be uniquely able to fill those gaps.”⁵

The Foundation had conversations with over 100 grantees and non-grantee advocacy organizations, peer funders, policymakers, and other community leaders. Many conversations were had individually, and some insight was gained through focus groups conducted by Alliance for Justice. The goal of the community engagement was to explore several key issues:

- Current advocacy activities of interviewees
- Initial reactions to an HCF-related 501(c)(4)
- Specific gaps such an entity could fill
- Concerns
- Structure, scope, and potential issues for the (c)(4)

Stakeholders identified several reasons to create a (c)(4), including:

- There is no advocacy organization with a dedicated focus on public health issues. Many thought a new “health-focused (c)(4)” could do things differently to move public health policies forward.

- Approximately 1/3 of interviewees thought that a new (c)(4) should “go big or go home”—if created and should use “every possible tool” in the toolbox to carry out its mission, including political activities such as candidate endorsements and candidate ratings. In fact, some thought a new (c)(4) should be created only “if the organization will take full advantage of the designation.” Some noted that “without a change in the make-up of governing bodies, (c)(3) advocates are struggling for relevance. A (c)(4) offers a potential path to help “change who sits in those chairs.”
- Ballot measures are becoming much more common in Missouri, and ballot measure campaigns are very expensive. “Having sophisticated capacity dedicated to both supporting and opposing ballot initiatives is a need that will continue to grow.” A well-funded (c)(4) could address this need.
- A new (c)(4) could convene existing (c)(3)s working on health issues and amplify their work.
- Many stakeholders expressed a hope for a new (c)(4) to support the lobbying work of existing

5. Id.

groups, which could “bolster the entire field of advocacy organizations.”

Stakeholders also identified several reasons not to create a (c)(4), including:

- Changes in how HCF is perceived. There was no consensus about whether the changed perception would be negative and damage the Foundation's reputation, or just different from the current perception of the Foundation's nonpartisanship. During focus groups, participants repeatedly described HCF as a balanced, neutral, trusted voice that is “above the fray.” Some wondered whether a more politically active (c)(4) would enhance the Foundation's reputation, but others raised concern that the Foundation would be seen as partisan. However, others were not as concerned by this since health access is perceived as a “liberal” issue already. And some acknowledged they weren't sure how (c)(4)s are perceived in the area. Some recognized that this perception may depend on how closely affiliated HCF would be to the new (c)(4) (i.e., sharing staff, similar name, overlapping board members), and whether the (c)(4) were to work at the local rather than state level.
- While there may be a gap in advocacy, is it necessary to create a new organization—and in particular, for HCF to create a new organization? By having a funder establish a (c)(4), would that create more of a power imbalance between a funder and its grantees? Some current grantees wondered whether they would feel pressure (even if not explicitly stated) to align their work with the positions of the (c)(4)s, or would foundation funding be at risk if a grantee opposed a position of the (c)(4)? And, many preferred that HCF provide more funding to existing groups for advocacy, rather than establish a new organization. Many grantees worried that a new (c)(4) would lead to less HCF for their existing work), questioned whether a (c)(4) dedicated to advocacy would detract from funding for needed direct services, or feared that they would be competing with the (c)(4) for funding. In addition, some worried whether lawmakers or other funders that disagreed with the (c)(4)'s positions would perceive HCF's grantees differently. After all, if HCF is seen as partisan based

on an affiliated (c)(4), would the same be true for its grantees? The grantees had no answers for these questions, but felt the need to raise and explore them.

- Would the new (c)(4) have enough resources to make it worth it? Those familiar with establishing affiliated organizations recognized the administrative burden and cost of operating two organizations. Without enough funding to do the work “very well, not watered down,” would the organization be effective enough to make it valuable?
- Doubt about whether HCF was prepared to “push the envelope” and was “really prepared to play in [the political] space.”

Ultimately, the board decided not to pursue an affiliated HCF. There was no consensus among the stakeholders about whether the political activity was appropriate for HCF. There was more overall comfort with a (c)(4)’s increased lobbying capacity—either the (c)(4) lobbying directly or making grants to existing organizations—than the election-related activities. Through the exploratory process, HCF realized that it was not reaching its potential as a public foundation and could do so much more than it was already doing. Some common gaps

that emerged during the conversations could all be done by HCF as a (c)(3) public foundation:

- Convening grantees for collaborative advocacy
- Public forums and other places for civic discourse on health
- Enhanced grantmaking support for advocacy activities
- Expertise, training and other assistance for grantees who wish to advocate.”

While the Foundation decided not to establish a (c)(4), it did not back away from its commitment to advocacy. HCF recognized it would rather maximize its advocacy as a c3 funder and advocate than trying to do too much with a (c)(4).

The Foundation’s President/CEO, Dr. Bridget McCandless, sent a letter to all those who participated in the community engagement process. As she explained:

This process has reinforced the value of the advocacy tools already at our disposal as a 501(c)(3) public charity. Federal IRS regulations allow nonprofits to engage in the policymaking process and, while 501(c)(3) entities are constrained in some ways, there are so many advocacy tools already at our disposal. As a result of this process, HCF recently made the 501(h)

election, an alternative method for tracking our advocacy and lobbying activities.⁶ The 501(h) election offers public charities much-needed clarity for tracking lobbying expenditures and will enable HCF to more accurately track our lobbying expenses.

Our deliberations have also highlighted the incredible depth of health advocacy already occurring throughout the Kansas City area, much of it by HCF's committed partners and grantees. In the

midst of an ever-evolving political landscape, HCF will continue its journey of further enhancing our own advocacy efforts and better supporting the work of our nonprofit partners. And while the political tools available to 501(c)(4) entities are not the right choice for HCF, we remain committed to raising up the voices of the uninsured and those who serve them, to creating space for collaborative thinking, and to creative problem solving.

6. Public charities may lobby, but must choose one of two standards by which their compliance with the Internal Revenue Code—either the 501(h) expenditure test (commonly referred to as a 501(h) election) or the insubstantial part test. Churches (and other houses of worship) must use the insubstantial part test. The insubstantial part test is the default, meaning that until and unless a public charity elects to use the 501(h) test, it is using the insubstantial part test.

The Colorado Health Foundation and the Birth of Healthier Colorado⁷

With a mission of improving the health of Coloradoans, the Colorado Health Foundation (TCHF) has long recognized that changes in government policy need to accompany traditional grant-making to bring that dream to fruition. To promote improved health policies alongside grant-making, the Foundation had developed an in-house policy team and a policy committee of its board of directors to further the Foundation's mission through advocacy and lobbying. Such activities were permissible for TCHF because it operated as a 501(c)(3) public charity, and the Foundation played a key role in advocating for several policy changes that produced tangible improvements for the health of Coloradans.

However, in 2011, a series of events at the Foundation began to change how it could engage in policy and advocacy activities. During that year, the Foundation decided to

diversify its endowment by selling a 40 percent stake in a large network of for-profit hospitals. As a result of this sale, TCHF would no longer satisfy the needed percentage of support from the general public necessary under IRS rules to maintain its tax status as a 501(c)(3) public charity. The Foundation had a window of five years between 2011 and 2016 to transition to a different tax status. Transitioning to become a 501(c)(3) private foundation made the most sense for TCHF, as all other possibilities would require intensive fundraising efforts. However, that transition would require the Foundation to change its advocacy approach. Once TCHF became a private foundation, federal tax rules meant that the Foundation could continue to engage in advocacy but could no longer lobby.

Having enjoyed substantial victories from the Foundation's past advocacy and lobbying efforts,

7. Special thank you to Kyle Legleiter, Policy Director, The Colorado Health Foundation and Jake Williams, Executive Director, Healthier Colorado.

TCHF's board and leadership were committed to seeking to continue a strong advocacy role after its tax status transition, even if it needed to find new ways to influence policy. It had a five-year transition period before the foundation officially became a private foundation and would face tax penalties on lobbying expenditures. The board used that time to explore options. Foundation officials soon discovered an opportunity to fund a separate, politically-oriented nonprofit operating under the 501(c)(4) code, allowing for lobbying and direct work on political campaigns where the public could vote on health-oriented issues.

To investigate this opportunity, Foundation leadership worked closely with outside legal counsel to explore three key questions:

1. Can we create a (c)(4)?
2. If yes, should we create a (c)(4)?
3. If yes, how should we do it?

Answering the first question, with extensive counsel, was relatively easy. YES, a public charity can create an independent or an affiliated (c)(4).⁸ The second and third questions—the non-legal, strategic

questions—were much more difficult and required numerous conversations and extensive research, with the board, legal counsel, other funders, and stakeholders.

First, the foundation conducted a gap analysis of the advocacy field for health issues in the state, exploring strengths and weaknesses. The advocacy gap analysis explored a variety of areas, including:

- Targets for advocacy
- Issue focus
- Tactics

The analysis found that the field, collectively, was good at moving policy at the state legislative and regulatory level, but lacked advocacy capacity to influence local-level policy decisions. In terms of issue focus, not as much advocacy was being done for all policy issues of interest to TCHF, such as social determinants of health. And, as to tactics, advocacy groups were doing a good job with issue research, issue analysis, and direct lobbying. However, there were noticeable gaps in conducting grassroots lobbying/engagement, candidate engagement, and holding decision-makers accountable.

8. In *Regan v. Taxation with Representation*, 461 U.S. 540 (1983), the Supreme Court ruled that a 501(c)(3) organization may establish a separate 501(c)(4) to expand its capacity to lobby beyond the limited expenditures allowed for 501(c)(3)s.

Moreover, Colorado has a long history of making fiscal and policy change through statewide and local ballot issues, and the state did not have an existing health-oriented (c)(4) with the expertise and financing to take on those types of campaigns.

Once the gaps were identified—both in terms of tactics, issue focus, and targets—the next question to be answered was: “Is a (c)(4) the appropriate vehicle to fill these gaps?” The Foundation recognized that a (c)(4) wouldn’t fill *all* the gaps, but could be a catalyst in addressing many of the tactical gaps. 501(c)(3) public charities often engage in less grassroots lobbying due to the legal rules (the lobbying limits are lower for grassroots lobbying than for direct lobbying) and the substantial capacity commitments such activities demand.

The Foundation was looking for a way to preserve its policy influence while supplementing the advocacy capacity of existing organizations. It did not want to duplicate or compete with its grantees, nor did it want the creation of a new advocacy organization to be seen as criticism of the grantees. It had lots of conversations with grantees to explore the prospect of TCHF establishing a new (c)(4) and making

a grant to support its initial work. Most grantees thought having a new (c)(4) would be helpful, but also wanted to make sure the (c)(4) was used to leverage its resources for maximum social impact and policy change. The grantees did not want the new entity to duplicate or compete with existing organizations’ areas of strength. For instance, they recognized that having the new (c)(4) engage only in (c)(3)-permissible activities would be a waste of valuable (c)(4) resources and would unnecessarily compete with the existing (c)(3)s for funding.

Regardless of whether it ultimately established a new (c)(4), the Foundation was committed to supporting its 501(c)(3) grantees’ advocacy efforts. Once it transitioned to a private foundation, the Foundation would no longer be able to make grants earmarked for lobbying.

Wanting to provide the most flexibility to its grantees while adhering to the more restrictive private foundation rules, the Foundation chose to provide general operating and project grants to its grantees that engage in advocacy.

The staff met regularly with the board, reviewing the legal rules and the gap analysis. The tactical analysis was a real selling point for

the board. Unlike other organizations that can leisurely make this decision, the foundation had a “ticking clock”—if it wanted to provide funds to a (c)(4) that could be used for lobbying, it needed to do so before becoming a private foundation in 2016. The foundation board, based on all the information it had, decided to establish the new (c)(4).

Making the decision *whether* to establish a (c)(4) was not the end of the process. The board and staff had to determine how to do so, and the relationship the new organization would have with the Foundation. Again, outside counsel was critical to determining the best structure. The Foundation’s outside counsel mapped out various models, from staff and board overlap to completely separate organizations. There were not many comparable examples to look for as guidance in the health advocacy field.

The board needed to determine how closely associated the two organizations should be. In addition to legal considerations, they discussed the reputational risk to the Foundation if the (c)(4) were seen as becoming too closely affiliated with an intensely controversial effort or divisive campaign. The more closely associated (with shared staff, office

space, overlapping board members, dictates on policy direction, similar names, etc.) the organizations, the more likely policymakers or the public may associate the political work of the (c)(4) with the Foundation’s activities.

Ultimately, the board decided to create the organization as an entity that was fully separate and independent from the Foundation. It wrote the mission statement and bylaws for the (c)(4), and appointed its initial board of directors. The Foundation participated in the selection of the (c)(4)’s first Executive Director. The organizations have no shared staff and are even based in separate office locations. The names differ, too. The Colorado Health Foundation is the private foundation, and Healthier Colorado is the newly formed (c)(4). The Foundation’s board, which has always been nonpartisan, was concerned about potential political activity by the (c)(4) and determined that supporting/opposing candidates was not the best role for the (c)(4). As a result, the (c)(4)’s bylaws prohibited it from participating in any political campaign on behalf of or in opposition to any candidate for public office.

The Foundation needed to make the grant to Healthier Colorado before the Foundation transitioned

to its new private foundation tax status. Under its 501(h) election, the elective standard that provides an expenditure cap and clear definitions of lobbying, the Foundation could spend no more than \$1 million on lobbying each year. Therefore, it revoked its (h) election and returned to the insubstantial part test, under which it could spend more than \$1 million on lobbying. The Foundation determined that a \$5 million grant for each of the three window years would be an insubstantial part of its activities, and decided to make those grants. Again, the Foundation worked very closely with its outside counsel to ensure it fully complied with the legal rules. The initial grant agreement required the (c)(4) to invest some of the funds to create an endowment. In its first year, the (c)(4) had general operating revenue of \$500,000. Healthier Colorado would need to raise money from individuals or other non-public charities if it wanted to engage in political activity at the individual candidate level.

The staff of both the new (c)(4) and the Foundation had to manage expectations about what the new organization could do. To complement the seed funding from the Foundation, Healthier Colorado began to raise additional revenue after about a year. Although a

(c)(4) could do more advocacy, it did not have unlimited funds, resources, and reach. It could not tackle any and all policy efforts, but needed to be disciplined about its scope. Therefore, after analysis of health data and surveying the capacity of the field and community concerns, Healthier Colorado narrowed its focus to three broad areas: health disparities (especially on the basis of socioeconomic status, race and geography), mental and behavioral health, and obesity and related chronic disease.

There were also two main areas Healthier Colorado identified as gaps in advocacy that needed to be filled: adding field components to statewide legislative and regulatory campaigns, and affecting local policy change. The existing field of health advocates had lobbyists at the Capitol, but lacked significant field capacity to add pressure or provide cover for decision-makers. Therefore, Healthier Colorado used petitions, activist events, and media to mobilize thousands of Coloradans in support or opposition selected health policies.

As TCHF found in its original gap analysis, Healthier Colorado recognized that local policy was largely under-utilized territory in advancing health policy. It began to fill this void by elevating health issues

in local elections in Denver and Pueblo through candidate questionnaires, dedicated websites, earned media, and telephone town halls. Healthier Colorado also answered the call of local activists in Boulder in leading a campaign to pass what was the second voter-approved sugary drinks tax in the nation. Finally, it launched Partnerships in Local Advocacy, a program that invites any individual or organization to request resources necessary to run a local public policy campaign to improve health. Through this program, Healthier Colorado became engaged in a number of different local campaigns around the state.

Healthier Colorado also chose to make two fundamental enhancements after it began operating independently. First, after about a year in existence, it created a (c)(3) public charity affiliate, the Fund for a Healthier Colorado. The primary purpose in doing so was to preserve the (c)(4) dollars by limiting their use to their legally exclusive purposes. As not every single activity performed by Healthier Colorado required (c)(4) dollars, however, they could appropriately cover some operational spending with (c)(3) funds. Creating the (c)(3) also opened up a far greater number of potential funders, as some institutional funder will not

or cannot fund 501(c)(4) organizations and many donors value the tax-deductibility of donations to 501(c)(3) organizations.

In October of 2016, it made a second enhancement by modifying the articles of incorporation to allow for direct engagement in political candidate elections, including the ability to support or oppose candidates. This restriction was originally placed in Healthier Colorado's articles of incorporation by TCHF for reasons including the fact that endowment funds from the foundation could not legally be used for such activity. As Healthier Colorado had since raised other 501(c)(4) funds, this type of activity became viable. Healthier Colorado also believed that this ability would bolster its access and influence with decision-makers. Every other major health interest—hospitals, health insurance, pharmaceuticals, health professionals—engaged in this activity, and Healthier Colorado felt that consumers deserved the same tool at their disposal.

Again, while creating and funding Healthier Colorado was a huge investment in advocacy for the Foundation, it was not its final investment. The Foundation continues to fund a variety of 501(c)(3) organizations that engage

in advocacy, and in fact wants to “up the game” of its (c)(3) grantees to complement the work of the (c)(4). It recognizes that the (c)(4) will be successful only with strong (c)(3) partners. As Kyle Legleiter, policy director at the Foundation says, “Advocacy gets you 90 yards. Lobbying gets you into the end zone.” While the (c)(4) tactics are important, they cannot replace the educational and advocacy work that (c)(3)s are fully permitted to do. Even if private foundations themselves cannot lobby, they need to invest in the capacity for others that can do so.

For the Colorado Health Foundation, spinning off the new (c)(4) was the right decision. They have no “buyer’s remorse,” and have been open about their process. The organizations did have a period of growing pains, where they were figuring out how to operationalize the relationship. For instance, the Foundation staff and board tended at first to refer to Healthier Colorado as “our (c)(4).” The staff of each organization grappled with how often and in what detail to communicate about their policy work. These are common issues that many organizations must sort through in order to operate effectively.



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