Building and Maintaining Strong Foundations

Creating Community Responsive Philanthropy in Nonprofit Conversions

Consumers Union of U.S., Inc. and
Community Catalyst, Inc.

Acknowledgments

This handbook, an update and expansion of Building Strong Foundations issued in 2000, was the creation of a team of writers and contributors. Deborah Cowan, James Whitley and Phillip Gonzalez at Community Catalyst and Elizabeth Imholz, Laurie Sobel, and Scott Benbow at Consumers Union, together with consultant Debbie Greiff, developed much of the new content in case studies and other materials drawn from their work with community advocates and new health care foundations. The original edition of the handbook was edited by Harry Snyder of Consumers Union and Deborah Cowan of Community Catalyst from contributions of earlier Community Health Assets Project staff, including Julie Silas, Lynn Lohr, and Kathleen Lee. Other contributors to the original publication were Kim Comart, Alan Pardini, and Julie Kenny Drezner. William Oman produced countless review drafts and Minerva Novoa made it all readable for final production. Many community members and advocates contributed their perspectives on forming and working with new health foundations. In addition, foundation staff and board members helped the project team understand how they interpret and give operational expression to the mandate of community responsiveness and accountability.

The publication was underwritten by grants from the Ford Foundation, which has funded the joint efforts of Community Catalyst and Consumers Union on the formation of new health foundations since 1997. This work to improve philanthropic practices is a component of the Community Health Assets Project which is also supported by the W.K. Kellogg Foundation.

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INTRODUCTION

Our nation has a proud history of communities and individuals coming together to create service organizations and resources to meet needs that businesses and government ignore. Private, non-governmental organizations such as churches, hospitals, museums, co-ops, food pantries, health insurers, community clinics, and credit unions are some of the organizations that make up a vibrant part of our society and economy, between business and government. These organizations are formed as nonprofits and are designed to help the community they serve, not to make profits for investors. They are governed by boards of directors, also known as trustees, who are usually volunteers.

The policies and laws that have been created to encourage and support nonprofits reflect the high value this nation places on the tradition of communities working together to meet their own needs. Nonprofits are private, not government, organizations. Because they receive private donations, in the form of monetary gifts and volunteer time, and government support, including full or partial tax-exemption, their nonprofit charitable assets must be dedicated to charitable purposes. Trustees do not own the assets of a nonprofit. Instead, they have the job of protecting such assets and ensuring they are used effectively to serve the needs of the community.

Nonprofit Service To Profit-Making Business

Across the country, nonprofit health organizations such as hospitals, HMOs, and insurance companies are reorganizing by means of mergers, acquisitions, nonprofit consolidations, and alterations of corporate structure from nonprofit to for-profit enterprises. These transactions are called "conversions." In conversions two vital community resources are at stake:

- Health services such as indigent care, emergency room coverage, and other services that are critical for maintaining healthy communities; and
- Nonprofit or charitable assets that have been built by and on behalf of the public.

As conversions go forward, consumer and community advocates are working hard to see that the public interest in nonprofit organizations is well protected. The Community Health Assets Project, a partnership between Consumers Union and Community Catalyst, works to help community groups, state regulators, the media, and the public understand how to protect these essential health resources.

The Project provides technical assistance, strategic consultation, legal and policy analyses, and public education and training to organizations and individuals who are working to protect local health resources. In many transactions community advocates have opened conversion proceedings to public scrutiny, participated in hearings, raised public awareness of conversions, and helped protect access to health care.

Among the most pressing issues facing advocates in a conversion are whether the transaction is in the public interest and, if so, the determination of what will happen to the nonprofit assets after conversion. The sum of money at stake is enormous. In most cases the assets are preserved in a health-related foundation in order to continue meeting community health needs. By 2003, the amount of nonprofit assets set aside in foundations following conversion activity had reached more than $16 billion, placed in over 165 healthcare foundations.[1]

This handbook addresses how community members and consumer advocates can get involved in the creation and ongoing operation of new health foundations in order to address the health needs of their locality, state, or region. It identifies the primary components of good practices in building and maintaining foundations, focusing on:

- A **planning process** that engages, in a substantial way, the perspective and expertise of consumers and health care advocates;
- A **mission statement** that dedicates the assets for purposes similar to the converting nonprofit;
- Criteria that ensure the **governing board** will have the appropriate expertise and experience and will be reflective and representative of the **diversity** of the community served;
- A **board selection process** that is deliberate, open, and accessible to health care consumers and the broader public, and is free of any conflict of interest; and
- An **organizational structure** that is open and accountable to the public, coupled with practices that offer many opportunities for community input and ongoing, meaningful community involvement.

While the discussion is focused on health care conversion foundations, these principles can be used just as effectively to build community accountability into the creation or re-structuring of any foundation. They also apply equally to foundations from conversions in other industries as well, such as those in the student loan secondary market.

Since the first edition of this handbook was published in 2000, the Project has advised a number of foundations and community groups that used the original edition as a guide during formation and start-up. This revised and expanded edition incorporates important lessons learned as conversion foundations have gotten off the ground and begun significant grantmaking in their communities. Thus, the handbook has been renamed "Building and Maintaining Strong Foundations." It concludes with strategies community groups and advocates can consider in working with conversion foundations. These same strategies may also be an effective way to hold any established foundation accountable in the public interest.

The ideas in this handbook are grounded in the collective experience of Consumers Union and Community Catalyst, working with community partners on conversion transactions in more than forty states. In some cases, the handbook identifies alternatives and options that draw on the ideas of forward-thinking, established funders as well as advocates who are pushing beyond conventional practice, recognizing the uniquely public nature of conversion foundations. The Project team hopes this handbook will provide you with the tools to get answers, get involved, and get results.

From Nonprofit Health Organization to Foundation: The Basics

In a nonprofit health organization, the board members, also known as trustees, do not own the assets. Rather, board members serve as stewards of the public trust. As stewards, they have a legal duty to protect the assets that have been permanently dedicated for public benefit purposes. The financial value of a nonprofit organization results from a pattern of broad community support, including the benefits of tax-exemption. Support for nonprofits also includes donations from individuals, government and charitable grants, and contributions of services, time and expertise, often over many years and from many sources. Because the public is the beneficiary and has participated in creating the value of a nonprofit health care institution, it has a significant stake in whether a conversion is approved and how the nonprofit's assets will be used following the sale or conversion to a for-profit corporation. This public interest creates an obligation to ensure community participation in all aspects of foundation planning, development, and operation.

Community involvement in all stages of the review and planning process is crucial to educate the public about the transaction and to identify and address concerns the community may have about it and its health impact. A company's promise of a new foundation to serve community health needs should not divert attention from a critical examination of the transaction itself. Some communities may choose to oppose the conversion if they deem that it does not serve the public interest. This handbook, however, focuses on situations in which the conversion has been authorized and charitable assets will be, or have been, transferred to a new or existing foundation. In these cases, continued public participation is essential to ensure that the new guardians remain responsive and accountable to the community.

Under long-established legal principles, reinforced by recent statutes in many states, nonprofit assets may not be deflected from their original nonprofit mission when a nonprofit organization merges with another nonprofit or converts to for-profit status. Charitable assets intended to benefit the public may never be used to generate profits for any for-profit corporation's private interest-holders. Instead, the charitable trust doctrine requires that a nonprofit corporation's assets – including the value accrued over time of all donations, gifts and revenues generated by the organization – continue to be used to fulfill its original public benefit or charitable purposes. This core obligation continues even if the nonprofit corporation changes its purposes, restructures its operations, dissolves, or transfers its assets to another organization. When a nonprofit health care organization can no longer meet its charitable trust obligations, the *cy pres* doctrine[2] requires that the assets be used for a charitable health purpose that is as close to the original purpose as possible.

The solution most commonly selected to preserve nonprofit health assets consistent with the charitable trust and *cy pres* doctrines is to create a new grantmaking foundation that will continue the charitable health purposes of the former nonprofit. As mentioned earlier, more than 165 new health foundations have been created as a direct result of conversions.[3]

In some conversions, rather than forming a new foundation, assets are transferred to an established community foundation or used to form a supporting organization to an existing public charity. In such circumstances it is critical to provide for adequate public participation to shape the funding program, decision-making structures, and foundation governance. Without such planning, solutions that utilize existing foundations risk serving pre-determined institutional priorities rather than community needs.

Sometimes government control of nonprofit health assets has been proposed as an alternative to the formation of independent health foundations. Such solutions effectively move the assets from the nonprofit to the government sector, contrary to the charitable trust doctrine. Unfortunately, the ultimate outcome of this arrangement may be to displace public funds committed to health purposes or divert assets to spending for the many non-health purposes of state or local governments. Community health interests are very much at risk in structures controlled or dominated by government bodies or officials.

In some circumstances, communities may prefer that conversion assets directly fund needed health services, such as operating a community clinic, rather than being placed in a grantmaking foundation. Funding direct services eliminates the flexibility to meet the community's changing health care needs over time, but could ensure certainty and concrete results from the use of precious health dollars. Communities may want to consider alternatives to a foundation that address health needs. However, since most conversions currently result in the creation of new foundations, this handbook focuses on the critical components of these new health foundations.

To best ensure community responsiveness and public accountability, conversion foundations should be free from influence by the resulting for-profit corporation. Although providing for continuity in stewardship of the nonprofit mission is sometimes a consideration, foundation independence is a strong value for most communities, and limiting connections to the converting nonprofit or undue influence by government officials is, therefore, also important.

A health care foundation funded with assets from a nonprofit conversion has a unique character and, therefore, a responsibility to ensure participation by the community it serves. Unlike foundations created by private wealth or corporate generosity, conversion foundations hold assets already dedicated to the broader public interest. Generally when foundations are created by private donors, the donors decide on their own how to distribute the funds for charitable purposes. In contrast, conversion

foundation assets are from their inception dedicated to benefit the public. Thus, the foundation is continuing a public trust. The board of trustees of a conversion foundation should determine how to spend the funds entrusted to it through meaningful consultation with the public. Foundations formed from nonprofit assets should represent and reflect the broader community and its health needs.

The argument for community engagement – while most clearly applicable to conversion foundations because of their special origin – is reinforced by the experience of established philanthropy. Philanthropic organizations increasingly recognize the value of structures that enhance community empowerment and utilize community members' experience and expertise. Grantmakers seek to bring direct community "voice" to bear in their decision-making because it strengthens the impact of their programs and more effectively addresses complex social concerns.

Early planning and decisions about structure and governance will determine how effectively a foundation engages its community and remains accountable to the public. Communities facing a hospital or health plan conversion that will result in creation of a new foundation should focus their efforts to require rigorous oversight, planning, and community involvement during all stages of that process. In so doing, communities and regulators will help to create mission-focused foundations with strong commitments to remain responsive to the communities they are designed to serve. Methods for foundations to achieve high levels of accountability, as well as guidance for communities seeking to monitor foundations, are the subjects of the chapter entitled *Maintaining Health Foundations: Ensuring Community Responsiveness,* at pages 26-37.

Planning for New Health Foundations: Getting the Public in on the Ground Floor

Planning and forming a new health foundation should be a public process. Regulator and consumer involvement strongly influence how effectively conversion assets are used and whether the resulting foundation will meet the highest standards for community engagement, accountability, and sound philanthropic practices. Planning of the foundation should have the same level of regulatory and community oversight as the conversion transaction itself does. The process should encourage public dialogue, engage diverse elements of the community, and foster consensus about community health improvement goals. Active participation by advocates and community groups, especially those representing people with unmet health needs, will greatly improve how nonprofit assets are used in a philanthropic program.

In some conversion transactions, the news that nonprofit assets of a health insurer, hospital, or other provider will form a new health care foundation is not examined critically enough. Often, hospital companies and health plans will seek to redirect attention to the potential benefits of a new health foundation to reduce scrutiny of the deal. Some community groups respond by positioning themselves to secure or qualify for grants. Some regulators lack the staffing or the will to vigorously scrutinize these complex transactions. Community involvement is especially important at this critical juncture. When a conversion proposal appears to be in the public interest and is likely to be approved, regulators and concerned community members should begin planning for the subsequent use of charitable assets. The Attorney General (or other key regulator) can actively work with community members throughout the planning, encouraging an open process and effective public participation.

A critical first step in the planning process is the development of articles of incorporation and by-laws, otherwise known as the governing documents, which will guide the new foundation. The regulator should oversee the creation and publication of proposed governing documents. The formation of a foundation Planning Committee composed of community members can add capacity, skills, and credibility to the process of creating governing documents and building a strong foundation.

Foundation Planning Committee

Once a conversion is approved the regulator should appoint a diverse Planning Committee with a clearly delineated role to lead the public process that results in comprehensive, non-binding recommendations to the regulator about the mission, structure, and governing of the new foundation. Chaired by a highly respected community leader, the Planning Committee should include members representing the demographic and geographic diversity of the population that the foundation will serve,

and representing a wide cross-section of opinions, backgrounds, and expertise. It is critical that the Committee include people who understand the concerns of vulnerable and traditionally under-represented populations. Additionally, individuals with expertise in public health, community development, and philanthropy can provide beneficial input.

Community-Based Planning Guides Foundation Formation

Throughout the process of determining disposition of the charitable assets of Kentucky Blue Cross and Blue Shield, community-based planning sought to ensure that the resulting foundation would comply with existing state and federal laws governing charitable organizations and achieve the highest standards for public accountability. The Kentucky Office of Attorney General formed a Planning Committee of consumers, health care advocates, health care professionals, and academics that was responsible for recommending the best disposition of charitable assets. The office provided considerable staff support to the planning process, but the Attorney General properly left recommendations about important issues (e.g., drafting a mission statement, articles of incorporation, and by-laws) to the Planning Committee. In addition, the Committee recommended a process for choosing members of the first board of the foundation that was deliberate, open, and accessible to health care consumers and the broader public.

Working collaboratively with a diverse Planning Committee, the regulator should provide strong leadership and help Committee members explore all of the options, consistent with the charitable trust and *cy pres* doctrines, for disposition of the converting corporation's charitable assets. A Planning Committee should be active in generating ideas and questions to lead the public process. A sample agenda for the Planning Committee can be found at www.consumersunion.org/conv. The Planning Committee should:

- Discuss and reach preliminary conclusions about the nature, scope, mission, and governance of the new foundation;
- Establish ongoing community involvement and input for the life of the foundation, in recognition of the unique origin of nonprofit conversion assets;
- Invite experts who can provide background that enables Committee members to evaluate a variety of foundation options;
- Help shape the agenda for Committee meetings; and
- Draft articles of incorporation and by-laws that reflect the consensus of the Committee on key governance issues.

Regulators can facilitate the work of the Planning Committee by:

- Providing adequate staff support to the planning process or financial assistance to enable the engagement of qualified planning consultants;
- Preparing a clear agenda for each meeting that focuses deliberation on foundation purposes, structure, and governance; and
- Establishing a process for the Committee's recommendations to be subject to public review.

Other Avenues for Public Participation

Whether or not a Planning Committee is formed to advise the regulator, planning for use of charitable assets should be a public process. Active community outreach to solicit a broad range of perspectives is essential. Regulators can achieve effective public participation by overseeing the foundation planning and holding public hearings to gather community input on the proposed mission and practices of the new foundation. For input to be meaningful, planners should commit to sharing their assumptions and preliminary findings throughout the process. Governance documents and the foundation plan should also be made available in draft form for review and comment. Regulators should hold at least one hearing to provide a forum for further public comment on the foundation plan, articles of incorporation, and by-laws before they are finalized.

In order for foundation planning to include meaningful public input, adequate resources should be allocated to support an open, participatory process. The costs for publicity and outreach, translation, skilled facilitation, recording, engaging philanthropic expertise, and conducting community assessment and planning should be covered by the converting nonprofit organization or proceeds of the conversion, under the supervision of appropriate regulatory officials.

Depending on the type of transaction, tax status chosen, amount and form of assets to be transferred, and governing state law, the process of creating a new foundation could take from several months to more than a year. Once established, new conversion foundations on average take 12 months to make their first grants, with a range from a month to several years.[4]

Creating a formal foundation planning process geared toward openness and community participation can have a great impact on the outcome of a conversion. The planning sets the tone and provides a structural environment to involve communities and ensure a transparent public process.

FORMING NEW FOUNDATIONS: ISSUES AND STANDARDS

Fundamental decisions made about the foundation at the earliest stages will greatly influence how effectively it will serve the community. By engaging in a process to define the mission of the new foundation, to create standards for board membership and responsibility, and to choose the appropriate form and structure for the foundation, community advocates can greatly improve the accountability and effectiveness of a new foundation.

Although the outline of a foundation plan is generally part of a hospital or health plan's application to convert, this represents only the initial suggestions of the converting nonprofit entity. Active regulatory review and community input should shape the foundation plan as well as the decisions encompassed in articles of incorporation and by-laws for the new health foundation. As noted earlier, formation of a Planning Committee with community members will ensure that decisions are more responsive to local concerns. The sections below summarize some of the key considerations for those responsible for forming new health foundations from conversion assets.

Mission of the Foundation

The mission statement, in the articles of incorporation or by-laws, will form the framework for the foundation's activities. It must ensure that charitable assets are permanently dedicated to purposes consistent with those of the converting nonprofit entity. Under the *cy pres* doctrine, foundation assets resulting from health conversion transactions must be used for similar health-related purposes. In the past, health conversion assets have sometimes inappropriately endowed foundations that support general community improvement projects and purposes completely unrelated to health. Advocates should resist attempts to use funds for general charitable purposes or for a broad range of community benefit purposes.

The mission of the foundation should be both specific to health purposes and broad and flexible enough to allow grants to meet the community's needs as they evolve over time. The challenge is to draft a mission statement that will guide and focus the new foundation's work without defining it too narrowly. Crafting the mission statement also presents an opportunity to direct the foundation to focus on goals that will enhance access to health care and improve health in a community, rather than simply maintain the status quo before the conversion.

When crafting a mission statement, planners must balance direct service needs against opportunities to invest in prevention, public education, investigation, and the development of new delivery models. Similarly, the mission statement should not restrict the foundation to funding only health care or insurance. The board's ability to support policy development, data gathering projects, advocacy, and other initiatives directed at systems improvement and reform will allow the foundation to have a broader and more lasting impact.

Equally important, foundation resources should not replace governmental responsibilities. While a foundation can make significant improvements in health care delivery and access, the resources required to cover health care costs of the uninsured and under-insured vastly exceed what any foundation can provide. Thus, the arrival of a new conversion foundation should not encourage the public sector or other health care institutions to reduce their efforts and commitment to addressing the burgeoning health care crisis. Some communities have included a statement of intent indicating that the foundation will seek to add value and leverage its funds and will not supplant funds from public sources. Similarly, dedicating charitable dollars to organizations or endeavors primarily benefiting for-profit businesses may not best support the philanthropic mission. This is also true of nonprofit health groups beholden to businesses whose interests may conflict with the foundation's mission.

Conversion foundations are often proposed as permanent endowments with a minimum spending requirement, under I.R.S. rules, of approximately 5% of the asset base annually. While this small percentage may be appropriate in some cases, it need not be a ceiling. Advocates should weigh the potential community impact of spending out the capital and interest over five, ten or twenty years, for example, against what could be achieved with grants of 5% indefinitely from an endowment. Raising the question sharpens the focus on what will benefit the community's particular needs, the standard that should be used for all decisions about the foundation plan.

Sample Mission Statements from Health Conversion Foundations

Foundation Planning Committees have developed a variety of mission statements to meet the needs of the people of their states.

The mission of the Endowment for Health is "to improve the health and reduce the burden of illness of the people of New Hampshire."

The Foundation for a Healthy Kentucky's mission is "to make grants, contributions and program-related investments, and sponsor or participate in activities, designed to address the unmet health care needs of Kentuckians by developing and influencing health policy, improving access to care, reducing health risks and disparities, and promoting health equity."

In New Mexico, the Con Alma Health Foundation's mission is "to be aware of and respond to the health rights and needs of the culturally and demographically diverse peoples and communities of New Mexico. Con Alma will seek to improve the health status and access to health care services for all New Mexicans and will advocate for a health policy which will address the health needs of all New Mexicans."

Whom Will the Foundation Serve?

It is important for planners to consider the primary beneficiaries of the foundation's activities. Many incorporating documents articulate a priority interest in vulnerable populations—those who are at greatest risk for poor health and who face barriers to obtaining reliable, quality health care. Foundation missions may specifically address the needs of people who are uninsured, under-insured, have disabilities or chronic illnesses, or are members of ethnic, language or other minority groups with disproportionately unmet health needs.

There has been much debate about tightly pre-defining the populations served. Efforts to craft overly specific language have led to conflicts among those representing different constituencies, such as seniors, children, families, the working poor, etc. While these populations are among those most often harmed by the fragmented health care system, they are not the only beneficiaries of nonprofit health care providers. Many communities have decided that focusing foundation resources on uninsured and under-insured populations will directly benefit even those with insurance by keeping their rates down and reducing the stress on the entire health care system. Adopting this focus can guard against the foundation being too limited or so broadly committed that its grantmaking is diluted and ineffective. Wherever possible, language defining the foundation's geographic scope should indicate the primary communities that will benefit. The definition should generally match the service area of the converting nonprofit entity. However, it should not be so restrictive as to create additional barriers to health care, increase fragmentation of services, or prohibit the foundation from addressing areas of greatest need within its region.

Board Composition

Formation of the governing board (known as the "board of trustees" or "board of directors") is among the most important early decisions regarding the new foundation. Foundation planners must determine who will sit on the foundation's initial board and how board members will be qualified and selected in the future. Board selection should follow from an analysis of leadership needs, the development of criteria for individual trustees and for the foundation as a whole, and a nominating and selection process designed to open the board to participation by diverse consumer constituencies.

The public's stake in conversion assets should be recognized and reflected explicitly at the level of the board of directors. Creating governing boards that include people with diverse backgrounds and people from different areas of the community served will strengthen the expertise of the foundation. It is important to seek representation from groups intended to benefit from the foundation's programs, including providers and advocates who have direct experience with vulnerable consumers and target populations whom the foundation is designed to serve. An ongoing commitment and process to maintain a diverse and broadly representative governing board should be stated in the foundation's by-laws.

To deliver the maximum benefit to its community, the new health foundation must act impartially. It must be viewed from the outset as making decisions fairly and without bias. It is essential, therefore, that the foundation neither carries nor assumes obligations to fund services that the succeeding for-profit corporation will or should deliver. It must neither favor nor disfavor providers or other community partners on the basis of their alignment or competition with the converting nonprofit or its successor.

For these reasons, board membership of the foundation should be completely independent from the for-profit successor company. No board member, officer, executive, or staff person from the for-profit should serve in any capacity with the foundation. However, if the foundation's endowment is primarily in the form of stock in the for-profit successor, a director or executive of the foundation may be named to the board of the for-profit company in order to represent the foundation's financial interests.

In some cases, individuals formally associated with the converting nonprofit are excluded from sitting on the foundation board. In other instances, they may be considered, together with other candidates, for seats on the foundation board. But people affiliated with the former nonprofit should not receive priority consideration for board seats, nor for any contract or staff position with the foundation. No paid or voluntary position with the foundation should be committed in advance to an executive or board member of the nonprofit that is the source of the endowment.

State, county, or municipal governments also should not control boards of conversion foundations. Foundations cannot assume funding obligations of the public sector or displace government grants and programs, if they are to serve their communities fully. While a regulator may have a role in choosing the initial board of directors from a list of nominations supplied by an independent Planning or Advisory Committee, public officials should have no ongoing role within the foundation. The assets of the nonprofit were created in the private nonprofit sector. Converting nonprofits originally were private organizations, not public entities; it would violate the charitable trust doctrine to allow those assets to come under government control.

Attention to the size of the governing board is also relevant. While consumers and community interests should be well represented, concern for inclusiveness should not get in the way of a board's effectiveness. Boards of conversion foundations range considerably in size, with the median being thirteen members.[5] Larger bodies often assign significant authority to more limited executive committees. Thus, a very large board may not serve the goal of providing opportunities for broad participation and representation of communities and interest groups. Consumers may be better served by a few seats on the board, together with membership on advisory committees to the foundation, rather than by more consumer seats on an unmanageably large board.

Board Selection Process and Membership Criteria

Once the size of the board is determined, the Planning Committee is ready to define the process for selecting the first board of the new foundation and to establish the qualification criteria for board membership.

The process for selecting board members addresses two goals:

- Forming a governing board that is reflective of the community to be served by the new foundation; and
- Securing the leadership, skills, and connections needed for the foundation to be successful from the outset.

The foundation planning process should include a list of the types of expertise that should be represented on the governing board. This analysis will help shape the subsequent search for board member prospects, priorities for recruitment, and the selection process. Among the qualities to consider listing are sensitivity to community health needs, health policy or systems expertise, health policy advocacy skills, public health expertise, financial management, investment management, experience in philanthropy, nonprofit management, legal expertise, and board leadership skills. In addition to the qualities that are set forth by the governing board as a whole, some communities have articulated criteria that each board member should meet, including, for example, a demonstrated commitment to community health improvement, a record of voluntary service, and community leadership experience.

Additionally, the foundation board should be viewed as a place to develop community capacity and leadership for groups not traditionally represented on foundation boards of directors. Although foundations often favor appointing established leaders with demonstrated skills in finance, management or fundraising connections, board service should be regarded as an opportunity to develop skills in community members with a demonstrated commitment to the foundation's mission. Community representatives can provide unique connections, experience, and perspectives highly relevant to the foundation's mission and frequently not represented on foundation boards. The foundation must deliberately calculate the balance of skills and experience that are needed for an effective board, while looking for opportunities to appoint board members who are committed to the organization and to learning new skills. Foundations should provide educational processes for all board members concerning their responsibilities to the organization and its purposes.

Once board membership criteria are established, there should be a public and open process to search for qualified candidates. Planners or the regulator should disseminate the criteria for board membership, widely publicize the call for nominations, provide ample opportunity for many people to respond with

suggestions, and be prepared with clear answers to any questions regarding how final selections will be determined. In some cases, Planning Committees have hired executive search firms to help identify and recruit board candidates who represent the diversity of the state that a foundation serves.

At the end of the outreach and nomination process, the initial foundation board must be selected. In some cases, the regulator acting alone appoints the board. Sometimes, the governor or court appoints the board without much community input. A better alternative is to authorize the Planning Committee or a permanent Community Advisory Committee (CAC) to recommend a slate of nominees to whichever authority is ultimately responsible for appointments. If the foundation has a CAC, the Committee can have an ongoing role in nominating individuals for the foundation's governing board in the future. (See the section on Community Advisory Committees at page 24.)

Initial and Ongoing Governing Board Formation

The Missouri Foundation for Health (MFH) was established in 1999 from assets of Blue Cross and Blue Shield of Missouri. The Missouri Governor and Attorney General, with the strong support of a coalition of community groups, appointed a 13-member public nominating committee representing diverse communities within the 84-town area the Foundation would serve.

By-laws for MFH specified qualities required of any director, including:
"demonstrated ability to contribute perspective in…health care access for the poor and uninsured, affordable care for the poor and uninsured, health promotion in underserved communities, health care quality and outcome improvement, health care needs of women, children, the elderly, low-income, ethnic and cultural minorities, health education or… public health."

They also required that the board, in aggregate, represent the state's gender, racial, cultural, geographic and ethnic diversity. The call for nominations was widely publicized through advertisements in newspapers in the Foundation's service area. Interested individuals were invited to complete a written application and provide information detailing their relevant background and expertise.

The nominating committee reviewed nearly 100 resumes, ultimately selecting 50 individuals to be interviewed. Following these interviews, the committee forwarded 35 names to be considered for 15 seats on the Foundation board. Subsequently, the public nominating committee was appointed to be a permanent Community Advisory Committee to the Foundation's board, with continued responsibility for nominating board members and advising the board on an annual basis about the efficacy of the Foundation's programs from the communities' perspectives, as well as the communities' priorities for future efforts of the Foundation.

The 15-member board is structured so that the terms of 1/3 of the board (5 members) expire each year. MFH board members serve 3 years and are limited to two terms.

Under the Foundation's by-laws, the Community Advisory Committee conducts an outreach process annually to identify qualified board prospects and forwards nominations for each vacancy.

The Foundation publishes widely the criteria for service on the board, including on its web site and in paid newspaper advertisements. The call for nominees contains a summary of board responsibilities, for example, attending monthly meetings in St. Louis and serving on at least one board committee. Interested individuals are invited to complete an application form and submit a resume of their professional and community service experience. The Community Advisory Committee interviews and ranks all eligible individuals prior to selecting the nominees to be forwarded to the Foundation board.

Expiring directors are eligible to be re-nominated for a second three-year term. However, the Community Advisory Committee has not automatically re-nominated all incumbents, but rather selected from among all the qualified applicants to serve on the foundation board of directors.

Learning from the Community

Once all regulatory and court approvals have been secured for the foundation and board members have been selected, more specific planning is usually undertaken to shape the new foundation's grantmaking and program priorities. This phase may wait until staff is in place. But even if staff take the lead in planning, conversion foundation trustees have an ongoing responsibility to ensure that the foundation is open and inclusive in all aspects of its operations.

Ideally, by-laws will require the foundation to conduct initial and periodic health needs assessments of the community in order to inform its grantmaking and program priorities. While reliable health data should be incorporated, advocates should ensure that the foundation does not rely solely on data collection and consultation with experts. Rather, early planning should continue a public dialogue about health needs and priorities opened in the transaction review and particularly seek to learn from those with relevant first hand experience.

Initial Needs Assessments

The Maine Health Access Foundation (MeHAF) was established in 2000 from assets of Blue Cross Blue Shield of Maine. Its by-laws required a formal needs assessment every two years during the first five years of operation that focuses on "health care needs of medically uninsured and underserved persons in the State of Maine." The by-laws further stipulated regularly updating the needs assessment in consultation with the foundation's permanent Community Advisory Committee.

Board members and members of the Foundation's Community Advisory Committee jointly serve on all MeHAF's key committees, including a new Primer Committee that was charged with taking the lead on the first needs assessment. This group decided early to focus on the status of health insurance for Maine residents and significant trends affecting cost and coverage. The Primer Committee gathered state-specific data on health care coverage and published these findings in a "Primer on Health Care Coverage in Maine." This document was then used to prompt a public conversation about health care coverage and access in Maine through public and invitational meetings held at seven locations throughout the state. At each location, the public was invited to an open forum through general media, outreach by Community Advisory Committee members, and contact with organizations serving and representing low-income and uninsured Maine residents. The purpose of this meeting was to discuss the information in the Primer and provide input on how this new foundation should move forward to achieve universal coverage in the state. In addition, a copy of the report was mailed in advance to invited stakeholders, including providers, business and community leaders, public officials, and consumer advocates. In each location, thirty to forty key leaders representing these diverse constituencies convened to address the same questions posed in the public meetings.

The preparation of data-driven materials enabled discussion at both the stakeholder and public meetings to be substantive and focused. A common theme emerged from participants in both sets of meetings, that the Foundation should not be too broadly engaged, but should seize an historic opportunity to focus its funding to achieve fundamental systemic change in how Mainers access health care.

The Foundation plans to take a broader but still focused approach to updating needs data on the required schedule. It will analyze and integrate findings from several recent health needs assessments conducted in Maine to extract common health and healthcare access priorities. This "secondary" data will be supplemented through surveys, focus groups and other research to fill identified information gaps. The findings will again be presented to enrich structured conversations about how the Foundation can support the state's new universal coverage initiative, the Dirigo Health Plan, yet continue to promote strategic improvements in health beyond Dirigo by addressing remaining gaps and barriers that affect the health status of vulnerable populations.

Consultation with diverse elements of the community is essential for effective grantmaking by any locally-focused foundation. It is especially important for health philanthropy because of the complex interaction of factors that influence health and well-being. Some established conversion foundations are among the most successful of all philanthropies at using community-engagement strategies. They adopt these practices in order to secure the involvement of key community leaders and constituencies, and to collaborate with other institutions in the community. A broad base of participation enables foundations to engage in dialogue with others and to build consensus in order to set and achieve goals for health improvement. Additional information about foundation efforts to use community-based planning appears in the chapter on Maintaining Health Foundations at pages 26-37.

Foundation Structure

It is important to consider the foundation's legal structure in the context of how best to preserve and promote the values of openness, community engagement, and public accountability. There are two broad Internal Revenue Service (I.R.S.) categories that a foundation can be organized under, sections 501(c)(3) and 501(c)(4). While both of these forms are nonprofit, there are important distinctions between the two that should be considered when deciding on the form of a new conversion foundation.

To be an I.R.S. 501(c)(3) organization, a nonprofit must be "organized and operated exclusively for religious, charitable, scientific, … literary, or educational purposes … or for the prevention of cruelty to children or animals...."[6] 501(c)(3) status recognizes that the organization is created for the public's benefit. Some state laws actually classify 501(c)(3) organizations as public benefit organizations.[7] Because there are limitations on a 501(c)(3) organization's ability to engage in lobbying or political activity, the I.R.S. allows donations to them to be tax-deductible.

501(c)(4) organizations, sometimes referred to as social welfare organizations, can also be organized for the public's benefit. As described by the I.R.S., a 501(c)(4) is engaged in "promoting the common good and general welfare of the people of the community... operated primarily for the purpose of bringing about 'civil betterments and social improvements.'"[8] Yet, a 501(c)(4) receives less favorable treatment under federal law than a 501(c)(3) in exchange for an enhanced ability to use its assets to engage in lobbying and other political activity. 501(c)(4) organizations include political or lobbying groups like Common Cause and the National Rifle Association. Donations to a 501(c)(4) are not tax-deductible.

Within the broad category of 501(c)(3) organizations, there are several further choices for a conversion foundation.

- Private foundation – If the endowment comes from a single individual, family or corporate donor and there is no ongoing pattern of earned or contributed support from diverse sources, the organization is usually classified as a private foundation. Private foundations are subject to

the most stringent I.R.S. rules. Many of the rules serve to protect the public interest, including the requirement to distribute at least a specified amount each year for charitable purposes, restrictions on board members' ability to "self-deal,"[9] and prohibitions against anyone privately gaining from the activity or business of the foundation. On the other hand, private foundations are subject to an excise tax on their net investment income.[10]

- Public charity - If a foundation derives substantial support from the general public through fundraising or earned income, it may qualify for status as a public charity. A foundation with public-charity status is subject to fewer federal tax rules than a private foundation. The regulations presume that earning broad support through donations or services offered to the public will expose the public charity to at least some level of public scrutiny or the benefits of licensing or other regulation.

- Supporting organization - A supporting organization is a separate legal entity with a close relationship to at least one established public charity. In the case of a moderately sized endowment, a supporting organization structure may offer cost or management efficiencies while still providing a relatively high degree of community accountability.[11]

In weighing the potential benefit of structuring the foundation as a supporting organization, it is crucial to consider whether the existing public charity has a mission close enough to that of the converting nonprofit. If the missions are inconsistent, or adequate provision for community-based governance cannot be provided, formation of an independent health foundation is a better option. Established public charities have been known to lobby regulators for the substantial assets that result from a charitable set aside and advocates for community health interests may encounter powerful interests in this debate. Strengthening existing public charities should not be a consideration in planning for the use of nonprofit assets in a health conversion.

Recently, a new variation on supporting organizations has been established with the incorporation of supporting organizations to state or municipal governments. This solution risks undue influence from government officials, and advocates should critically examine any such proposed structure to be certain that charitable assets are not used to displace public funds for health purposes.

Another option, generally appropriate for smaller endowments, is to create a fund within an established community foundation. If a determination is made to use a supporting organization or community foundation fund, community leaders should review and advocate for the public process and measures identified in this handbook that ensure community influence over the use of conversion assets. The concepts should be adapted and applied to any foundation structure selected.

An additional issue to consider is whether the new foundation will function as a grantmaking philanthropy or as an operating foundation offering its own programs and services to the community. Operating foundations decide on the work to be done and employ their own staff or contractors rather than granting funds to other organizations. They may operate health clinics, for example, or commission work by health policy analysts and researchers. Operating foundations may use advisory boards or other community guidance and they certainly should develop and manage their services through active community processes appropriate to any health conversion foundation. Some health conversion foundations have a blended character, operating one or more community clinics, for example, but also awarding grants to outside organizations.

According to a 2003 Grantmakers in Health survey, the most common tax status among 165 health conversion foundations was public charity (52%), followed by private foundation (43%). Less than four percent were classified as 501(c)(4) social welfare corporations.[12] Many foundations initially qualify as public charities in the period immediately following the conversion. Subsequently, the size of their endowments and the resulting levels of earned income make it difficult to raise enough funds to meet the public support test. In some cases, conversion foundations originally established as public charities ultimately become private foundations.

These are the basic structural choices available to communities that decide to form a foundation from assets of a converting nonprofit health care provider or insurer. Generally, private foundation status is preferable from the community's perspective because of the greater public protections required. (See the section on Private Foundation Restrictions at page 20.) Advocates and regulators should consider all options, however, and make their decisions considering the size of the assets, whether the endowment is initially in the form of stock in the for-profit company, and how the foundation can best secure the kind of governance and linkage to its community that will make it most accountable to the public.

Incorporating Documents

Principles guiding the ongoing work of any foundation rest in its governing documents: the articles of incorporation and the by-laws. The articles of incorporation include the basic information required under state law to form a charitable corporation. They limit the foundation to nonprofit purposes, articulate the specific mission, provide for the disposition of assets if the foundation is discontinued, and indicate how by-laws can be amended. The by-laws create the governance structure and formal guidelines under which the board, staff, and advisors must function. The initial foundation planning process should develop governing documents that clearly state the mission of the foundation, establish board qualifications and the selection process, and formalize commitments to community engagement. If the foundation will be organized as a public charity, supporting organization, or a 501(c)(4) corporation, the by-laws can and should include private foundation restrictions to protect the public interest. Model conversion foundation by-laws and articles of incorporation can be found at www.consumersunion.org/conv and www.communitycatalyst.org.

Private Foundation Restrictions

Incorporating I.R.S. private foundation restrictions into a foundation, regardless of its tax status, is the best way to ensure that the charitable assets of converting nonprofits will be used solely to continue charitable health work. Adopting private foundation restrictions serves to protect a conversion foundation from the worst abuses found within philanthropy. Private foundation restrictions include:

- A prohibition against holding more than 20% stock in one corporation or partnership;
- The requirement that the foundation makes a minimum level of expenditures each year, defined as at least 5% of the average market value of the asset base;
- A prohibition against private inurement;
- Mandatory filing of a detailed 990-PF federal tax return;
- A prohibition against engaging in any self-dealing transactions;
- A mandatory tax on investments that jeopardize the foundation's charitable purposes;
- A prohibition against grants for lobbying;
- Limitations on the foundation's ability to make grants to individuals and for-profit organizations; and
- A prohibition against certain types of loans.

Adoption of the private foundation rules ensures that the new foundation will meet at least minimal standards of public accountability. For example, the 5% minimum payout requirement will guarantee that at least that much funding, minus administrative costs, will be granted to the community in support of the mission. The restrictions also prevent the foundation from unduly delaying grantmaking.

Spending Policies and Community Investment Strategies

Many foundation boards and managers believe that to preserve the asset base as an enduring endowment, spending for grants and management of the foundation should be limited to approximately 5% of the value of the asset base annually, the minimum required by I.R.S. regulations for private foundations. Community advocates should understand that the private foundation rules set a floor, not a ceiling, on spending. Annual distributions significantly in excess of 5% probably cannot be sustained for long periods without using principal and thus reducing the value of the endowment over time. Nonetheless, for some communities, increasing grants to meet urgent needs may be more important than preserving the endowment in perpetuity. They may prefer to spend down the endowment to achieve a major health impact rather than using the funds slowly over time with less immediate impact.[13]

Balancing the goals of preserving the endowment for the long-term versus improving current community health should be addressed in the formation of the conversion foundation. For example, a reasonable investment and pay-out policy standard might be to limit principal appreciation to maintaining initial value of the endowment on an inflation-adjusted basis. Another alternative that would grant additional dollars in good economic times would be to set annual expenditures at the greater of: (1) the annual investment income, averaged over 3 to 5 years, minus administrative expenses and adjustments for inflation; or (2) the five percent I.R.S. required distribution.

When developing the by-laws and articles, planners should consider whether to encourage use of the assets to expand support to the community through investments in local projects or by making loans to nonprofits at attractive terms. Equity capital for economic development or housing projects that benefit people with low to moderate incomes, loans for construction or acquisition of community health facilities, and low-interest educational loans for professional development of health care workers are examples of such opportunities to use part of a foundation's asset base. These uses are referred to in the foundation world as program-related investments, or PRIs. Although the record of repayment for these loans has been very good, in many cases banks are not willing to provide financing to nonprofit borrowers. An established health foundation can develop a PRI strategy at any point. By raising the issue early and including it in the foundation by-laws, advocates can ensure this asset use is considered as a multiplier of impact from creating a new health foundation.

Using Invested Assets to Benefit the Community

Although many endowed foundations limit their activity to an annual distribution for grantmaking, some also use part of their invested assets for community benefit purposes allied to the mission. Community Memorial Foundation in Illinois awards grants for community health improvements in western Cook and southern DuPage Counties on the west side of Chicago. Through a loan of $750,000 to the Illinois Facilities Fund, the Foundation provided capital for low-interest loans to community-based organizations in the same area. The Foundation's loan, a program related investment, has provided low-cost financing to a wide range of nonprofits offering health-related services, including health clinics, senior centers, housing for people with developmental disabilities and emergency shelters. Loans have provided working capital, covered relocation expenses, financed energy efficiency improvements and facilities expansions. Working with an experienced lending organization or intermediary expanded the ways the Foundation is able to help community organizations improve health services. Other foundations in the Chicago area, including the Washington Square Foundation, by-pass the intermediary, using part of their asset base to make loans directly to nonprofit organizations.

Open Meeting Provisions

In some conversions, the foundation by-laws or state law require that certain program activity or board meetings be open to the public. While throwing the doors open may seem a radical idea, and one that certainly runs counter to the philanthropic norm, the experience has been a positive one for some foundations. This has led foundation officials originally opposed to or skeptical of the concept to become its most avid proponents.

Many benefits exist to such a "sunshine" provision, common in many states' public meeting laws for government processes. In the philanthropic world, allowing public attendance at board meetings and even program meetings discussing grant proposals could help de-mystify the foundation's decision-making process. Foundations that abide by such openness policies report that the advantages applicants receive hearing discussion of the pros and cons of various proposals far outweigh any awkwardness such an arrangement brings. Nonprofits whose proposals are denied may hear firsthand debate of the merits and weaknesses of their project, thus positioning them better for the next application. More generally, open meetings also can help counteract the broad secrecy and accountability concerns that hound the philanthropic sector.

Community members, regulators, and foundation planners may well want to include an open meeting requirement in the foundation's by-laws to ensure maximum transparency and build long-term credibility of the foundation.

Open Meetings as an Element of Foundation Accountability

Because community groups and Missouri's Attorney General were committed to foundation transparency, openness, and credibility when they created the Missouri Foundation for Health, they drafted by-laws requiring that the board of directors abide by state open meetings laws, which permit applicants and community members to attend board meetings, including those in which a committee of the board reviews and makes recommendations about grant proposals. Initially, board members were concerned that open meetings would inhibit them from being completely candid in their remarks about proposals during the review process. Yet the feedback from the board, staff, grantees, applicants and public witnesses has been overwhelmingly positive. And the meetings have been popular; the board usually sets aside approximately 30 seats for outside observers and often all of the seats are filled. Applicants were pleased to have the opportunity to learn about the criteria and methods of decision-making within the Foundation. And board members, despite early misgivings, appreciate the impact such meetings have on their own efforts and Foundation staff efforts to maintain transparency and consistency in dealing with applicants.

Conflict of Interest Provisions

Strong conflict of interest policies are among the most important elements to include in governing documents. These provisions serve to protect the community from any improper conduct by board members and staff that might put the charitable assets at risk. Conflict of interest policies prohibit self-dealing or any action for private gain by board members, staff, advisors or others associated with the foundation. It is also important to include language preventing the distribution of funds for the benefit of the succeeding for-profit corporation.

By-laws should also include a clear conflict of interest policy appropriate to the needs of a grantmaking institution. The goal is not to prevent individuals who provide leadership for important constituencies from serving on the board. Rather, it is to ensure that foundation decisions are not influenced by anyone with a competing interest at stake and that there is no appearance of a conflict of interest, either of

which could undermine public confidence in the new foundation. Sound policies generally require board members to declare their affiliations (and those of close family members) with other nonprofits, including employment contracts, membership, or service on governing boards. The by-laws should require that a board member leave the room prior to a vote on any business involving an organization with which he or she has a relationship. The member also should not participate in the board discussion about that organization.

Board and Staff Issues

Limited terms of board service and the requirement for rotation of new members onto the governing board are sound principles of nonprofit management and should be provided for in the by-laws. Having new board members nominated by a Community Advisory Committee helps to bring current needs and thinking to the board's decision-making. Rotating terms so that no more than a minority of board members change at any one time will preserve the institutional memory and continuity of the Board. Advocates should be critical of any proposals for "life trustees," or by-laws that enable board members to serve for indefinite terms.

Advocates should scrutinize any proposal that allows a conversion foundation to pay fees to its trustees for board service as this is not common practice among public and community foundations. Board members certainly may be compensated for the costs of travel and other expenses associated with their service on a foundation board. It may also be reasonable to provide the option for reimbursement for loss of income or childcare expenses or to offer an optional modest stipend in order to make board service feasible for low-income people.

Communities may also consider salary and experience requirements for staff. For example, the articles and by-laws might include a recommendation that all program staff have prior work experience with nonprofit organizations. They might also require that staff salaries be commensurate with the salaries of the foundation's grantees. For example, the articles or by-laws could require that foundation staff salaries should not exceed by more than 10% the average salaries of grantee staff with similar responsibilities.[14] A pay structure that rewards staff for meeting defined goals may also be incorporated to ensure staff accountability. This is common practice in the for-profit world. In order to ensure that staff members focus on improving the health status of community members rather than building an institutional power base, advocates may seek to limit the time of service for program staff, for example, to five years service for program officers in areas where the labor pool is large enough to sustain such a limit. Issues of institutional memory can be dealt with by staggering staff terms, with some flexibility of terms for initial hires. In addition, limits on overhead spending can be considered to minimize use of funds for foundation expenses and maximize the funds available to meet the foundation's goals.

Community Advisory Committees

Linking the foundation closely to the community it serves can be facilitated by providing in the by-laws for a permanent Community Advisory Committee with one or more of the following functions:

- To serve as an outside nominating committee to fill vacancies on the foundation board of directors (as well as a training ground for potential board members);
- To act as an ongoing liaison with the community, particularly with respect to identifying community needs and priorities for future efforts of the foundation; and
- To conduct critical assessments of the foundation's interaction with the community it serves and periodic reviews of the performance of the foundation in meeting its mission, from the community's perspective.

In order to have adequate standing and a level of autonomy, it is important that the Community Advisory Committee report directly to the foundation board. Ideally, regulators should consider forming the Community Advisory Committee early in the foundation planning process so that it can play a meaningful role in selection of the initial foundation board. (See the chapter on Planning for New Health Foundations at page 7.) As is true for any representative body, Community Advisory Committee members should be reflective of the community the foundation serves and should possess the leadership, skills, experience, and connections to assist the Community Advisory Committee in fulfilling its roles. To date, at least seven health conversion foundations have such Advisory Committees.[15]

If a Planning Committee provides for a Community Advisory Committee within the structure of the foundation, it should fully and clearly state in the by-laws the purpose, role, authority, assignment, duration (perpetual or otherwise), and the key activities of the Community Advisory Committee. It is important to distinguish in the by-laws the advisory role and responsibilities of the Community Advisory Committee from the governance role of the board. By-laws may include a reference to staff or other resource support to the Community Advisory Committee commensurate with its assigned responsibilities.

The Community Advisory Committee can assist foundation board and staff by suggesting methods to ensure public input in all facets of the foundation, thereby creating an information exchange and sustained dialogue between the foundation and the community it serves.

Potential Constraints on a Foundation's Autonomy

In reviewing proposed conversions or sales of nonprofit health care organizations, advocates and regulators should be alert to constraints that could limit the foundation's autonomy, compromise its effectiveness, or prevent it from realizing the full value for the public assets.

Particular concerns arise when initial foundation assets are in the form of stock in the successor for-profit company. In order to ensure its financial strength over the long-term, the foundation will need to sell this stock to diversify its investments. If the conversion involves a Blue Cross and Blue Shield (BCBS) plan, rules of the national BCBS Association require that the foundation complete the process within a specified time period. In order to realize the full value of its assets, the foundation must have the optimal ability to sell its stock. To the greatest extent possible, the foundation's board and management should control when and at what price it sells its shares. The foundation should have the full opportunity to participate when the company sells stock through an initial public offering and in all subsequent offerings. These rights – and any limitations on these rights – are generally spelled out in language that may be highly technical. The for-profit may seek to limit how, when, or to whom the foundation sells its stock, although the foundation has the same direct interest in maximizing the stock value. Advocates should work with regulators to be sure the foundation will have full control of decisions required to receive the maximum value of its endowment.

Some sales or conversion plans include "non-compete" provisions that improperly limit the foundation's options in serving its charitable mission. For example, foundations formed from a health insurer may be prevented from offering subsidized health insurance in cooperation with a competitor company of the for-profit successor. Or, companies that purchase a nonprofit hospital may seek to prevent the foundation from awarding grants to other hospitals in the community with which it competes, or even to nonprofit service organizations that are allied with competing hospitals. All such provisions represent a form of continuing control over charitable assets by the for-profit successor. They are an inappropriate constraint on the new health foundation and should be strongly opposed. Non-compete clauses should not be included in the foundation plan or by-laws and advocates should press regulators to require removal of such clauses from the transaction documents as well.

MAINTAINING HEALTH FOUNDATIONS: ENSURING COMMUNITY RESPONSIVENESS

While decisions made during the formation of a new health foundation are very important, leadership and day-to-day decision-making during the life of the foundation ultimately will determine its responsiveness to the community and how well the mission is served. This chapter describes methods some health conversion foundations use to aim for a high level of ongoing responsiveness and accountability to their communities. And it offers guidance to individuals who are interested in evaluating the responsiveness of health foundations that exist to serve their communities.

The Accountability Challenge

The regulatory oversight of conversion transactions offers a powerful opportunity for community participation to shape the resulting health foundations and to ensure they are dedicated to serving community health needs. Once up and operating, with a board of directors and staff in place, health conversion foundations will implement grantmaking and other programs, making many choices and decisions. At this stage, communities have fewer opportunities to influence the foundation's policies and processes. If the resulting health foundation strays from addressing the most urgent community health needs and goals, there are traditionally few avenues open to address these concerns.

As with any nonprofit corporation, ultimate responsibility for a foundation rests with the governing board of trustees or directors who serve as stewards of the public interest. Through annual tax filings, the Internal Revenue Service seeks to ensure that foundations meet the legal and financial requirements to maintain their tax-exempt status. State attorneys general provide an additional level of oversight. But the standards foundations must meet are actually quite minimal. And most states lack robust oversight capacity to scrutinize the actions of foundations and other charities. Likewise, I.R.S. audits are infrequent and usually limited to matters of taxation.

Foundations are remarkably autonomous. Through elections, voters can hold public officials accountable for their actions. Business corporations are answerable to shareholders and customers. Achieving accountability for results is more challenging in the nonprofit sector generally, but most nonprofit organizations compete for grants, service contracts, membership, clients and donated support, and many are also subject to licensing or accreditation standards. Endowed foundations, however, are subject to few outside pressures. They enjoy wide latitude and because they have the means to exist without satisfying customers, answering to stockholders, or standing for election, foundations need not be accountable in order to survive.

Nonetheless, there is growing recognition of the necessity for foundations to become more accountable. Philanthropy is struggling to sharpen its own responsibility for the use of charitable assets and, at the same time, searching for better ways to incorporate public guidance into foundation decision-making. These two different, but related, endeavors -- improving internal monitoring and fostering public input -- are efforts to strengthen accountability.

Voluntary national standards have been established for community foundations and several regional associations of foundations have set their own standards for membership. The Council on Foundations has announced a new initiative aimed at developing good foundation practices for its members to follow. (See www.cof.org for further information.) It is worth noting, however, that there are no sanctions for violating these standards and the Council on Foundations does no compliance monitoring.

Too often, attention directed at foundation accountability is prompted by events that shine a light on questionable practices. This, unfortunately, frames the accountability conversation from the liability side: What do foundations have to do to avoid negative attention or government regulation? For example, in recent times highly visible cases of excessive spending on staff and overhead, along with inattentive governance, have convinced many that tougher accountability standards are needed for private sector boards of directors and have fueled a Congressional proposal to change the required minimum payout rules for private foundations.

This chapter approaches accountability from the other side: What can foundations do in the course of their everyday work to begin to ensure ongoing accountability to their stakeholders? A working relationship between foundations and the communities they serve is the cornerstone of philanthropic accountability. Establishing that relationship requires two key components: 1)transparency of foundation operations; and 2)meaningful access to foundation staff and boards to provide input about current and future strategic direction, and feedback about past operations. The two are intertwined. Transparency provides the data and information that make access effective. And access to key decision makers renders information acquired through transparency useful as a basis for conversation. An accountable foundation is one that provides the opportunity to impact foundation functions through discourse leading to suggestions for continued, as well as redirected, efforts. Creating a foundation on the bedrock of accountability to the people it serves is the most effective way to ensure its relevance and effectiveness.

Many health conversion foundations are at the forefront of philanthropy in defining principles for corporate ethics, transparency, accessibility, community engagement and other dimensions of public accountability.[16] This sometimes results because these foundations were formed through contested regulatory processes with strong public participation. Consumers and community health advocates have

been appointed to the boards of some conversion foundations. And effective advocacy has convinced many that, for conversion foundations, responsiveness to community is analogous to loyalty to the donor's intent in conventional private foundations.

There is wide variability in how foundations operate, however, and not all conversion foundations meet standards of excellence in their stewardship of public benefit funds. This chapter describes the means some conversion foundations use to respond to the communities they serve, as well as some of the ways community members can monitor conversion foundations' performance through publicly available venues.

Methods for Community Engagement

Core to the work of the Community Health Assets Project over the past several years has been the search to identify and promote philanthropic approaches that most successfully engage communities in defining and implementing their foundation's health mission. Four key themes that emerged from interviews with staff and board members of more than thirty health conversion foundations around the nation and their community constituents[17] are set forth in this section. These categories of "good practices" could, undoubtedly, apply more broadly as well to any foundation:

- Broad and Inclusive Foundation Governance;
- Transparency and Clear Communications;
- Community Input in Setting and Ensuring Strategic Direction; and
- Accessibility and Good Customer Service Practices.

By broadening participation, improving transparency, actively seeking community input and guidance, and treating applicants and grantees in a professional and respectful manner, health conversion foundations can exceed the narrow requirements of state and federal law and encourage an institutional culture of accountability. These practices and commitments have the potential to improve accountability practices and raise the standards for philanthropy as a whole.

Broad and Inclusive Foundation Governance

Regulators, advocates and foundation leaders increasingly recognize that foundation governing boards should be reflective of the community served. Ideally, board criteria and selection processes set out in the by-laws should ensure diversity along racial, ethnic, geographic and other categories appropriate to the service area and the participation of people with different health interests. Some foundations also limit board terms and impose criteria for board membership to ensure leadership rotation and rotation of

more people through service on the board. A few conversion foundation boards are required to include members directly experienced with the medically underserved, a criteria generally met by including safety-net service providers or advocates for vulnerable constituencies.

Concern about the insularity of many foundation boards has led some regulators to require nominating committees with some – or all – outside (non-board) members. Open nominating processes, including a widely publicized opportunity to submit candidates for consideration, were pioneered to form the first boards of many new health foundations. In some foundations these more transparent approaches are used regularly to fill seats on the board. Other foundations utilize their Community Advisory Committees to develop a pool of informed community members from which future board members can be drawn.

Transparency and Clear Communications

Transparency and full disclosure are core elements of public accountability. Foundations committed to serving community health missions actively communicate information about their program interests, funding priorities, application procedures, grantmaking criteria and the processes that determine other activities supported and conducted by the foundation. In this, they go beyond the minimal legal requirement of making the annual tax return available to the public.

Foundations help the community understand their decisions by clearly describing funding programs with current and projected dollar allocations and by providing uniform, meaningful

Transparent Grantmaking: The Grantmaking Accountability Template

As part of the Community Health Assets Project, Consumers Union developed a template to provide uniform, objective information about a foundation's grantmaking. The "Grantmaking Accountability Template" was designed to provide an information base for meaningful conversation between foundations and communities about accountability and effectiveness in meeting community needs.

The California Endowment (TCE) worked with Consumers Union to help develop and pilot this new tool for advancing transparent grantmaking. TCE provided extensive data on two years of grantmaking and background information on how allocations were made. The template was tested and refined with feedback from TCE staff, other foundation practitioners, and community leaders.

The Template includes data fields about:

- the foundation (i.e., age, I.R.S. foundation classification, asset size, payout percentage, financial and investment management ratios and policies, board and staff profiles);
- proposals received, funded, withdrawn, and declined by rationale;
- spending by grantmaking programs;
- grants by size, term, degree of public access and process, foundation goals, primary sector of impact, subject area, type of activity; and
- grantee and target population profiles.

Applying the Template to The California Endowment helped refine the tool. It also showed that a more complete and systematic approach to reporting on grantmaking can yield helpful information about where the resources of a foundation are going and whether grantmaking adequately reflects a foundation's mission and goals. Based on its participation in the Case Study, TCE made significant improvements to their data systems to better inform themselves and others about the use of funds and the process by which community groups access them.

See "Advancing Accountability: A Tool for Transparent Foundation Grantmaking" and "The California Endowment Case Study" at www.consumersunion.org/conv.

information about current grants and the grantmaking process. Widely disseminating application guidelines and information on how to access foundation resources, and publishing regular newsletters, annual reports and summaries of learning gained through funded projects is essential. A full understanding of foundation activities and allocations is the basis for a sustained and informal dialogue between the community and the foundation about its effectiveness in serving its mission. A template for foundations to present grantmaking information to the public can be found in a Consumers Union publication entitled "Advancing Accountability: A Tool for Transparent Foundation Grantmaking." [See www.consumersunion.org/conv.]

Maintaining web sites with links to detailed information, publishing e-mail addresses for staff, and using list-serve groups and other interactive media facilitate two-way communication and improve foundation accessibility to the public on a cost-effective basis. Foundations should consider including information about board members and Community Advisory Committee members on their web sites. To inform the public about their structure and practices, foundations should post their by-laws and articles of incorporation, annual reports, and I.R.S. Forms 990 and 990-PF.

Accountability requires a concerted effort to explain foundation priorities, processes and decisions in ways that illuminate the choices made, including the process used, who was involved and the rationale, and that provide opportunities for comment and criticism. As noted earlier, open meetings are one method foundations can use to afford the public maximum access to philanthropic decisionmaking. Philanthropy often confounds people by using highly abstract or specialized language. Successful foundation communications avoid "insider" lingo and define clearly important terms such as the criteria for funding decisions.

Communicating in Plain English

When Advisory Council and board members worked with staff of the Endowment for Health in New Hampshire to craft the foundation's grant application guidelines, they struggled to avoid jargon and code words that would not convey clear meaning to grant applicants. But in reviewing the first round of proposals, it was obvious that language the foundation was using did not have consistent meaning for all applicants. Comments included in a survey of grant applicants reinforced an idea developed within the Endowment that offers the public a glossary of terms that would explain exactly what the Endowment means by key concepts in its application literature.

Honing and publishing the definitions brought even greater internal clarity, and helped people submitting proposals respond with the right information and understand how the Foundation uses that information. Posted on the Endowment's web site, the glossary has been expanded over several years, and now includes more than 100 key terms, from "access" through "vulnerable populations." (See www.endowmentforhealth.org.)

Community Input in Setting Strategic Direction

The most commonly cited strategies for ensuring community responsiveness relate to how foundations gather information for program planning, setting funding priorities, and developing foundation initiatives. Health conversion foundations make wide use of published health information, risk factor

and demographic data, research and best practices literature, and information from academic, health provider, and policy experts. Many augment this health data and research with more experiential and direct input from community members, including groups the foundation seeks to benefit through its grantmaking.

Some foundations regularly invite groups of people to talk about community health needs or areas of current interest for the foundation. The relatively unstructured "listening tour" was originally used by new foundations to establish initial programmatic priorities, or on occasion to support a major reshaping of program priorities. Some health foundations now schedule such community forums regularly to ensure that staff and leaders stay in touch with local concerns and hear comments and suggestions from people with different backgrounds. Such listening tours now have developed a track record as a foundation outreach strategy, and their features that have proven most useful in eliciting and capturing broad input include:

- Scheduling multiple meetings in local neighborhoods, and in diverse parts of the state, including rural areas;
- Avoiding dominant institutional host facilities, such as large hospitals or universities, and instead using non-traditional sites, such as churches, clinics, and schools;
- Using local co-sponsors rather than sole foundation sponsorship;
- Holding meetings frequently, perhaps even several times per year;
- Issuing direct mail invitations and publicizing in local media; and
- Documenting all needs expressed, mapping them out, and making them public, e.g., on a web site.

Key informant interviews are another way to gather information for defining programs and shaping foundation initiatives. Consumer and constituency groups, advocates for the medically underserved, safety net health providers, and community activists can provide valuable input about direct experiences with health system deficits and barriers to care. Foundation leaders who rely on such informants stress the importance of feeding back how their advice has been incorporated and reflected in decisions and resource commitments of the foundation.

Health foundations also make use of focus group research as a way of gaining insight and perspective from community members. Many regularly convene stakeholder groups in areas of program interest such as adolescent health, disability and chronic illness, or health workforce issues. Conversations with providers, advocates, clients, and family members help foundations pinpoint community health needs and develop effective strategies for meeting them.

Incorporating Qualitative Experience

The Quantum Foundation in West Palm Beach, Florida had three years of experience in health grantmaking when it began a process for "strategic sharpening," organizational assessment and planning designed to match funding more closely to community needs. Assembling health data for the service area was an important step informing the process, but the Foundation also wanted to better understand the views and experience of community residents, particularly those it was striving to benefit. A nonprofit consulting firm skilled in working with grassroots groups, was contracted to conduct key informant interviews with community members, particularly focusing on low-income, uninsured and under-insured residents of the area.

Beginning with contacts identified by the Foundation, the firm reached out to develop additional information on a network of community-based organizations that serve and engage low-income people, transient workers and others facing barriers to health care. Interviews with 28 groups and individuals were the basis of a report that put on the table qualitative information about how people experience the health system in Palm Beach County to augment the health data summary.

The demographic and health data reports for Quantum's service area indicated significant health disparities, and communities of very high need within a generally affluent region. The Foundation staff knew the area pretty well, but it proved useful for an outside organization to identify additional grassroots groups and to conduct the key informant interviews.

Outside consultants were able to get a more complete picture of the community than the Foundation believed it could get on its own. The consultants were able to gather community input and, as skilled intermediaries, were able to clarify for the Foundation the community's needs for additional and smaller grants to groups close to the people in the community.

Comprehensive community health needs assessments are used as part of the early organizing and program development process of many health foundations. Foundation managers typically hire consultants, technical experts or planning professionals to assemble and analyze demographic, health status, risk factor and utilization data. Factors that reveal unequal distribution of primary and preventative care and barriers such as lack of insurance coverage are emphasized by funders focused on medically underserved populations. Many look for indicators of health disparities resulting from racial, ethnic, socio-economic, or immigration status and other factors.

Foundation leaders with a strong commitment to responsiveness do not view health information gathered as proprietary. Rather, in addition to using it for internal planning to establish priorities for health improvement, a number recognize the wider value of organized health data for other users. Many invest in making the information available and accessible to community-based organizations and policy leaders.

A growing number of health foundations cite the use of "asset-based assessment" strategies as key to mobilizing community resources and working with other local institutions. Unlike a needs assessment, this process involves identifying strengths and capacities available and developing approaches through which the foundation – and others - can build on these resources to set and meet community health improvement goals.

Another way some conversion foundations engage with communities is through Program Advisory Committees. Foundations use ad hoc and standing program advisory committees for outreach, program design and development, grant application review, development and management of special program

Learning from Community Focus Groups

In its first year of operation, Healthcare Georgia Foundation conducted a statewide listening tour and analyzed a wealth of health and demographic data. The following year, the Foundation elected to dig deeper, commissioning focus group interviews directly with healthcare consumers. An Atlanta-based consulting firm was hired to plan and conduct the research.

In order to generate commonality among participants, the focus groups were organized by consumer categories representing those most often identified as having unmet health needs: under/uninsured; Latinos; people living with chronic illness, HIV/aids, mental illness and disabilities; gay men and lesbians; youth; middle class substance abusers; homeless people and the elderly. Beginning with Healthcare Georgia Foundation's grantees, the consultant identified nonprofit hosts for the focus group sessions and engaged them in recruiting participants. The effectiveness of interview questions, remuneration, meeting times, and recruitment methods were tested through an initial pilot study. To encourage participation, incentives meaningful to different groups were offered (for example, movie passes for teens and gift certificates for elderly participants). Ultimately, the pilot consisted of thirteen 90-minute focus group sessions, each with approximately eight participants.

Focus group findings helped the Healthcare Georgia Foundation provide grant support for the design, implementation, and evaluation of health promotion and disease prevention strategies. The research process also helped the Foundation build strong relationships with potential grantees and healthcare consumers. These relationships provide an invaluable outcome–a well-developed grantmaking program that speaks to the needs of healthcare consumers.

initiatives, periodic or ongoing evaluation, and feedback on foundation activities and procedures. Such advisory structures have been an effective means for strengthening connections between foundations and their constituents, but they seldom are required in conversion foundation by-laws. Rather, they are most often ad hoc. Arising from the discretion of the foundation staff or board, they can be changed or discarded in the future. Nonetheless, when they are used such advisory structures can significantly expand opportunities for community engagement.

Another important component of some conversion foundations is a Community Advisory Committee. (See the discussion on Community Advisory Committees in the Forming Chapter at page 24.) Unlike Program Advisory Committees, Community Advisory Committees are most commonly standing committees created in a foundation's by-laws. As such, they are ensured a level of autonomy and independence from the board and staff of a foundation as well as from the totality of the demands of operating a foundation. This structure allows them to stay continually focused on the community and its needs.

In addition to providing nominations for board membership, Community Advisory Committees often serve as a liaison between the foundation and the community, particularly to identify community needs and priorities, and to regularly review the performance of the foundation in meeting its purposes from the community perspective. A primary way that Community Advisory Committees tackle these goals is by participating on board committees responsible for establishing, monitoring and assessing grantmaking programs, priorities and allocations. In other cases, Community Advisory Committees prepare for the board and community an annual review of the effectiveness of the foundation in meeting its purposes. As well, they provide the board with a community perspective about future actions and priorities.

Institutionalizing Community Engagement

The Program Advisory Committee of the Frequent Users of Health Services Initiative, a jointly funded effort of the California HealthCare Foundation and The California Endowment, has the goal of bringing the larger community into the thinking, planning and implementation of this 5-year effort. The Initiative aims to improve the quality, outcome and delivery of care to chronically ill patients who frequently utilize health services, and to identify and work towards addressing systemic changes needed to break the cycle of costly, ineffective use of services in California.

The Program Advisory Committee was established in the early planning phases of the Initiative and is critical to its success, which has both service delivery and systems change goals and strategies. The Committee consists of a diverse body of state and national health sector leaders. The Committee provides guidance on key program elements, RFP and evaluation design; provides input and advice on Initiative progress; reviews applicant proposals and provides guidance to the foundations; and assists with developing and advancing the policy agenda.

As part of the recruitment process, Committee members were given written "job" descriptions outlining their roles and responsibilities, specific tasks and time-commitment expectations. Committee members are given honoraria and reimbursed for travel and related expenses. The foundations established a Program Office charged with administering and overseeing the Initiative, including providing staff support to the Advisory Committee's work as well as a budget for expert consultations where needed.

Meaningful and responsible use of advisors in both of these structures requires that the foundation make a realistic assessment of the resources required for the assigned responsibility. Advisory groups should be provided with staff assistance, financing, or other support adequate to their charge. Clarity about the assignment, the extent of the advisory group's authority, its duration, and the terms and responsibilities of individual members is also critical. These issues should be covered in written materials and provided to new and prospective members of advisory groups.

Accessibility and Good Customer Service Practices

How foundations relate to applicants and grantees is a key measure of their community service orientation. Inherent tension exists between those with the power to allocate limited funds and those who need resources. Critics and observers of philanthropy – and many nonprofit leaders – focus on the quality of this relationship as an indicator of foundation sensitivity to the needs and conditions of their funded partners. In response, some foundations more clearly define applicants and grantees as primary customers and seek to improve the quality of their service to community-based organizations. Setting standards and policies for good customer service and soliciting feedback from community-based organizations are often key to establishing, maintaining and where needed, improving the working partnership between foundations and community-based organizations that generally build capacity and provide programs and services to the community.

Some foundations hire independent consultants to conduct anonymous surveys or focus group interviews so that rejected applicants, current and potential grantees, and community members will be more comfortable offering honest, critical feedback. Applicant surveys and interviews often reveal weaknesses in foundation communication efforts (language in application guidelines and Requests for

Proposals is simply not clear) and in staff accessibility. Other common complaints about foundations are unclear or unexplained rejection letters, unreasonable expectations that grantees will secure other support or subsequently sustain the project once the foundation's grant has ended, and unwelcome pressure to collaborate with other organizations.

With few exceptions, most foundations do not release survey results to the public. Communities may want to exert pressure on the foundations that serve them to release survey results to the public. With a higher level of openness, foundations can use the information to improve application processes, grantmaking policies, and technical assistance services to applicants and grantees. Foundations seriously committed to improving their performance repeat surveys periodically and track their progress over time. They may set performance standards in areas such as timeliness of funding decisions, meaningful debriefing of rejected applicants, the clarity of publications and web sites and staff courtesy, accessibility and helpfulness.

Monitoring and Reporting on Applicants' Experiences

The California Wellness Foundation (TCWF) uses anonymous surveys to contact community organizations about their experiences in applying for grants. In addition to using the results for internal improvement, it also makes the results available to the public on the Foundation's web site.

The Foundation sends applicant surveys, administered by an outside consultant, to both grant recipients and unsuccessful applicants. It received responses from nearly 500 organizations to its most recent survey, representing a response rate of about 20%. Its survey has been improved and expanded over three trials since 1996.

The California Wellness Foundation has been a major proponent of grantmaking for core operating support for nonprofits, designating one-half of its grants for such support. Feedback from the 2002 customer survey indicated that applicants were deeply appreciative of this grantmaking emphasis at TCWF, but some were unclear about exactly what "core operating support" covers and whether it was a separate grant program rather than a cross-cutting one. To improve clarity, the Foundation folded a brief definition of "core operating support" into its general grants program information on the web site, and added a link to a more extensive description with examples showing what core support did for three TCWF grantees. By closely monitoring survey responses–the positive and the negative–the Foundation is able to continually hone its procedures and communications with community organizations.

Some foundations also seek to address the power imbalance between themselves and applicants by working in collaboration and developing shared leadership and responsibility as a goal for their programming. For example, foundations often convene various stakeholders on an issue, including other funders, providers, public officials, and business and community leaders. The purpose of such working groups is typically to share information, develop strategies and evaluate programs intended to address an issue, and in some instances to coordinate or pool funding commitments. By convening or participating in collaborative programs, foundations may agree to work within agendas and goals set by the group rather than to lead the planning.

Planning with the Community

Serving 27 communities in the western suburbs of Chicago, Community Memorial Foundation first began grantmaking by responding to grant applications from community organizations. Proposals are still accepted from a wide variety of organizations addressing health needs in its service area.

However, the Foundation has also developed a number of program initiatives through which it seeks to focus grant investments in order to have greater impact. New initiatives are developed through a series of research, communication and participation steps. The development process takes time, but it greatly increases community understanding of the Foundation's work and yields valuable insights and perspective. Typically, new initiatives begin with focus group discussions involving service and constituency organizations in the field. Additional information is gathered through surveys and other community research. For example, the Foundation surveyed more than 8,300 young residents as part of planning for its youth initiative. Individual meetings and interviews with experts in the field and key leadership institutions typically follow these early grassroots-level steps. And finally, a literature review gathers overview information and knowledge of best practices and relevant research. Grants made through program initiatives have defined outcomes, and usually employ best practices that have been researched and evaluated.

Wherever possible, the Foundation approaches program development with the goal of building skills and capacity in the community. For example, rather than make extensive use of consulting expertise, youth and elder participants learned about asset mapping techniques and how to facilitate and report on peer focus groups.

A more far-reaching idea for enhancing accountability would be for a foundation or group of foundations to establish an independent ombudsperson to provide a safe mechanism for community members, nonprofit organizations, and others to make complaints, suggestions, or recommendations about foundation practices and policies. The ombudsperson could also serve as a monitor of the foundation's performance. To be truly effective in this sensitive role, such an office should be funded by the conversion foundation or group of foundations but administered independently.

Publicly Available Venues and Resources for Monitoring

There are a number of strategies that communities can use to assess the accountability of the foundations that serve them. First, community members should be aware of the specific governmental agency or unit responsible under the law for monitoring the philanthropic work of foundations. Most often this is a division within the state attorney general's office. Being familiar with the regulatory process is a basic and essential first step toward ensuring long-term accountability of foundations. The existence of a regulatory framework provides a place to lodge public inquiries about foundation activities. The opportunities for public input can be used to acknowledge the good work of the foundation, as well as bring attention to activities or policies that are not fully consistent with the foundation's public benefit obligations.

Community members generally have at least two sources of information about the conversion foundation's operations and philanthropic work. Reviewing the foundation's Form 990 or 990-PF (the nonprofit equivalent of a tax return) provides considerable information about the foundation's finances, including its expenditures, grants and investments. These forms are often available on-line at

www.guidestar.org. Federal law requires nonprofits to make copies available for a reasonable fee. Many states also require that they be available for public review in the offices of a state regulatory agency, often the secretary of state's office, as well as in the office of the foundation itself.

Many foundations also issue annual reports that describe their activities and finances during the previous year. Along with the Form 990 or 990-PF, the annual report may provide helpful information by which community members can review the foundation's work and its adherence to its public benefit obligations. Careful attention to information about overall payout (grants made during the previous year); expenditures for salaries, benefits and other overhead expenses; and investment returns will help community members better understand the operations of the foundation and the strategies it uses to meet its mission and its public commitments.

Reviewing the foundation's Form 990 or 990-PF and annual report will also provide community members with information about the specific grants made by the conversion foundation during the previous year. Comparing the patterns of grants with the mission, principles, and priorities established by the conversion foundation will help community members develop their own understanding about how the foundation is meeting its mission in practical terms.

CONCLUSION

An essential ingredient in a successful conversion transaction is a guarantee that the charitable character of the nonprofit assets will be preserved. For most communities, an independent foundation that will have a long-lasting benefit is the best place to put these assets. With a strong foundation planning process in place, community advocates can influence the early stages of a foundation's creation. Board membership criteria that reflect the importance of community expertise, and a selection process that is open to the public, can go far in ensuring a responsive and responsible board of directors. By incorporating structural provisions that institutionalize the role of the community and put into place important private foundation and conflict of interest provisions, advocates and regulators can provide for greater public accountability of the resulting foundation.

Community members have many different tools they can use to shape a foundation's mission, governance and structure in a direction that will benefit the community. Public pressure and involvement in this vital part of a conversion transaction is of utmost importance. With more than $16 billion already in foundations created from health care conversions, the potential for improved community health is clear.

NOTES

[1] "A Profile of New Health Foundations," Grantmakers in Health, May 2003, page 3.

[2] "Cy pres" is French and translates as "as nearly as." In this context, the cy pres doctrine requires that the charitable assets of a nonprofit are used in a manner as similar as possible to their original intended purpose (e.g., the assets of a nonprofit health insurer must be used to maintain and improve the health of the public in some way even if the nonprofit health insurer converts to for-profit status or ceases operations in some other way).

[3] "A Profile of New Health Foundations," Grantmakers in Health, May 2003, page 3.

[4] "Assets for Health: Findings from the 2001 Survey of New Health Foundations," Grantmakers in Health, March 2002, page 8.

[5] "Assets for Health: Findings from the 2001 Survey of New Health Foundations," Grantmakers in Health, March 2002, page 8.

[6] Treasury Regulation § 1.501(c)(3).

[7] For example, Missouri's nonprofit corporations law designates 501(c)(3) organizations as "public benefit" or "mutual benefit" corporations. R.S.Mo. § 355.881(3). California's Nonprofit Corporation Law also renders all charitable and public purpose nonprofits, which includes 501(c)(3)'s, as "public benefit" corporations. Cal. Corp. Code §§ 5111, 7111.

[8] Treasury Regulation § 1.501(c)(4) - 1(a)(2)(i).

[9] Under federal law, self-dealing refers to a wide variety of direct and indirect transactions between a private foundation and its "disqualified persons," i.e., those who are in a position to influence or control the charity's actions, as well as companies controlled by those persons.

[10] Under 26 U.S.C. §4940, a private foundation pays a 2 percent (in some cases 1 percent) tax on in its investment income each year.

[11] See, "Creating Supporting Organizations: An Option for Conversion Foundations," by Consumers Union of U.S., Inc., 1998.

[12] "A Profile of New Health Foundations," Grantmakers in Health, May 2003, page 3.

[13] The debate over foundation distributions intensified in the summer of 2003, as Congress considered legislation (H.R.7) to mandate higher payouts by private foundations. Currently, foundations are allowed to count administrative costs–executive salaries, rent, travel expenses–as part of the five percent of their total assets they must distribute each year. If enacted, the bill would have required foundations to make a five percent payout, but excluded administrative costs from qualifying. While this bill did not pass in 2003, the issue may be reconsidered in a future Congressional session.

[14] Communities might also consider limiting grants to organizations whose highest staff salaries are no more than five times the salary of the lowest staff salaries.

[15] Colorado: Caring for Colorado Foundation, www.caringforcolorado.org. Kansas: The Sunflower Foundation: Health Care for Kansans, www.sunflowerfoundation.org. Kentucky: Foundation for a Healthy Kentucky, www.healthyky.org. Maine: The Maine Health Access Foundation, www.mehaf.org. Missouri: The Missouri Foundation for Health, www.mffh.org. New Mexico: Con Alma Health Foundation, www.conalmahealth.org. New Hampshire: Endowment for Health, www.endowmentforhealth.org.

[16] See American Foundations: An Investigative History (MIT Press, 2001), in which Mark Dowie opines that most of the new health conversion foundations are "better informed, more imaginative, and more responsive to community needs than traditional health foundations," at pp. 82-83.

[17] Participating foundations were identified through informal consultation with staff at Grantmakers in Health (www.gih.org), the national membership association of health philanthropy, regional health foundations associations, community health leaders, and advocates. The interviews with staff and board leaders and community members, conducted in 2003 and 2004 , included formal policies incorporated in the by-laws as well as informal operating practices and methods developed by foundation boards and managers, and suggestions to enhance currently used approaches.

THE COMMUNITY HEALTH ASSETS PROJECT

The Community Health Assets Project is a national effort that works to protect both nonprofit charitable assets and the interests of health consumers. Founded in 1996, the Project is a joint effort between Consumers Union of U.S., Inc. and Community Catalyst of Boston, Massachusetts. Funded primarily by foundation grants, the Project provides its assistance free of charge. A team of skilled attorneys, philanthropy experts, health policy analysts, and community education specialists with extensive experience in the full range of issues presented by conversions staffs the Project.

Project staff members provide consultation and technical assistance to community and consumer organizations, philanthropic leaders, policymakers, regulators, legislators, and media in over forty states. The Project is unique in its ability to apply its broad base of experience and expertise to the particular circumstances of a given state, community, and transaction. The Project team provides the following services:

- **Trainings** for community groups, policymakers and media to discuss the array of policy issues involved in conversions and help health advocates design effective action strategies. Trainings provide accessible information, encourage active participation, and utilize local groups' knowledge of community needs and unique circumstances.
- **Public education** materials are available for community groups, advocates, and policymakers. The Project's education materials can also be tailored to address the specific concerns of a given community.
- **Legal and policy analyses** of proposed laws, state statutes and regulations are available, as are analyses of transactions that identify specific public interest concerns (e.g., health care delivery impact, antitrust issues, valuation or company worth, protection of community benefits, and preservation of charitable assets.)
- **Strategic consultation** involves ongoing advice and analysis of a conversion proposal and the accompanying process. The Project team can provide ideas for effective outreach and participation, as well as information on specific issues such as model approaches for establishing a mission or governance principles for a foundation.
- **Information clearinghouse** service for data on regulatory, legislative, and market developments in the fast-evolving area of conversions and models for handling complex policy issues related to conversions.

For more information contact:

Community Catalyst
Community Health Assets Project
30 Winter Street, 10th Floor
Boston, MA 02108
(617) 338-6035; fax (617) 451-5838
www.communitycatalyst.org

Consumers Union
Community Health Assets Project
1535 Mission Street
San Francisco, CA 94103
(415) 431-6747; fax (415) 431-0906
www.consumersunion.org

QUESTIONS TO ASK...

…about foundations formed as the result of nonprofit conversions.

As philanthropic organizations formed from assets held for public benefit, new foundations should be responsive to the communities they serve. They should also be highly accountable for their stewardship and effective use of these community assets. Here are some questions any foundation should be willing and able to answer forthrightly. If your community is served by a foundation formed from assets of a nonprofit hospital or health plan, these questions might serve as the basis for discussion with the foundation about its work and its role in the community.

1. What is the foundation's mission or purpose? How was the mission statement developed? Who participated? What information about the community was considered? Is the mission reviewed periodically?

2. Whom does the foundation intend to benefit? What will change for these people if the foundation is effective? How are the views and experiences of targeted beneficiaries represented in the ongoing work of the foundation?

3. What are the foundation's current goals? What does it seek to accomplish? Within what time period?

4. How does the foundation engage the community it serves in planning, implementation and evaluation of its work?

5. What are the review process and criteria for grantmaking? For foundation initiatives determined other than by reviewing proposals? How are funds allocated between grants and other funding commitments?

6. What non-grantmaking activities does the foundation pursue? How do these support the achievement of key strategic goals?

7. How does the board assess and measure its own progress toward organizational goals? How widely are the results of self-assessment shared?

8. Who currently serves on the governing board? Does the foundation have goals related to board diversity and if so, what is the current status? What qualities are sought in recruiting board members?

9. What is the nominating process for board members? Do any non-board members participate? Are there opportunities to suggest people to be considered for service on the board?

10. What percentage of funds paid out each year goes to grants, overhead expenses and contracts for foundation initiatives? What percentage of funds paid out each year goes to nonprofit organizations, community-based organizations, general support grants, advocacy, direct services and research?

ADDITIONAL RESOURCES

For additional information on health care conversions and new foundations, please visit:

www.communitycatalyst.org

www.consumersunion.org/conv

The following material relating to conversions and building strong foundations can be found on the Community Catalyst and Consumers Union web sites:

- Sample foundation mission statements
- Model articles of incorporation and by-laws
- Sample conflict of interest statements
- Model conversion legislation
- The Blue Cross Blue Shield Update, "Conversion and Preservation of Charitable Assets of Blue Cross and Blue Shield Plans: How States Have Protected or Failed to Protect the Public Interest"
- "Wisconsin BC/BS Conversion: Responsive Philanthropy"

The following documents relating to building foundations and monitoring health foundation performance can be found at www.consumersunion.org/conv:

- Sample agenda for orientation of a foundation Planning Committee
- "Advancing Accountability: A Tool for Transparent Foundation Grantmaking"
- "Grantmaking Accountability Template: The California Endowment Case Study"

The following documents can be found at www.communitycatalyst.org

- "Analyzing the CareFirst Decision in Maryland: What Does it Mean for Conversions Elsewhere"
- "Compendium of State Conversion Laws"
- "Guide to Organizing Community Forums"
- "The Harvard Pilgrim Health Care Receivership: A Case Study in Consumer Activism"
- "Holding On: Fighting to Preserve Essential Services at a Community Hospital"
- "Looking at the Full Picture: Analyzing the Community Health Impact of Insurer Transactions"
- "Protecting Health, Preserving Assets: A Comprehensive Study of Conversion Laws"
- "Strength in Numbers: Guide to Building Community Coalitions"
- "Triad's New Market Strategy: A Threat to Community Hospitals"

The following documents can be found at www.consumersunion.org/conv:

- "Blue Cross and Blue Shield Stories: Local Struggles Make A Difference"
- "Good as Gold: Preserving Community Resources in Nonprofit Conversions"
- "How Much Is Too Much: Executive Compensation Following the Conversion of Blue Shield Plans from Nonprofit to For-Profit Status"
- "How To Successfully Involve the Community When Your Nonprofit Hospital Converts: Protecting Community Health Assets & Services"
- "Intervention By Community Groups in Blue Shield Conversions: Sample Motions to Intervene from 4 States"
- "Nonprofit Hospital Conversions: How Your Community Can Shape the Outcome and Protect Its Health Care"
- "A Silver Lining of Hospital Closure and Bankruptcy: Protecting Community Health Assets & Services"
- "Valuation of Non-Profit Conversions: Techniques for Determining the Value of the Health Care Organizations Converting to For-Profit Status"
- "You Can't Take The Money & Run: Court Prohibits Nonprofit Hospital Chain From Removing Community Assets"
- "The Slidell Story," A video about how one community fought Goliath and won, and kept their nonprofit community hospital. Please e-mail video@consumer.org if you are interested in obtaining a copy of this video.