



The Colorado  
Health Foundation™

# CREATING A HEALTHIER COLORADO

**The Colorado Health Foundation's  
Bold Investment in a Voice Our  
Health Deserves**

# ACKNOWLEDGMENTS

The Colorado Health Foundation would like to thank those who contributed to this paper.

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### About the Colorado Health Foundation

The Colorado Health Foundation is singularly focused on helping Coloradans live their healthiest lives by advancing opportunities to pursue good health and achieve health equity through grantmaking, policy and advocacy, strategic private investments and convening to drive change. For more information, please visit [www.coloradohealth.org](http://www.coloradohealth.org).

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Dear Reader,

Our mission at the Colorado Health Foundation is to improve the health of Coloradans. It's a bold goal — and one that can only be achieved through boldness in our everyday work and our everyday thinking.

Influencing public policy is one of the primary — and most effective — tools the Foundation uses to drive our mission forward. Over the past two decades, we have embraced work beyond grantmaking to include significant engagement in public policy. This has long included using our own voice to advocate for the health of Coloradans and making grants to mission-driven nonprofits that engage in advocacy and lobbying.

That combination has produced an established track record of policy gains, demonstrating that work in health policy makes a difference for improving health in our state.

In 2011, when the Foundation began to transition its nonprofit tax status from public charity to private foundation, we recognized that how we engage in advocacy would need to change. However, we did not question whether advocacy should continue as an important channel to advancing our mission. The rules of our new tax status now prohibit us from lobbying for or against specific pieces of legislation, but we continue to have ample opportunity, as a private foundation, to educate the public and policymakers about important policy issues and how they impact the health of Coloradans.

Prior to the Foundation's official tax status transition in 2016, we had a time-limited window of opportunity to think creatively about how we could sustain — and even increase — the influence of Colorado's health advocates. During this time, the Foundation reflected on how and where health advocacy had been successful in shaping policy in our state. The Foundation and its advocacy partners had many strengths and victories to celebrate but also some areas in which additional capacity could increase our impact. Specifically, we identified the need to

support organizing at the grassroots level to amplify the voice of the people of Colorado in policy debates that influence their health.

Recognizing this opportunity, the Foundation pushed to be bold and creative with how we deployed our resources. This willingness to stretch beyond the conventional led the Foundation to do something unprecedented: to create and endow Healthier Colorado, a separate and independent 501(c)(4) political organization that was free to actively engage in direct lobbying with policymakers, as well as organize and activate Coloradans to speak up about important health policy issues.

How the Foundation weathered a potentially disruptive tax status transition while preserving — even expanding — Coloradans' ability to influence health policy is a valuable lesson for other philanthropic and advocacy organizations. This white paper shares the Foundation's journey to creating and endowing Healthier Colorado. It details how this innovative approach was a risk worth taking to increase our impact and ensure Coloradans have the policy voice our health deserves.

Sincerely,



**Kyle Legleiter**  
Senior Director of Policy  
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# Summary

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- Over the past two decades, the Colorado Health Foundation has embraced work beyond grantmaking to include significant engagement in public policy. This has long included using our own voice to advocate for the health of Coloradans and making grants to mission-driven nonprofits that engage in advocacy and lobbying.
- In 2011, when the Foundation began to transition its nonprofit tax status from public charity to private foundation, we recognized that how we engage in advocacy would need to change. However, we did not question whether advocacy should continue as an important channel to advancing our mission.
- Through a carefully considered and transparent process involving internal leaders and external health policy partners, the Foundation focused on a unique opportunity: to create and endow a separate and independent 501(c)(4) political organization that would have greater latitude to engage in lobbying.
- In July 2013, the Foundation Board voted unanimously to create and fund a Colorado-based 501(c)(4) nonprofit that would focus on health policy advocacy, lobbying and grassroots political activism within the state.
- In September 2014, with its director tapped and the name Healthier Colorado established, the new 501(c)(4) organization held a public launch. According to its mission statement, Healthier Colorado believed that “every Coloradan should have a fair chance at living a healthy life.”
- Healthier Colorado has more recently refined its mission to include identifying and training diverse local leaders to take grassroots efforts deeper into Colorado communities.
- Healthier Colorado has also created an affiliated organization under the more common nonprofit 501(c)(3) tax code, in response to some potential donors’ wishes to support advocacy work while avoiding the most politically-charged activism.
- The nimbleness and fearlessness Healthier Colorado demonstrated in taking on powerful targets was exactly what the Foundation and its advocacy partners had hoped for in backing the formation of a new 501(c)(4).
- Foundation policy leaders are convinced that the high-profile work of Healthier Colorado has already emboldened other groups to take grassroots political action in health.

# The Window of Opportunity

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In late 2011, a door was closing on the Colorado Health Foundation, even as the organization moved to secure a promising future. As the largest charitable organization in Colorado, the Foundation sought to clarify its mission and funding by selling its primary asset: substantial ownership of an extensive hospital group in metro Denver. This action would allow the Foundation to expand an endowment dedicated to improving the health of Coloradans.

This conversion of assets required legal changes far beyond the mundane. For years, the Foundation had been operating as a public charity hospital, and by 2011 transitioning to a private foundation seemed the least-disruptive path to the proposed asset sale. By the vagaries of federal tax law, this transition to a private foundation would put an end to a revered portion of the \$2.3 billion endowment's mission: lobbying state and local officials directly on legislation affecting state residents' health. A private foundation cannot lobby, even though it may study and advise in other public policy settings.

While public policy advocates within the Foundation saw this door closing, they also saw a window of opportunity. Through a carefully considered and transparent process involving internal leaders and external health policy partners, the Foundation focused on a unique opportunity: to create and endow a separate and independent 501(c)(4) political organization that was free to engage in politics and elections.

How the Foundation completed this disruptive transition while preserving — even expanding — health leaders' ability to influence local health policy is a useful lesson in philanthropic guidance. Foundation leadership and community partners sought a path bold enough to affect real health policy change, while also protecting the collaborative reputation of the ongoing Foundation. The direction they chose and insights gained are described in this white paper.

### **What is the difference between a public charity and a private foundation?**

Generally, 501(c)(3) organizations are classified as either a public charity or a private foundation. Public charities generally receive a greater portion of their financial support from the general public, private foundations or governmental units whereas a private foundation is typically controlled by a small group of individuals and derives much of its support from a limited number of sources or from investment income. Private foundations are subject to stricter legal requirements than public charities and may be subject to excise taxes or loss of exempt status for failure to comply with those restrictions. Unlike public charities, private foundations are strictly prohibited from engaging in lobbying and cannot earmark grant funds for lobbying activities.

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Healthier Colorado. The Voice Our Health Deserves. Feb. 3, 2017.  
<https://app.box.com/s/9car3fcxo839lvgowjyoietnr3skt1i>. Accessed June 2017.

### **What is lobbying?**

“Lobbying” generally refers to the activity intended to influence a decision. In this paper, we use the term in reference to legislative decisions. Certain nonprofit organizations, classified as “501(c)(3)” under the IRS code, have their lobbying activity restricted by the IRS, which has specific rules about what constitutes “lobbying.” Thus, when this term is invoked in this paper, it is in specific reference to what the IRS would define as “lobbying.”

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# Preserving the Power of Policy Work

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The Colorado Health Foundation’s exploration of the interplay between nonprofits, the federal tax code and public policy advocacy grew out of the endowment’s complex origins.

Historically, the Foundation’s nonprofit predecessor operated some of the largest hospitals in metro Denver. In 2011, the for-profit joint venture operator of the hospitals, Hospital Corp. of America in Tennessee, wanted to buy out the nonprofit’s share. The Foundation was ready to sell, believing the significant proceeds would secure an endowment with wide-ranging investments and further its mission of improving the health of Coloradans. The result was the largest charitable organization in Colorado, with an endowment of more than \$2 billion and the promise of reaching \$100 million in annual health-oriented grants within a few years.<sup>1</sup>

Along with endowment diversity came a tax code challenge: The Foundation could no longer be considered a public charity, like a hospital, in the eyes of the Internal Revenue Service (IRS). In the years of transition allowed by federal tax law, the Foundation needed to decide whether to remain a public charity, which would require extensive fundraising made difficult by the presence of a healthy endowment, or become a private foundation, eliminating the need to raise funds but locking in a new set of rules about how it could influence public policy. “Because of our history of comfort with policy advocacy, it was a tough decision,” said Kyle Legleiter, senior director of policy at the Colorado Health Foundation.

“From our perspective, health does not have to be a partisan issue. People don’t think others should be less healthy, no matter what side of the aisle they are on. It’s a bipartisan issue, and there’s a way of advocating for that in a nonpartisan way. I always felt that included getting involved legislatively, when appropriate and on the right issues,” said Denver attorney and Colorado Health Foundation board member Jessica Yates.

<sup>1</sup>Booth M. Colorado nonprofit to sell its share of hospital group to for-profit HCA. The Denver Post. June 15, 2011. <http://www.denverpost.com/2011/06/15/colorado-nonprofit-to-sell-its-share-of-hospital-group-to-for-profit-hca/>. Accessed June 2017.

In the previous decade, the Foundation had broadened its work beyond grantmaking to include significant engagement in influencing public policy. Historically, the Foundation’s policy engagement included building an in-house policy staff. At times, the Foundation would take positions on pieces of specific legislation and lobby policymakers to support those positions.

For example, while the Foundation took no public position in the bitterly partisan Affordable Care Act (ACA) debate of 2009 and 2010, the Foundation did later lobby for a state law to opt in to an expansion of Medicaid, made available to states under the ACA, because it would bring Colorado much closer to the Foundation’s stated goal of achieving 95 percent health insurance coverage for residents.

“It was not an accidental choice to get involved in policy,” said Anne Warhover, who served as the Foundation’s president and CEO from 2005 to 2015. “I’d always believed that long-term sustainable change is achieved through policy and not grantmaking. Grantmaking can provide anecdotal evidence that something works, so you can take that back up to policymakers through advocacy work. But in and of itself, there’s not enough money in the world to give away to make long-term, transformational change.”

For many years, the Foundation funded advocacy through grants to mission-driven nonprofits that engaged in advocacy and lobbying on health-related issues. At the same time, the Foundation’s in-house policy staff also developed and advocated for the Foundation’s own policy priorities. The combination established a long track record of successful policy work that helped create a supportive constituency on the Foundation Board to continue such work where possible, including Grant Jones, former executive director of the Center for African American Health. Jones said he saw the opportunity for amplification in the Board’s goals in targeted funding areas such as increasing physical activity among children in Colorado.

“You can make a grant to build a playground,” Jones said. “But wouldn’t it be more powerful if we could do something to get the state school board to adopt a policy for all schools to have PE [physical education]?”

# A Call for Political Muscle

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At the same time that the Colorado Health Foundation's leaders learned the implications of the possible changes in tax status, they began gathering information about nonprofit advocacy in Colorado. Politically oriented groups chartered under the 501(c)(4) section of the tax code existed in policy fields such as environmental concerns and education reform. Donor contributions to these groups were not tax-deductible, but the groups themselves retained nonprofit status and did not pay taxes on their contributions or revenues. The 501(c)(4) status allowed them to legally spend on direct political lobbying and the kind of grassroots campaigns that could impact votes on wide-reaching policy issues. But no large or active 501(c)(4) groups in Colorado were organized to promote the public's interests in health policy debates.

“It’s clear that other issue-areas in our community are helped by politically active organizations that can get in front of the public and be more aggressive. They can get in front of decision makers, with a desired outcome,” said Mike Dino, a Denver attorney, seasoned political advisor and current member of the Healthier Colorado board of directors. “You’ve seen it make an impact for the environment and education communities. So it’s time for the health and wellness movement to also have the powerful presence and voice that a (c)(4) can bring.”

## Legislative

Action	501(c)(3)– Non-(h)	501(c)(3)– (h) Election	501(c)(4)	Utilization
<b>Policy content:</b> topical reports not considered “lobbying” by the IRS	Unlimited	Unlimited	Unlimited	Frequent
<b>Direct lobbying:</b> paid staff or contractor communicating to elected official		Limited	Unlimited	Frequent
<b>Grassroots lobbying:</b> mobilize public to contact elected official about particular policy		Limited	Unlimited	Rare
<b>Earned media:</b> use news outlets to support/oppose particular policy		Limited	Unlimited	Medium
<b>Paid media:</b> TV, social, radio, print, billboard to support/oppose particular policy		Limited	Unlimited	Rare

## Electoral

Action	501(c)(3)– Non-(h)	501(c)(3)– (h) Election	501(c)(4)/ Unrestricted	Utilization
<b>Ballot measures:</b> contributions to campaigns for/against local and state questions decided by voters		Limited	Varies	Medium
<b>Candidate education:</b> includes candidate questionnaires, content showing issue positions, without any endorsement		Limited	Unlimited	Rare
<b>Candidate contributions:</b> financial donations to candidates or intermediaries, like political action committees			Varies	Rare
<b>Independent expenditures:</b> efforts to support or oppose a candidate disassociated with a candidate’s campaign			Unlimited	Rare

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<https://app.box.com/s/9car3fcxo839lvgowjyoietnr3skt1i>. Accessed June 2017.

Proponents of a new health-oriented 501(c)(4) compared the possibilities not just to fields like education and the environment, but to the existing power of self-interested health lobbies for hospitals or major drug companies. “Grassroots lobbying and persuasion are very different skill sets from traditional advocacy,” said Shepard Nevel, then-vice president of policy and communications at the Colorado Health Foundation and one of the key proponents of a new 501(c)(4). “Foundation research efforts such as an economic analysis of the fiscal benefits of the Medicaid expansion are important,” Nevel said. “But you also need a commitment to the muscular advocacy of lobbying, activating constituencies and rewarding some people and punishing others politically... The 55 million underinsured in America in 2009 deserved that same level of advocacy as the pharmaceutical sector or the medical supply sector.”

Outside partners of the Foundation did express some concerns that a new, well-funded 501(c)(4) organization would soak up all of the Foundation’s resources to provide funding for advocacy, possibly limiting support for other 501(c)(3) organizations. But during its initial listening sessions with partners, the Foundation made it clear that its advocacy grants to 501(c)(3) organizations could and would continue under the Foundation’s new private foundation rules, said Chris Watney, former president of Colorado Children’s Campaign.

Watney was one of the supporters who pointed out to fellow advocacy groups the dearth of political activism in the health field. Her own 501(c)(3) organization worked in the overlapping sectors of education, health care and social services, and concentrated on educating politicians rather than getting involved in actual elections. “We want to work with all legislators on our agenda no matter who wins,” said Watney, who later became the second chairperson of the Healthier Colorado board. “We can go up to a certain line, and then we have to stop, as do our other (c)(3) partners. These groups slowly came to the realization there were other tools that could be helpful to use that we didn’t have.”

The advocacy groups then funded by the Foundation made a distinction between roles they were comfortable with, such as being “influencers” and “negotiators,” and those they were not comfortable with what they called “agitators.” A similar dynamic emerged in discussions with other funders. “Other foundations told us it would be great if someone else funded grassroots organizing or some of the other types of activities that (c)(4)s typically do. They told us ‘we’d be really happy if you took on the risk for that,’” recalled Legleiter.

When the Foundation conducted its own gap analysis of health advocacy in Colorado and similar states, its policy staff found three significant gaps that a potential 501(c)(4) organization might fill:

### 1. By target

While health advocates were engaged on state-level issues governed from Denver, few resources were available to track or influence health policy made through local entities like county commissions, school boards, city councils or county health departments.

### 2. By focus area

Little political advocacy focused on advancing health issues beyond the domain of health care and health insurance, such as school nutrition, youth physical education (PE) or public recreation.

### 3. By tactics

Few groups were using grassroots tactics for lobbying, such as those employed effectively by both sides of issues like gun regulation.

# Checking the Legal Boxes

Once the Foundation's policy staff was convinced that a 501(c)(4) startup was both legally possible and desirable in the community, a yearlong internal education and persuasion process began. With fact-finding approval from Foundation leadership, staff commissioned a legal and tax policy review by a local law firm experienced in nonprofit issues. Leaders inside and outside the Foundation credit Nevel, Legleiter and another senior policy officer, Alexis Weightman, with a studied, rational approach to gathering information for executives and Board members, on a timeline that allowed room for absorbing the issues and raising questions or concerns. Nevel, said then-CEO Warhover, "had a way of introducing a concept and coming back, building on it, coming back... By the time we were talking about forming a \$10 million entity [later, \$15 million] with little control over it, it was kind of a no-brainer. Some staff said it was taking too long. But in my perspective, that was not a long time."

The internal discussions with Board members and top executives fell into three areas:

- 1. Explanations of the Foundation's pending prohibition on political lobbying and how a 501(c)(4) organization could legally preserve that role while filling gaps in the advocacy field.**
- 2. The degree of control the Foundation could — and should — have over the 501(c)(4)s structure and direction.**
- 3. The level of assets the Foundation could legally grant the 501(c)(4) organization before its transition to a private foundation was complete in the eyes of the IRS.**

Discussion of the first point largely followed the reasoning of the policy staff and its discussions with Foundation executives and outside partners: Preserving the Foundation's tradition as a backer of policy changes that could affect far more Coloradans than singular grants was essential to the ongoing mission. "I've always looked at the Foundation as a true partner," Watney said. "The Foundation is a very safe place to do big thinking. And they certainly have the power to bring the right people to the table. They've always added huge value as a convener," said Watney, in an assessment of the Foundation's collaborative policy-shaping role.

More reflection surfaced, though, in discussions on the second question: If a new politically active entity were created, how separate should it be from the Foundation itself? The issue boiled down to two alternatives, each with a drawback.

1. The Foundation could legally retain significant control over a 501(c)(4) organization through overlapping board members and staff, along with a carefully dictated mission statement and bylaws. The primary risk would be a politicizing of the Foundation's traditionally nonpartisan and nonabrasive reputation when the new organization led any health campaign confronting vocal opposition.
2. Alternatively, the Foundation could fund the 501(c)(4) organization as a completely independent entity and "set it free." The Foundation would thereby distance itself from future conflict but would also lack control over the spending or issue choices made by the independent organization.

"Although there is no legal restriction against a private foundation being affiliated with a 501(c)(4) lobbying organization, the Foundation's unique opportunity must be weighed against the public's perception as to the relationship between the Foundation and its affiliated entity and whether Foundation exerts (in reality or in appearance) too much control over the lobbying organization," wrote the Foundation's outside counsel, Cara Lawrence, in a 2011 memo to Foundation leaders.

One consideration for Foundation staff was the appeal of creating a new independent entity because that would allow it the opportunity to build its own personality and identity in the eyes of the public and policymakers. This consideration was in part informed by the Foundation's own past experiences. One motivation for the Foundation's sale of assets in the first place was to leave behind its partial hospital-ownership stake because some in the community falsely equated that partial ownership with a controlling influence over the hospital system's decisions. Other considerations in the discussion of this second structural issue included organizational culture, Legleiter noted.

"Many people told us that a 501(c)(4) organization needs to have the latitude to build its own culture. Successful (c)(4)s are nimble, bold, assertive and comfortable with risking failure... Having a culture of being too risk-averse or too slow would limit its potential to make a game-changing impact on policy," Legleiter said.

Board members recalled that the decision to continue the Foundation's support of political advocacy in some way seemed like an easy consensus, but working out the details of how to do that prompted more discussion. "There was a lot of thought given to how that [policy work] would be structured," said Board member and Denver attorney Jessica Yates. "And a lot of thought that after a certain point, there wouldn't be much control."

Proponents of the 501(c)(4) concept credit the Foundation's then-CEO, Warhover, with carefully championing the idea through the necessary Board committee work and group reflections, without trying to force a conclusion. "That Board, like nearly all boards, wants to be a consensus organization, and there were times I wasn't sure we'd get a full consensus," Nevel said.

Anne Warhover spoke up at those times very passionately and said, “This is what we need to do. The fact that no other foundation does this is not a reason we shouldn’t do it — it’s a reason we should.”

On the details of how much overlapping power the Foundation would have over the 501(c)(4) organization, Nevel said, “Separateness slowly won out.”

The structure of the potential 501(c)(4) organization began to emerge. The Foundation Board would appoint the new entity’s board, with one Foundation Board member, Grant Jones, serving on the new organization’s board for its first year. The Foundation would write the mission statement and bylaws of the new organization, and those bylaws could only be rewritten by a supermajority of the 501(c)(4) entity’s board. Some of those bylaws were specifically written to maintain as much of the Foundation’s nonpartisan tradition as possible, including a provision that funds from the Foundation’s grants to the 501(c)(4) organization could not be spent for individual candidates in political races. If the 501(c)(4) organization later decided to get involved in an election for an individual candidate, it would have to raise that money on its own from other sources. In the end, Foundation Board members, executives and staff agreed that the relationship they wanted with the new entity was “low control, high influence,” as Legleiter put it.

As Foundation leaders became more comfortable with the concept and the role of a health-oriented 501(c)(4) organization, the third challenge surfaced: How much of its money should the Foundation use to launch the political entity?

The first part of the answer had to address the question of how much money could be available. This began with an exploration of nonprofit legal and tax structures by Lawrence, and a subsequent education of Foundation leaders and Board members on the possibilities. During this consideration period of 2011 and 2012, the Colorado Health Foundation was still operating as a public charity because of its ownership of nonprofit hospital assets. While the path to conversion into a private foundation was becoming clear, tax laws allowed for a transition window and the official change in designation would not happen until the end of 2015. A private foundation could not contribute tax-free funds to a 501(c)(4) organization, but a public charity could, up to certain points.

# How Deep is the Funding Pool?

Tax laws allow public charities to spend a limited amount of money on lobbying under two measurements: 501(h) election and 501(h) revocation. Years ago, the Colorado Health Foundation had chosen 501(h) election, which made its spending limit for political lobbying \$1 million a year. In 2012, the Foundation was entering a three-year window to endow the 501(c)(4) organization before its conversion to a private foundation was complete and lobbying expenditures would become prohibited. However, tax attorneys warned, if the Foundation used the full 501(h) election amount of \$1 million each year, it could not spend any money internally on policy lobbying during that three-year transition period.

The second measurement, 501(h) revocation, allowed the Foundation and similar nonprofits to revoke the 501(h) election and to lobby as long as it represented an “insubstantial” portion of the public charity’s overall expenditures. The challenge for advisors, according to Lawrence, outside counsel to the Foundation, was that there was no “bright line test” that would tell a foundation exactly what percentage of its assets or annual budget remained safely “insubstantial” under the eyes of the IRS. “It’s not something you can Google,” Lawrence said. “There was never any case law close to our facts to give guidance. Some groups spent 25 percent and that was obviously too much. Others did 10 percent and that seemed fine. We found cases saying that 4 percent was fine. We knew we weren’t going to be very risky.” After researching the practices of nonprofits from across the country, Lawrence and Foundation leaders were comfortable recommending up to a 5 percent annual expenditure on lobbying prior to the Foundation’s tax status transition. An annual grant and administration budget averaging about \$100 million allowed the Foundation to provide a \$5 million endowment grant to the new entity during each of the remaining years that the Foundation operated at a public charity. The limits on how much the Foundation could grant to the new 501(c)(4) entity in a given year gave the Foundation options to alter its grants in the later years if the new 501(c)(4) organization began operating in ways that caused the Foundation concern. The \$5 million figure for a grant to a start-up organization was clearly a substantial consideration for the Foundation Board, even in an organization that expected a \$2.2 billion endowment once the sale of hospital assets had closed.

As Warhover acknowledged, \$5 million “is a lot of money.” While proponents like Nevel favored the size of the proposed endowment, they also realized the Board might take some time and discussion before arriving at the same number. Some wanted to know, Nevel said, “If we are giving \$5 million to this new thing each year, is somebody else losing out?” Worries about defunding existing grantees were in large part assuaged by the growth of the Foundation’s own endowment and annual grant budgets during the same time period. “It helped that finances were growing and we didn’t have to take that \$5 million from something else,” Nevel said, allowing overall grants to rise from \$20.4 million in 2006 to \$97.4 million in 2013.

Foundation Board member Jones looked back over the year of deliberations as “a long dialogue. It wasn’t just ‘yes’ or ‘no.’ In cordial but detailed discussions, certain board members pushed back significantly on the purpose and desirability of a Foundation-funded (c)(4),” Jones said. “There were some people who thought we were wading into the wrong pond. I like that, in retrospect,” Jones said. “It’s the kind of thing a board should be doing. Deliberating about general direction and philosophy, more involved in board governance and not day-to-day management.”

# A New Entity Takes Shape

In 2013, to better inform the Board's decision about the new entity, the Colorado Health Foundation staff convened a group of nearly two dozen nonprofit leaders whose interests represented behavioral health, state budget policy and health in vulnerable communities, among others. An outside moderator formally gathered opinions from these leaders both before and after the discussion. Before the discussion began, 40 percent of the participants considered the health 501(c)(4) organization a good idea. The intervening discussion between the nonprofits and Foundation staff covered specific legislation where a grassroots lobbying effort by a 501(c)(4) organization might have changed the outcome; the limitations of unanimous collaboration versus a more pointed political campaign; concerns about new competition in advocacy roles; and the need to continue sharing work and responsibility with local 501(c)(3) nonprofits even if a new organization was established. By the end of the meeting, 60 percent approved the concept. Among the more common statements at the meeting were these:

“This organization must feel empowered to lead and be innovative, and not feel compelled to compromise all the time.”

“The main benefit a (c)(4) can add is to be bold.”

In July 2013, the Foundation Board voted unanimously to create and fund a Colorado-based 501(c)(4) nonprofit that would focus on health policy advocacy, lobbying and political activism within the state.

However, some minor disagreements remained among Board members about relinquishing legal control over the new organization. While that decision was also approved, it wasn't unanimous but did not create ongoing divisions on the Board.

The first-year grant of \$5 million in 2013 allowed the then-unnamed 501(c)(4) organization to begin looking for staff, commission a naming and branding effort, establish a board of directors and begin collaborations with other local nonprofits. At the same time, Legleiter, Foundation senior director of policy, was tapped to act as executive director of the 501(c)(4) until it could establish its own board and complete a six-month search for a full-time chief executive. Foundation staff, executives and Board members collaborated to recommend potential 501(c)(4) board members, drawing from a pool of community health, political, nonprofit and organizing experts, with Jones as the single overlapping board member and initial chairman. “Grant Jones as the chair was the perfect person, liked by everyone and with the ability to get people to interact well,” said Mike Dino, a subsequent 501(c)(4) board member.

The search for a full-time executive director began, using a job description that reflected the year of internal discussions about the goals of a 501(c)(4) organization. The new entity needed a leader who was proficient in public policy and, perhaps more importantly, had experience in the rough-and-tumble of a fast-moving election campaign. The experience did not need to come from the health field, but familiarity with Colorado's public policy landscape was ideal. The director needed to be willing to be the public face on issues drawing substantial disagreement. Still, the need for an aggressive, risk-taking leadership also came with demands to collaborate and build coalitions. Few health-oriented votes or lobbying efforts would succeed without the meaningful support of Colorado's well-established nonprofit network interested in health issues.

Eventually the board hired Jake Williams, in part because of his varied experiences in campaigning and collaborating. Williams had worked as a foundation consultant on environmental efforts to sustain the Colorado River; achieved victories for LGBT legal equality at a time of rapid political and social change; and helped to activate a coalition of Latinos, farmers, local businesses and others to protect Western natural resources. He also worked on often highly politicized progressive advocacy campaigns for a labor union.

"The board wanted someone who could create something formidable from scratch and who could apply a political lens to health," Williams said of his conversations with the board. "What I emphasized was my advocacy to promote conservation of the Colorado River. It was complicated, opaque and distant to the average person. In order to move the ball on policy, we had to simplify the issue and make it relatable to everyone: decoding a complex issue and creating organizations from scratch to add new voices to advocacy. To me, that was the most applicable experience."

In September 2014, with the executive director tapped and the name Healthier Colorado established, the new 501(c)(4) organization held a public launch for the local policy community and journalists. According to its mission statement:

Healthier Colorado is a nonpartisan, nonprofit organization dedicated to raising the voices of Coloradans in the public policy process to improve the health of our state's residents. We believe that every Coloradan should have a fair chance at living a healthy life. The people of Colorado are our constituency, and Healthier Colorado aims to make meaningful improvements throughout our state's diverse communities.



# Choosing First Targets

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Next, Healthier Colorado began reviewing its options, narrowing the field of possible health policies and issues to take on. Election-oriented issues hotly debated in Colorado and other states at the time included ballot pushes for universal health insurance, local votes on taxing sugary beverages to fight rising obesity rates, and additional school funding to support PE. “In the first year,” Williams said, “our goal was to build relationships with allies and demonstrate our value. We didn’t want to come out of the gates and upset people in year one.”

Nevel, one of the initiators of the 501(c)(4) discussions, had visions of the new entity becoming a rigorous and more bare-knuckled defender of Medicaid expansion and provisions of the ACA than other Colorado nonprofit groups had. “The constant, endless Medicaid bashing bothered me deeply and still does,” Nevel said. “It was constantly the first place they went to cut, and there weren’t a lot of consequences for bashing Medicaid.” Widespread prevention issues in diet and physical fitness also interested Nevel.

Watney and other Healthier Colorado board members believed a narrower focus at the beginning would better serve long-term goals. “To say we’re going to change these huge things, that’s when you start to scare partners,” Watney said.

Healthier Colorado ultimately chose to rally Colorado residents in support of state legislation that opened new avenues for local farmers to sell their nutritious crops to school food programs. “We chose an issue that would get us around the state, into urban and rural areas, with Democrats and Republicans. We knew the legislation would be popular and would help us make a diverse range of friends,” Williams said.

Supporters also saw the principles involved as a good entrée for encouraging untested local voices to speak up with decision-makers. The bill eventually died in a committee of the Colorado Legislature. But by then, Healthier Colorado had counted more than 5,000 residents making contact with their legislator about the bill.

Those kinds of contacts were exactly what proponents were hoping for, Nevel said. He remembered a conversation years before with a sympathetic state senator after a failed attempt to pass mandatory PE levels for schools. “He told me, ‘I heard from 100 people on the other side, and I didn’t hear from your people,’” Nevel said.

A vote of confidence for Healthier Colorado’s early setup and work came when the Foundation’s timetable for conversion reached its third and final year in 2015. The final year before officially becoming a private foundation allowed the Foundation the opportunity to make a third \$5 million contribution to the 501(c)(4) organization informed by an emerging track record of how the new entity was operating and creating impact in the state. The floor for the discussion of how much to grant to Healthier Colorado in 2015 “was zero,” as Foundation leaders put it. Yet, after an optimistic assessment of what had already been accomplished, the Board approved a grant at the \$5 million ceiling of what the Foundation could legally spend on lobbying in its final year as a public charity.

The 501(c)(4) organization thus received total of \$15 million from the Foundation during its three-year tax status transition period. Healthier Colorado dedicated this seed funding to creating an endowment of its own that would form a solid financial base for the organization to continue to operate for years to come.

# New Sophomore Focus

Going into its second year, Healthier Colorado needed a “sharper focus,” Williams said. A small staff and consultants took on a statewide listening tour to identify health and health care issues that mattered most to local residents. The staff discovered that public concerns were consistent across geographic and economic boundaries: obesity prevention and chronic disease management, health disparities resulting from race and location and better access to mental and behavioral health.

Watney encouraged the organization to collaborate with an existing coalition of other nonprofits in a yearlong effort to improve nutrition and other standards at state-licensed child care centers, where 100,000 Colorado children spend a significant amount of time each year. As a Denver Post article pointed out, the Colorado Human Services board oversees vital standards for 2,000 licensed centers caring for 100,000 children a year. After years of working on school-based nutrition, the coalition wanted to influence behavioral changes even earlier, at the preschool level, by reducing access to sugary beverages in child care centers, reducing the amount of allowed television time and changing other standards. Watney asserted, “People might say, ‘Changing child care rules? Big deal!’ But that showed the other advocates that we’re interested in good things, and now we can work together on something bigger, like a tobacco tax.”

“There were already a formidable array of non-government organizations involved (including Watney’s Colorado Children’s Campaign); so what we could add was grassroots activism,” Williams said. “What we got was over 5,000 Coloradans to tell the Human Services board that they wanted to see this change happen. That level of grassroots engagement was almost nonexistent until we made that happen. During the hearings, the volume of people weighing in, in favor of the rules, was noted for the record more than once by board members.” The board approved the new day care standards and supporters, including Healthier Colorado, claimed a healthy living victory that made headlines in The Denver Post as well as many smaller, regional newspapers around the state.

While Healthier Colorado was encouraging grassroots support for the child care center rules, Williams and other leaders had begun meeting with a local physician-led coalition about a bigger political target: a public vote to increase taxes on tobacco products in Colorado.

A group of Colorado doctors who made up the leadership of the Lung Cancer Task Force asked Williams to discuss a tax increase with membership. They listed their concerns and facts: Hundreds of thousands of Coloradans still suffered from the lifelong effects of tobacco use, despite the slow national and local decline in the percentage of population using tobacco. Colorado had not increased its state tobacco tax — considered by public health leaders to be key leverage in behavior change — since 2004, and since that year had steadily fallen to the lower-middle of the pack in state-assessed tobacco taxes. What the

<sup>2</sup>Osher CN. New Colorado rules bar sugary drinks, restrict TV at day care centers. The Denver Post. Jan. 1, 2016. <http://www.denverpost.com/2016/01/01/new-colorado-rules-bar-sugary-drinks-restrict-tv-at-day-care-centers/>. Accessed June 2017.

doctors and a public health coalition sought from Healthier Colorado was organizing and law-writing advice on how to make the tax increase politically possible.

Working with other nonprofit leaders, advocates and political consultants, over the next year, the coalition eventually settled on a proposal that would raise \$315 million in taxes each year. The new tax would more than triple the per-pack cigarette tax from 84 cents to \$2.59 and raise taxes on other tobacco products by 22 percent of the retail price. The new revenue would be divided among a number of causes, including smoking prevention in youth and smoking cessation among adults, veterans health care and access to health coverage for the underinsured.<sup>3</sup>

Provisions of the ballot issue were written with Colorado history and local activism in mind. Statewide tax increases in Colorado must be approved by a public vote, and voters in the past had proven they wanted to know exactly where new tax revenue would be spent. The choice of beneficiaries of the new tobacco revenue also kept valuable political and volunteer coalitions in mind: Children’s Hospital Colorado had a volunteer network of thousands willing to gather petition signatures to get the vote on the ballot and to conduct other organizing work, as did Colorado veterans support groups. Healthier Colorado also agreed to spend from its budget to gather a significant portion of the necessary signatures, an expensive proposition when potentially dozens of other statewide ballot measures would be competing for voter attention.

“The tobacco tax campaign reinforced one of Healthier Colorado’s earliest goals — that of being nimble enough to truly help other advocates,” Williams said. Though the coalition had only half the time to prepare as they had in the 2004 tax increase campaign, the paid and volunteer gatherers collected tens of thousands more signatures than needed to achieve the 2016 ballot. “Outside of Medicaid expansion, it would be the biggest state investment in health in our memory,” he said.

Notably, Healthier Colorado did not take a position on another prominent statewide ballot issue that fall: a universal health care proposal that would create a steep new tax on all residents. But as part of the philosophy to “go where we’re needed and wanted,” as Williams put it, Healthier Colorado did agree to join an effort in Boulder, Colorado, to raise local taxes on sugary drinks. Boulder, home to the main campus of the University of Colorado and regional offices of national high tech firms, is not the natural constituency for Healthier Colorado’s primary mission statement. In 2016, private homes were valued on average at \$1 million. But Healthier Colorado did pay for polling on the issue and found a solid majority of residents supporting the tax. Moreover, the tax revenue was earmarked for greater physical activity and improved nutrition in low-income areas of the city. Williams said Healthier Colorado did not want to pass up the chance for a high-visibility victory that would put Boulder among a select few cities with a sugary beverage tax and obesity prevention plan, while sending a strong message to drink manufacturers that target vulnerable youth and have spent greatly to defeat local taxes. “A win would be significant not just in public policy perspective for that jurisdiction, but we will affect the market behavior of the manufacturers who distribute these drinks. The effort is about Boulder, but it’s about so much more,” Williams said at the time.

<sup>3</sup>Bunch J. Hefty hike in Colorado tobacco taxes qualifies for November ballot. The Denver Post. Aug. 22, 2016. <http://www.denverpost.com/2016/08/22/colorado-tobacco-tax-on-ballot/>. Accessed June 2017.

# Finding the Right Measuring Sticks

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The results of public votes — such as those on the statewide tobacco tax and the Boulder sugar tax — will inevitably provide one basis for judgments of Healthier Colorado’s successes and failures promoting health policy change in the state. Board members, staffers and other proponents acknowledge that such benchmarks are one important component of success. “We won’t win them all,” said Mike Dino, board member, attorney and Colorado political advisor. “But if we bat 50-50 or even .400, that would be pretty good.” Dino added that another measure in the board’s mind will be demonstrating a quantifiable addition of voices to local decisions, such as the continuation of Denver fluoridating water, the healthier child care center rules and more.

For some time, the Colorado Health Foundation has made evaluation and measurement an integral part of its grantmaking process and its larger self-assessments of Foundation policy and goals. Documenting results and sharing successes with the wider community were inherent in Healthier Colorado’s conception and development, Nevel said. “This kind of work is some of the most concrete and measurable work,” he said. “You can quickly ascertain whether you played a substantial role in changing policy that has tangible implications. You’re always working with other people, so you don’t ever get exclusive attribution, but it’s usually quite clear when an organization has played a significant role.”

“For example, the rule changes in day care facilities — Healthier Colorado led that — and it was widely recognized that the rule changes wouldn’t have happened without them,” said Nevel. “And later you can show a quick increase in the number of children eating healthier in a pre-K environment.” If the proposed cigarette tax passes, if the proposed sugar tax passes, those are tangible results and benefits. There is a risk of political capital and reputation and expenditure if they don’t pass. So credit goes to Jake Williams and the board that they would carefully consider what they get involved in and pick the ones most suited to get the greatest possible impact.”

Williams noted that Healthier Colorado is carefully counting easily measurable items such as grassroots contacts with lawmakers and decision makers resulting from the 501(c)(4)s direct work. To reiterate, Healthier Colorado documented more than 5,000 public contacts for the Human Services board decision on child care centers. During the petition drive and education campaign for the tobacco tax, it documented approximately 10,000 signatures. “Healthier Colorado has made a conscious decision not to take responsibility for measurements with complex societal influences, such as the statewide obesity rate, he said. But leaders are considering how to measure questions like public agreement on ‘shared health values’ such as school-based PE or affordable health insurance. Healthier Colorado funds could be spent on polling those questions over time,” he noted.

Healthier Colorado has more recently refined its mission to include attempts at identifying and training diverse local leaders to take grassroots efforts deeper into Colorado communities. This formal “advocacy fellowship” brings people on board for six months of training. “If we’re trying to create a movement, we need to bring more people into the field who are advocacy experts, and those experts need to look like the communities we are focused on,” Williams said. “We’re trying to create a new pipeline of talented and diverse professionals who can keep working in the advocacy field.”

Healthier Colorado has also created an affiliated organization under the more common nonprofit 501(c)(3) tax code, in response to some potential donors’ wishes to support advocacy work while avoiding the most politically-charged activism. Other 501(c)(4)s in other states have made similar moves. The affiliated (c)(3) organization can have overlapping staff and board members and can pay for administrative or educational costs not associated with lobbying. Some nonprofits, moreover, are forbidden by tax law or their own organizational bylaws from contributing to a 501(c)(4), in part because those contributions are not tax deductible.

Results from 2016 votes statewide and in Boulder would no doubt provide much fodder for internal and external discussions of strategy, priorities and funding. Still, health leaders’ experience conceiving and launching a unique entity in Colorado had already prompted self-reflection on what might have been done differently to create the most effective political organization.

Nevel, who was among the first to begin talking with Foundation staff, executives and Board members about the possibility of a 501(c)(4), said he and others may have moved too fast toward explanations of a new political entity. Instead, they might have first walked interested parties through the complex tax, policy and lobbying decisions that the Foundation faced. “There’s a saying that you can never over-communicate,” Nevel said. “We got to where we wanted to go, but maybe communicating every element of this at the beginning rather than jumping to the end would have been helpful. This can be a complicated and confusing issue.”

For her part, then-Foundation CEO Warhover said executives and the Board might have spent more time establishing broad health principles for the state and for the new political entity to make the mission of Healthier Colorado clearer from the start.

“As the leader on the ground, Healthier Colorado should have had a system in place at its launch for identifying local leaders’ desires for health policy change,” Williams said. The organization has now tried to speed that process through its Partnerships in Local Advocacy program, which invites individuals and organizations to request support for a public policy campaign in one of Healthier Colorado’s areas of interest. “I wish we’d started that sooner, I’m very excited about it,” Williams said. “But that said, it’s hard to hang up your shingle and invite people to come ask for help if nobody knows who you are first.”

Finally, some Healthier Colorado leaders expressed the need for broadening financial support for Healthier Colorado beyond the initial \$15 million in endowment grants from the Colorado Health Foundation. “Now that people know who we are and what we are about, broader support would send a strong message to communities,” Watney said. “And also, financially, if we want to do the big things that make a difference, it will take a bigger resource than those initial investments by the Foundation,” she added.

# The First Tests at the Polls

November 2016 voting results in Colorado brought a rare chance for self-reflection in advocacy: a measurable snapshot of public sentiment and policy desires. On Election Day, Healthier Colorado recorded one significant victory and one significant loss in the two measures to which it had dedicated much of its time for the year.

Sugary Beverages

**WIN: 53%**

Tobacco Tax

**LOSS: 46%**

Voters passed the proposal to add a tax on the distribution of sugary beverages sold in Boulder, with just under 54 percent of the popular vote. A statewide constitutional amendment to nearly triple the tobacco tax and use the proceeds for health programs was defeated at nearly the same margin, earning 46 percent of the vote. It was a difficult year for statewide taxes in Colorado: The proposal for a \$25 billion universal health care system lost overwhelmingly at nearly 80 percent against.

While Healthier Colorado and other advocates were stung by the tobacco tax loss in the wake of summertime polls showing deep support, they see significant wins in the coalitions built and the public awareness raised by both 2016 campaigns. Most importantly, according to backers of the 501(c)(4) idea, the high visibility of the campaigns let voters know they had a strong voice fighting for them, alongside other significant power groups in health — hospitals, physicians, pharmaceutical companies — that had traditionally dominated policy debates. “We are developing a brand and reaching that visibility we want for future campaigns,” Williams summed up. “We are letting people know that we are advocates for them.” In addition to casting hundreds of thousands of “yes” votes in the campaigns, Coloradans took some 60,000 actions supporting one of Healthier Colorado’s issues, whether emailing a legislator or signing a petition.

According to news accounts, the tobacco industry spent more than \$17 million trying to defeat the tobacco tax measure, making it the most expensive ballot campaign in Colorado history. The tobacco industry’s deep pockets meant Healthier Colorado and its allies were ultimately outspent by at least 10 to 1 in the campaign. Various sources attribute the industry’s win to an effective TV advertising campaign

avoiding health issues while focusing on how the amendment would change the state's constitution; the failure of some pledged supporting donations to come through when initial polls painted a favorable forecast for the amendment; and a relatively short time to plan a campaign after the proposal was finalized. "We put up a good fight, but you can't be competitive in a campaign where you get outspent 9- or 10-to-1," said Healthier Colorado board member Dino. "I think we can get back on the ballot and go at it again sooner rather than later." Forcing Big Tobacco to spend tens of millions of dollars against the measure is a victory in its own way, health advocates said, viewing it as a complement to the strength of the voices they had organized to fight for health in Colorado.

The sugary beverages tax win is full of lessons for advocacy. Though the battle in Boulder was waged against another giant – "Big Soda" – the resources on each side were comparable and the pro-tax advocates spent roughly \$1 million on local cable TV ads and other measures. While the opposition emphasized the tax's negative impact on small businesses and a general loss of public liberty, Healthier Colorado and partners led with messaging of improving children's health and balancing the inequity of sugary drinks' impact on vulnerable communities. "We were up against a skilled and resourced foe who was willing to lie, and I think we handled their tactics quite well," Williams said. "In every instance, we responded swiftly and convincingly."

That nimbleness and fearlessness in taking on powerful targets was exactly what the Foundation and its advocacy partners had hoped for in backing the formation of a new 501(c)(4), said the Foundation's Legleiter. Without an aggressive political advocate like Healthier Colorado, the tobacco tax increase in particular might never have made it beyond the wish list of physicians on policy committees. The poll results on the tobacco proposal were not all discouraging. One of the previous statewide tax proposals, a nearly \$1 billion income tax increase to benefit schools, prompted a "no" from 66 percent of voters in 2013. "We've talked about batting averages and risk-seeking," Legleiter said. "You can't find two issues with bigger dollars against them than what Healthier Colorado took on in 2016. So to come out of those fights with a .500 batting average is impressive."

## Next Steps After a Fiery Start

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In response to its initial election results, Healthier Colorado is moving expansively, not defensively, when it comes to tactics. The board has decided to broaden the mission to include possible monetary contributions to individual candidates, while preserving the Colorado Health Foundation's dictate that none of the original endowment money be used for those purposes. Initial contributions are likely to support candidates from both sides of the aisle with allied policies rather than targeted against other candidates who oppose Healthier Colorado's policy objectives. "It gives us a chance to have conversations with candidates, and maybe those conversations will last a little longer," Dino said. The 501(c)(4) organization has also consciously underlined its bipartisan outlook by adding a prominent local Republican leader to its staff. National election results from 2016 could mean a refocusing of advocacy energy on federal policy battles, with local and national advocates joining to defend the health coverage gains Colorado has achieved in recent years.

The Foundation is taking its own lessons from the early results of Healthier Colorado. As one example, Foundation leaders look at the long years between the 2016 tobacco tax vote and the previous successful raising of the state tobacco tax in a 2004 vote. "It is the 501(c)(3) nonprofits that can hold that institutional memory and keep advocacy work alive during long gaps such as that, and so the Foundation must continue to fund and partner with a wide variety of (c)(3)s with a long-term view," Legleiter said.

Foundation policy leaders are also convinced that the high-profile work of Healthier Colorado has already emboldened other groups to take grassroots political action in health. "The 501(c)(4) has expanded – and will continue to expand – the playing field for health improvement in Colorado," Legleiter said.

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