DATE: February 15, 1990

TO: BOARD OF TRUSTEES

FROM: Leonard W. Smith, Chairman
Public Issues Committee

RE: Proposal to Establish a Michigan AIDS Fund

Recommendation: The Council of Michigan Foundations establish a Michigan AIDS Fund to be administered by CMF, funded by interested Members and subject to certain conditions described below. The project is recommended in response to the compelling nature of the need and to the thoughtful request and commitment of the Members listed as part of the Ad Hock Task Force.

Background

In mid-1988 CMF was contacted by a Member about the possibility of establishing a Michigan AIDS Fund, similar to other funds established in other regional associations. Other Members became interested in the project and in July, 1989 an Ad Hoc Task Force was formed to explore the rationale and mechanics for a Michigan AIDS Fund. Members of the Task Force include:

Ms. Barbara J. Getz, Chairman
Program Officer, The Kresge Foundation

Dr. Thomas A. Bruce
Program Director, W.K. Kellogg Foundation

Dr. William E. Emery
Trustee, Whirlpool Foundation

Ms. Amy Fistler
Executive Secretary, Health Education Foundation

Mr. Glenn F. Kossick
President, Metro Health Foundation

Mr. W. Calvin Patterson, III
Executive Director, McGregor Fund

Dr. Marilyn Steele
Program Officer, Charles Stewart Mott Foundation

Dr. Ira Strumwasser
Executive Director, Michigan Health Care Education & Research Foundation

CMF Role

It is proposed that the Council of Michigan Foundations receive all grants to the Michigan AIDS Fund and act as fiscal agent of the Fund, with final authority for redistribution of grants vested in the Council's Board of Trustees. It is estimated that the annual expenses of the Council of Michigan Foundations for this activity would amount to approximately $5,000 to be provided from the Michigan AIDS Fund as operational costs.

The initial goal for the Michigan AIDS Fund will be $500,000 to be redistributed to grantees rather than held as an endowed fund. This sum will be gathered by release of information concerning the establishment of the Fund and its availability for participation by interested grantmakers and by Task Force members' contacts with interested grantmakers. Task Force members would widely distribute a formal request for proposals for projects to be supported by the Fund, review those proposals with input from the various resources available to them and make recommendations on the distribution of the Michigan AIDS Fund grants. One or more CMF Trustees would be invited to join the Task Force.

As conceived, grants from the Fund would be provided on a matching basis, thereby leveraging another $500,000 in local support for individual projects. The attached narrative provides background on Council members' interest in the HIV epidemic, the examples studied by the Task Force, and the opportunities which present themselves for the proposed Michigan AIDS Fund.

Conditions

- Ad Hoc Michigan AIDS Task Force would become a Michigan AIDS Fund Committee. One or more CMF Trustees would be invited to join the committee.

- The Fund Committee would be specifically for collaborative efforts regarding AIDS and will be a pilot effort subject to CMF annual Trustee review:
  a. Review will include: CMF Board time
  b. CMF staff time
  c. Results of the grants
  d. Process of collaboration
  e. Impact on CMF members

- The committee would provide volunteer time. Barbara J. Getz, Program Officer, The Kresge Foundation, and Chair of the Task Force, would provide staff assistance of one-third time for a limited period. Funds for any subsequently needed staff would be provided from the Michigan AIDS Fund

- CMF would serve as fiscal agent preparing all necessary reports

- No direct solicitation of funds from CMF members, written or verbal, for the AIDS Fund will occur. It will be "quiet funding."
  a. Members of the Task Force are already committed to various levels of funding

b. CMF will make the membership aware of the Fund through the Michigan Scene, Memo to Members, and a session at the conference
c. Other funders are welcome to participate with the Michigan AIDS Task Force, membership is not closed if other grantors would like this service

- CMF Attorney would review the grant agreement letter

- CMF Board would approve a formal plan of work (see timeline and proposal from Barbara Getz which follows), R.F.P. process and forms, the fund-raising plan and all disbursements. (Fiduciary responsibility would not be delegated to the committee).
  a. CMF Board would approve all policies
  b. CMF Board would approve RFP
  c. AIDS Committee would recommend grants for CMF Board approval
  d. AIDS Fund Committee will fully fund direct and indirect expenses for CMF management time.

Questions Addressed by Public Issues Committee

Will purposes of CMF be diluted?

No. Volunteer staff help (released time Executive, one-third time Kresge Foundation; committee volunteers; and proposed part-time staff, paid for from grant funds at the appropriate time will take care of the program components).

What is liability of CMF Board of Trustees in assuming grantmaking role?

(See attached two page memo prepared by Duane Tarnacki, Clark, Klein and Beaumont. CMF Board protected by Articles of Incorporation amendment to limit the liability of the Trustees and the indemnification provided in the corporate bylaws.)

What is impact on CMF staff?

Staff arrangement described above will assume program function. Administrative function will be assumed by Administrative Director and is no different than for other special project fund accounting, reporting, etc.
CMF will keep functional accounts. Proposal calls for $5,000 fee.

Will CMF be peerceived as a grantmaking organization?

- Doubtful, as CMF has a strong image for providing education and advocacy services for grantmakers. The Community Foundation Energy Initiative and the Kellogg Youth Project are perceived as service projects. In all liklihood the Michigan AIDS Fund Committee will receive any public recognition along with the funders of the committee. CMF's role is in support of its members' efforts.

Will other members want a fund established around their favorite subject?

The Board of Trustees has control of all CMF activities and no other fund would be established without the Board's approval. It would be explained to any inquiring member that the AIDS Fund was established in response to a need by a group of interested Members who, over 18 months, prepared plans. The Board is looking at this project as a "test" as to whether or not this type of collaboration is useful for CMF Members.

What are the advantages of CMF assuming this function?

- Service to seven Members who have requested service, volunteered their time and expressed interest in funding program from several Members.

- Extension of collaboration role which began with the organizing of CMF.

- Modest way for CMF to test fund concept used by other regional assocations...to see if useful, functional, and practical.

What are the disadvantages to CMF:

- Several Members will want to establish similar funds.
  Response: CMF testing the concept with the AIDS Fund Committee.

- Board of Trustees agenda would be burdened by grant requests.
  Response: Michigan AIDS Fund Committee would recommend grant requests to Board of Trustees, together with one-page summary of grant and the full proposal. CMF Board Member would be appointed to Committee.

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OPPORTUNITY

With cases of AIDS (and, one must assume, even greater prevalence of HIV infection) being most heavily reported in Southeast Michigan (Wayne, Oakland and Macomb Counties accounted for 70% of all Michigan cases through June 12, 1989), efforts at education and prevention have a reasonable chance of delaying the costly impact of AIDS in other areas of the state. This may partly explain why a project, undertaken by Michigan State University and funded by the National Institutes of Health, will undertake assessment of AIDS education in all communities in the state except Southeast Michigan. Meanwhile, education and prevention do figure heavily in the MDPH and C-CAP activities ongoing in Southeast Michigan, along side the direct services needed to care for those already living with AIDS. Similarly, education and prevention efforts currently receive much more of the federal HIV targeted dollars than do direct services for persons with HIV.

The Centers for Disease Control have outlined the ingredients for effective AIDS prevention. These include: access to data on infection rates in the general population and in high risk populations; estimates of the prevalence of risk behaviors and the levels of knowledge, beliefs, attitudes, skills and support services influencing such behaviors; and an inventory of the available and potential services and resources for carrying out prevention efforts.

It would seem that similar elements must be included in the provision of successful health care and social services for HIV infected individuals. In order to plan for and ultimately implement service provision, communities will need to assess the expected demand for services, estimate the costs associated with those services, identify and equip the local resources already in place to provide such services and nurture the development of services which may be needed but are presently lacking.

While the MDPH AIDS statistics reveal the numbers of AIDS cases by the county in which they were diagnosed, the statistics do not take into account individuals who may have been diagnosed with HIV infection outside the state or elsewhere in Michigan and have moved to a different community for care or family support. In the Kalamazoo County report on AIDS, it was pointed out that there were 14 diagnosed people with AIDS but 40 receiving treatment - in other words, 26 individuals had returned to the county after being diagnosed elsewhere. Only local study can arrive at estimates of the demand for services and estimates of their costs. Similarly, a detailed inventory of available services would need to be undertaken by most communities in order

Kent County group to serve as a local clearinghouse for fund raising information for providers and to develop a continuum of care through Kent County's array of acute, home health, public health and social services.

C-CAP, the oldest of the three local initiatives and the one facing the greatest local incidence of AIDS cases, has concentrated recent activities and funding in the area of direct services. It has funded and spun off a separately incorporated AIDS consortium of providers to meet the needs of people with HIV infection. The consortium has developed plans for a 20-bed sub-acute health care unit in Detroit and has implemented a community-wide case management system. C-CAP is also developing linkages with local nursing homes to expand access to long term care and devise patient care protocols, infection control guidelines and admission/discharge criteria for long term care providers. Additionally, provider education projects for social work students and for medical providers have been funded by C-CAP. Other projects in the areas of ambulatory care and mental health will be pursued as additional outside funding is identified.

In addition to nine grants for the development or promotion of continuum of care projects for people with AIDS, the MDPH has funded ten community based organizations for projects in high risk, minority HIV education/prevention. Each of the prevention projects must include target population surveys to establish baseline data against which their future success can be measured, and each must work closely with existing local public health and other organizations involved in AIDS prevention to ensure consistency. The MDPH also publishes and periodically updates the AIDS Resource Guide which lists the state counseling and testing centers, the health departments and AIDS information coordinators, state and local agencies providing services to people with HIV infection, national organizations providing AIDS information and AIDS Hotline telephone numbers.

ACTIVITIES IN MICHIGAN REVIEWED

The MDPH regularly issues statistics on the reported cases of AIDS in the state. While the extrapolation of this data to the suspected incidence of HIV infection is by no means an exact science, it is assumed that the 1,169 reported cases of AIDS in Michigan through June 12, 1989 may translate to roughly 10,000 to 15,000 individuals who might have positive HIV infection test results. MDPH makes its data available in classifications by county of diagnosis, age, race and transmission mode.

Interestingly, the three Michigan locations in which assessment, planning and coordinated AIDS programming have been aggressively pursued at the local level represent significantly different experiences with AIDS. The June, 1989 MDPH AIDS statistics show that 54% of the AIDS cases reported in the state have been discovered in Wayne County, including 44% in Detroit. Kent and Kalamazoo Counties have reported 4% and 2% respectively. Needs assessments have been proposed for Genesee County (with 3% of reported cases through June, 1989) and for Marquette County (with 4 actual cases representing less than 1%).

The MDPH has reported that their efforts at state-wide AIDS education have established a good base on which to build. Even without apparent systematic local assessment, MDPH believes more is needed by way of intervention (especially in the IV drug using population), high risk behavior reduction (prevention), HIV-related mental health services and case management and IV drug abuse treatment. This sweeping outline of needed services squares in some respects with the needs determined by the planning surrounding the three existing local AIDS entities.

In Kalamazoo, priority activities have to do with prevention (including education focused on isolated high risk groups and peer intervention) and care (health and social support). Working through the Kalamazoo AIDS Resource and Education Services (KARES), local activities and provision of services are coordinated in such a way that assured, anonymous and affordable testing, priority treatment for HIV positive IV drug users and other long term goals may ultimately be addressed.

Similarly, priorities for the AIDS Foundation of Kent County have included funding for education for high risk groups and providers, counseling and other direct (primarily social) services including housing and provision of basic needs for people living with AIDS. Eleven recent grants totalling $62,493 will support projects in these areas; three of the projects are also receiving support from MDPH. It is a future goal for the

and the support of collaborative efforts of community based organizations.

It was agreed that a group of CMF members would form a task force to explore the possibility of such a partnership, and that this Michigan AIDS Task Force would return to the CMF Board of Directors with a recommendation.

From July through November, 1989, discussions have been held with and materials received and reviewed from the four currently active AIDS collaborations in Michigan: the MDPH, the Kalamazoo County AIDS Planning Task Force, the AIDS Foundation of Kent County and C-CAP. It is clear from these discussions that consideration of a state-wide funding consortium would be welcome for several reasons. There are perceived needs for:

* coordination of private AIDS funding information state-wide,

* cross-fertilization in specific project information so that successful project methods may be shared between providers and funders, and

* a central funding source/conduit in support of an epidemic which is so far reaching and without alleviation that many donors are loathe to become involved at all.

Prepared by Michigan AIDS AdHoc Task Force
January, 1990

BACKGROUND

The topic of AIDS and HIV infection has received increasing attention on the part of grantmakers nationally and within the state of Michigan. The establishment of the Council on Foundation's affinity group, Funders Concerned about AIDS, has provided a nationwide network of information within the grantmaking community, urging that more foundation and corporate dollars be made available in the struggle to combat both the spread and the suffering associated with this chronic and fatal disease.

The Council of Michigan Foundations (CMF) included in its 1987 Annual Meeting program a session devoted to AIDS and its implications for Michigan grantmakers. This was followed within a year by a session co-sponsored by CMF and the Michigan Department of Public Health (MDPH), attended by a diverse body of state and local service providers as well as a limited number of grantmakers. Since that time, several CMF members interested in health care issues have convened on issues including state-wide information sharing by funders of health care projects, access to health care and, most recently, the status of the AIDS epidemic in Michigan. This last meeting was hosted by the W. K. Kellogg Foundation at its Battle Creek headquarters in June, 1989.

The June 28, 1989 meeting included representatives from thirteen Michigan grantmakers. Following presentations Ms. Jean Chabut of the MDPH and Ms. Diana Kerr of the Greater Detroit Area Health Council's Coordinated Community AIDS Program (C-CAP), a closed session of the attending grantmakers entertained discussion of the willingness to explore a state-wide AIDS funding partnership, under the auspices of CMF. This might follow a model displayed by the AIDS Task Force of the Northern California Grantmakers regional association.

The Northern California Grantmakers, a group of funders familiar with collaboration on various issues, has identified four benefits of collaboration among grantmakers: the encouragement of regional efforts not easily funded by individual grantmakers, a reduction of fragmentation through coordination, an opportunity for grantmakers to participate in areas they might otherwise avoid and a multiplied impact with otherwise scarce resources. In their AIDS Task Force efforts, issues were identified in the need for flexibility in priorities, the potential role in enhancing and encouraging innovation beyond public sector funding

to adequately assess the level of local resources and to initiate steps to fill service gaps. In the lack of structured planning by larger local resources, several communities in the state are now host to small, voluntary efforts to fill service gaps perceived by those most directly affected by AIDS, and it is these groups which may ultimately spearhead larger planning and coordination efforts.

In all areas studied, the building of service coalitions is stressed in order to take advantage of and strengthen the community resources already in place and to coordinate all aspects of services to avoid duplication and ensure access. The three examples of community involvement leading to coordination of AIDS efforts differ in their origins but result in each case in a group of individuals and service providers who have accepted "ownership" of AIDS as a concern to all. Cooperation and compassion have been fostered, and each community has benefited. Oddly, the three private groups are not closely attuned to each other for information sharing and other cross-fertilization.

While there are wide ranging needs in HIV education, prevention and care being met or anticipated, grantmakers have struggled with the complexity of this disease. Indeed, it is a hard disease to grasp. While research has produced drugs to forestall death and ameliorate some conditions associated with AIDS, the steady march of HIV infection has brought it to the heterosexual individual and the newborn infant, as well to the IV drug user and others whose lifestyles are anathema to many. In the absence of coherent planning and coordination within communities we are left with scattered efforts whose impact must be a question. Coordination of infomation seems needed for the Michigan grantmaking community as well as for the provider groups.

In the June, 1988 meeting on AIDS co-sponsored by CMF and MDPH, many needs for fighting the AIDS fight were identified. Among them was the need for flexible funding resources. The proposed Michigan AIDS Fund may, in part, meet that goal. To house the Fund at CMF seems only logical. Already a convener and information clearinghouse for the state's grantmakers, CMF would serve as an eligible grantee and banker for the Fund. With care to ensure that subsequent Fund grantees are completely eligible under IRS guidelines, there should be no technically negative implications for Fund supporters. The impact on CMF staff should be minimal, with most of the Fund activity undertaken on the part of the Michigan AIDS Task Force members themselves initially, and then by part-time staff once funds have been assured.

DOLLARS INVOLVED

In the absence of a state-wide assessment, it is nearly impossible to put costs and availability of funding into any clear outline. It is, therefore, only possible to set an initial monetary goal for the Michigan AIDS Fund based on an assessment of potential interest on the part of Task Force members and their contacts and on an arbitrary amount to be distributed in a first year of grantmaking. While the Northern California Grantmakers AIDS Task Force set and exceeded a three year funding goal of $1,500,000, that group represents funders used to collaborative efforts in a geographic area with one of the earliest and highest incidence of widespread HIV infection.

As stated earlier, the AIDS Foundation of Kent County recently announced grants ranging from $411 to $14,081 for projects in that area. This total of $62,493 must be supplemented with another $22,317 in new support in order to fund several projects deemed needed but unable to be funded at the present time. On the other side of the state, C-CAP has received for its own operations and the support of its funded projects over $1,225,000 from the McGregor Fund, Kellogg Foundation and Ford Motor Company Fund. It is obvious from these vastly different dollar amounts that there are wide ranges of projects, costs and available funding.

POSSIBLE SCHEDULE FOR INITIATION - MICHIGAN AIDS FUND

2/27/90 CMF Board approved Michigan AIDS Fund. Ad Hoc Task Force becomes Michigan AIDS Fund Committee (MAFC).
CMF approves MAFC funding plan.

3/90 MAFC begins drafting of RFP and plans for distribution.
Michigan AIDS Fund announced in Michigan Scene and "Memo to Members".
MAFC meets to review RFP draft.

4/90 MAFC meets to review redraft of RFP.
Initial funding in place by one or two lead donors.

5/90 MAFC meets to confirm final RFP and final distribution plans.

6/90 CMF Board approves RFP and distribution plans.
RFP distributed according to plans.
Job description developed for part-time, 1-year CMF position to staff Michigan AIDS Fund; position duration 8/90-8/91.

6/90-7/90 Additional funding secured for Michigan AIDS Fund.
Precis developed for CMF Board review of applications.
Interview applicants for part-time CMF staff position.

8/90 Final funding for Michigan AIDS Fund secured.
Part-time CMF position begins.

9/90-10/90 Proposals received, processed, distributed to MAFC.
MAFC meets to formulate 1st round recommendations.

11/90 MAFC submits recommendations to CMF for Board action.
1st round of Michigan AIDS Fund grants awarded.
Interim report made to Fund donors.

12/90-2/91 CMF staff/MAFC evaluate 1st round process.
Further distribution of RFP.
Re-evaluate applicants held over from 1st round.

2/91 Report to CMF Board on 1st round grants/evaluation.
CMF annual review of MAFC project.

3/91-5/91 Additional proposals processed, distributed to MAFC.
MAFC meets to formulate 2nd round recommendations.
CMF staff/MAFC evaluate completed 1st round projects.

6/91 MAFC submits recommendations to CMF for Board action.
2nd round of Michigan AIDS Fund grants awared.
Report made to Fund donors and CMF Board, including evaluations of 1st round projects.

6/91- Complete evaluation of 1st round projects.
8/91 Evaluate 2nd round process and, where possible, 2nd round projects.

9/91 Final report to Fund donors on processes; outcomes of 1st round and, where possible, outcomes of 2nd round projects.

10/91- Report to CMF Board.
11/91 CMF/MAFC determine future of Michigan AIDS Fund.

tml:0124H-7

CLARK, KLEIN & BEAUMONT

MEMORANDUM

TO: Dorothy A. Johnson

FROM: Duane L. Tarnacki

CLIENT: Council of Michigan Foundations

RE: Proposed Michigan AIDS Fund - CMF Board of Trustees Liability

DATE: February 1, 1990

A group of CMF members has proposed that a Michigan AIDS Fund be established and administered by CMF. The Michigan AIDS Fund will essentially be a cooperative grantmaking vehicle. CMF will receive all grants to the Fund and act as fiscal agent for the Fund, with final authority for redistribution of grants vested in CMF's Board of Trustees.

The questions which have been presented are whether this activity will give rise to greater potential liability for the CMF Board of Trustees and what protections are afforded to the Trustees.

Although the subject matter of AIDS is one which has drawn considerable national attention due to the catastrophic nature of the disease, this particular CMF project should not increase the risk of liability for Board members more than any other new initiative. The Michigan AIDS Fund will engage principally in grantmaking and will not provide direct services to AIDS patients or those affected by the disease. The potential for liability in this grantmaking context is negligible. In fact, we are unaware of any recorded cases involving Board liability where grantmaking activity was the basis of the lawsuit.

You have asked what protections are afforded to Board members and whether CMF should obtain Director and Officer liability insurance coverage ("D&O coverage). Basically, the Board can be protected in three ways--by amending the Articles of Incorporation to limit the liability of the Trustees, by providing for mandatory indemnification in the corporate Bylaws, and by obtaining D&O insurance coverage.

CMF recently amended its Articles to limit the liability of its Trustees. This provides significant protection

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against third-party claims (i.e., those brought by persons other than CMF members or the corporation itself in a suit against Trustees). Under this provision, CMF has agreed to assume the liability of any Trustee to any third party so long as the Trustee acted in good faith and in furtherance of his or her duties as a Trustee.

The indemnification language in the bylaws states that the corporation shall indemnify any Trustee or Officer against judgments, settlements, and expenses incurred by that individual so long as he or she acted in good faith and in the best interests of the corporation. This indemnification language provides additional protection to Board members and covers some situations which are not covered by the provision in the Articles of Incorporation.

A D&O policy would provide protection in other areas which are not covered by the limitation on liability in the articles and the indemnification provision of the bylaws. However, we question whether a D&O policy could be justified on a cost-analysis basis. The premiums are relatively expensive and the risk of loss is minimal. Although D&O policies generally cover judgments and settlements, the principal benefit offered by such a policy is that it will cover the expenses of defending a lawsuit (such as legal fees) since judgments and settlements are rare. The one area in which there may be some exposure is claims of wrongful discharge or other employment-related lawsuits. Since the CMF staff is relatively small, the risk of liability here is not great.