

Cynthia Coffman, Esq.
Attorney General of the State of Colorado
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203

January 7, 2016

Re: Master Plan of Conversion, Total Community Options, Inc. d/b/a InnovAge

Dear Attorney General Coffman:

On behalf of the Colorado Consumer Health Initiative (CCHI) and the undersigned individuals and organizations, please accept the following comments and recommendations on the Plan of Conversion (Conversion Plan) filed November 7, 2015 by Total Community Options, Inc. d/b/a InnovAge (InnovAge).

CCHI is a nonprofit, 501(c)(3) membership-based, consumer oriented health advocacy organization that supports a vision of increasing access to affordable, high-quality, equitable health care for all Coloradans. CCHI has helped convene interested parties and educate its members about the non-profit to for-profit conversion process and about the proposed InnovAge conversion. Members include the undersigned organizations, Disability Law Colorado and the CO-WY Chapter, National MS Society.

Disability Law Colorado, formerly The Legal Center for People with Disabilities and Older People) is a 501 (c) (3) advocacy organization that protects and promotes the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education and legislative analysis. Through the work of the Colorado Long-Term Care Ombudsman Program and the Legal Assistance Developer Program, DLC works to protect the fights of Colorado's older adults.

The National MS Society is united in its collective power to do something about MS now and end this disease forever.

First, thank you for providing the extension of time for comments and for providing the opportunity for public hearing.

InnovAge is a service provider for the Program for All Inclusive Care for the Elderly (PACE), which serves a client base of individuals who are elderly or disabled, but who wish to reside and receive services in the community rather than in a nursing home. Participants may be dually eligible for both Medicare and Medicaid and all services are provided to participants through the PACE program. Due to the nature of the PACE program, and the fact that the participants have high needs and are quite dependent on the PACE services, we ask you to exercise extreme care in

evaluating the proposed Conversion Plan. We are concerned about the impact of the conversion on services to PACE participants and that the interests of a for-profit organization could result in a diminution of quality.

Further, we are concerned that the charitable purpose for which InnovAge was originally created should be continued for the benefit of the community and that the Attorney General should ensure appropriate stewardship of the proceeds of the conversion. As such, we submit the following comments for your consideration.

Conversion Foundation

Foundation Independence

In order for the community benefit to be maximized, it is important that the entity receiving the funds from the conversion process is independent from its predecessor, and that it have an independent board that prevents conflicts of interest and bias, real or perceived. The Conversion Plan, Exhibit B currently calls for the proceeds to be distributed to the Total Community Options Foundation (hereafter, "Conversion Foundation"), which is the existing foundation supporting the nonprofit InnovAge. It also calls for the board of directors to be made up of nine members of the existing pre-conversion InnovAge Foundation and nonprofit InnovAge. The board structure of the Conversion Foundation does not provide sufficient independence from the pre-conversion foundation or the nonprofit InnovAge, notwithstanding the plans to integrate a community board in 2017.

The Conversion Foundation board of directors should impartially carry out its duties to preserve the charitable purpose of the predecessor organization for the benefit of the community. However, the loyalties of the board members have been directed at the predecessor organizations. For example, the pre-conversion foundation appears to exist for the sole purpose of supporting the nonprofit InnovAge and the board of directors has presumably operated with that charge. The Conversion Foundation should not exist for the purpose of supporting the resulting for-profit, nor should it operate in a way that steers funding away from the new for-profit's competitors or toward organizations demonstrating a particular alignment with the new for-profit.

Further, the boards of both the pre-conversion nonprofit and pre-conversion foundation have been intimately involved in the conversion process, which again gives rise to our concerns that carrying over board members does not establish an appropriate level of independence for the Conversion Foundation.

Conflict of Interest

The Conversion Plan and subsequent documents posted on December 16, 2015 do not articulate clear conflict of interest policies. Given that the current plan is to carry forward an initial board of directors comprised of board members from the former nonprofit and former foundation, it is imperative to establish clear conflict of interest policies to avoid impropriety or any appearance of impropriety.

Mission and Community

During the public hearing, Innovage CEO Maureen Hewitt clarified that the Conversion Foundation mission would be to exclusively serve the senior community. We object to this limitation. While it is important that the mission remain closely aligned to that of the original nonprofit, this mission would be too narrow. The PACE program currently serves both elderly and disabled individuals and the mission of the Conversion Foundation should likewise be broad enough to include people with disabilities. Additionally, PACE, from its inception, has served persons 55 and older, so there may be a need for a more explicit delineation of the “Senior community” to include persons age 55 and older.

In a letter filed on December 26, 2015, Innovage expressed its intent to define the Conversion Foundation’s geographic community broadly to allow for grant-making throughout the country. This is overbroad. Innovage operates primarily in communities in Colorado with two small programs in California and New Mexico. The primary focus of the new Conversion Foundation’s work should be on those three communities.

Community Advisory Committee

The board of directors should include voting members who come from and represent the communities served by the PACE program. While the Conversion Plan and subsequent filing calls for a community board, the filings are limited in the specifics about how that community board will be achieved. We recommend the establishment of a Community Advisory Committee (CAC) comprised of consumers representing the populations and communities served by the PACE program. The CAC should support:

- Selection of the foundation board of directors
- Foundation strategic planning
- Community needs assessment
- Ensuring alignment of funding priorities

There are successful models for the use of CACs in the foundation community. We request that a CAC be established immediately in order to help inform the transition process before all final decisions are made by the initial board. A CAC could help cure independence and conflict of interest issues raised herein.

Finally, we are aware that the Caring for Colorado Foundation has indicated its willingness to accept the proceeds of the conversion and manage the disposition of the funds moving forward. This is a good potential solution to achieving independence, reducing conflict of interest, and maximizing the funds that can be distributed in the community by avoiding costs associated with set up.

Proceeds of Sale

Because the value of the assets of the nonprofit should remain with the community as a community benefit, we object to aspects of the Conversion Plan that may result in reducing the value of the assets transferred to the Conversion Foundation for the

benefit of the community. For example, we object to deducting Company expenses from the Purchase Price. There is no articulation of the “expenses incurred.” This provision is unacceptably vague and would have the effect of reducing the proceeds that would otherwise be directed to a community benefit.

We further object to reducing the proceeds of the sale by \$15.8 million to be placed in escrow for four years. This seems to unreasonably place the burden of future liabilities on the Foundation, rather than the Resulting Entity and unreasonably reduces the benefit to the community.

Finally, we are concerned about the impact the Johnson Center will have on the proceeds of the conversion and that placing the responsibility of operating the Johnson Center with the Conversion Foundation could considerably restrict the foundation’s assets.

Post Conversion Monitoring

In order to protect PACE patients from disruptions to their care brought about as a result of the transition from a nonprofit to a for-profit entity, we strongly encourage the Attorney General to require a plan for independently monitoring the quality of services during and after the transition. There should be no reduction in the level or quality of services provided to beneficiaries. An independent monitor should:

- Have experience in providing or evaluating services for the dual eligible population and possess experience in the particular needs of frail and elderly individuals;
- Provide quality monitoring that is conducted on location with clients, including in home assessments; and,
- Provide ongoing evaluation and reporting on staff-to-client ratios, hours of services, overall health of clients, client turnover, provider and case manager qualifications, quality of services, number of covered services.

We also encourage the Attorney General to establish an Ombudsman who can help navigate clients, their caretakers and advocates through problems they may face with the delivery of services during the post conversion period. The PACE client base is a comparatively vulnerable population and should have an independent third-party specifically designated to help address problems that may arise for individuals. Clients should have avenues to address problems without fear of retaliation.

Thank you for your consideration. Please do not hesitate to contact Adela Flores-Brennan, 303-839-1261, with questions or clarification.

Sincerely,

Adela Flores-Brennan, Executive Director

Colorado Consumer Health Initiative

Mary Anne Harvey, Executive Director
Disability Law Center

Sharon O'Hara, Executive Vice President
CO-WY Chapter, National MS Society

M. Jean Nofles