

December 15, 2015

Cynthia Coffman, Esq.

Attorney-General of the State of Colorado

Ralph L. Carr Colorado Judicial Center

1300 Broadway, 10<sup>th</sup> Floor

Denver, Colorado 80203

Dear Attorney-General Coffman:

I appreciate the opportunity to comment on the proposed conversion of Innovage to a for-profit entity.

In 1988, together with my colleagues Dr. Willie Orr and Sue Radcliff, I founded Total Longterm Care, the PACE program now part of Innovage. After establishing the new non-profit corporation, I served as Chairman of its Board of Directors from its inception until 2008. During this 19 year period, Total Longterm Care was a successful participant in the original Medicare PACE demonstration project, became one of the first PACE sites to achieve provider status, and evolved into one of the largest and most successful PACE organizations in the United States. I resigned my position in 2008 after concluding that the recently appointed CEO and I had incompatible ideas regarding the future direction of the organization.

A central goal of the PACE model of care is to make it possible for very frail and disabled individuals to delay or avoid placement in a nursing home. Eligibility for PACE services requires certification that the needs of the individual are at the nursing home level of care. Independent analysis of the Innovage PACE population contracted by the state of Colorado has indicated that a large majority of PACE participants would require immediate nursing home placement if PACE services were not available. No organization or service provider other than PACE can as effectively avert this outcome for individuals with this level of disability. Innovage is the sole provider of PACE services in the Denver metropolitan area.

PACE participants have a very high level of impairment and disability. The majority have dementia. Many have impairments in mobility, self-care, and basic activities of daily living. The ability of such individuals to advocate for themselves is very limited. Virtually all participants are covered by Medicaid as well as Medicare, indicating that they have limited financial resources.

PACE cares for its participants in a community setting using a highly coordinated approach including adult day care, medical services, social services, transportation, home care, rehabilitative care, personal care, advocacy, and negotiation with caregivers and family members. PACE provides arguably the most intensively integrated and coordinated package of services of any health care program. There is no feasible way to obtain this care other than PACE.

PACE operates within a capitated reimbursement system under which risk-adjusted Medicare funds and Medicaid funds (based on a blend of NH and HCBS rates) for each participant are pooled to support the care of the population. This is a very costly population, with monthly rates in the \$5000 range in Denver. Roughly 2/3 of the dollars come from Medicaid. The financial success of the program depends on holding costs below the available capitated funds. This is achieved by investing heavily in care in the community and thereby reducing the very expensive use of inpatient hospital and nursing home care. The capitated payment methodology offers the flexibility needed to achieve the desired results. As a non-profit entity, PACE can offer the optimal level and mix of services to each participant, consistent with the constraints of available funding. There is great discretion in determining which services are appropriate for the individual participant.

PACE participants are “locked in”. They must use the physicians provided by the program and use only services provided or authorized by PACE. Neither Medicare nor Medicaid will pay for services from any other source as long as the participant is enrolled in PACE. There has always been concern regarding the possibility of stinting on care of this very vulnerable population. In essence, participants must accept PACE services as they are provided (or not) or face a high likelihood of immediate institutional placement. Under such circumstances, the culture of the PACE organization is a critical guarantor helping to ensure that excessive focus on profitability does not degrade the care delivered.

Such concerns can only be exacerbated by the conversion to for-profit status. The imperative to generate investment returns adds an additional factor which will influence the careful balance required to provide optimal care that is financially responsible. It will distort the financial incentives under which the program now operates.

Although it is now permissible, it is far from clear that conversion is desirable. There has never before been a PACE conversion to for-profit status. The decision made in this instance will have national implications. While I can understand why the conversion may be attractive from a business standpoint, it is much less clear how it will improve specifically the PACE services available in our community. Innovage appears to have ample financial resources to support expansion of PACE in Denver metro and in other areas of Colorado. Perhaps Innovage wishes to increase its involvement in other aging service areas, such as housing, but many other organizations can fill this need. It is only the PACE services which are unique. In fact, there is substantial risk that conversion will jeopardize specifically the quality of care provided to PACE participants. In my view, the proposed conversion is a betrayal of the ideals and values which once were the bedrock of this program.

However, I do realize that others may see this issue differently and the conversion may take place. If so, the disposition of the funds resulting from the transaction is a key issue. The funds should be used to support activities closely linked to the original purposes. These purposes include providing direct service to the elderly, especially the frail elderly, and advancing understanding of the most effective, beneficial and cost-effective approaches to caring for this population. If the public is to “sell” Innovage to the investment group, strong patient protections for PACE participants and preservation of the charitable purposes of the sale proceeds are essential. To avoid potential inurement, the funds should be managed without influence or involvement of persons connected with the for-profit venture or persons connected with the decision to move in this direction.

Perhaps I misunderstand the proposal, but it appears to call for the transfer of funds to the Innovage Foundation, which would be largely or entirely controlled by individuals who are today closely

associated with Innovage. Furthermore, the document appears to propose that the charitable funds resulting from the sale and managed by the Innovage Foundation will be used for the benefit of those who are Innovage clients. These funds could be used to replace costs that would otherwise be borne by the for-profit entity, thus increasing investment returns. Surely this arrangement cannot be permitted.

Colorado is fortunate to have multiple health-care-related foundations with experience in grantmaking and the infrastructure to accept and manage the very substantial proceeds of the sale. I would expect that if this approach is chosen that the funds would be segregated in order to insure their application to the original charitable purposes. On the other hand, the size of the transaction could justify the creation of an entirely new foundation.

In summary, the proposed conversion would jeopardize the care upon which frail elderly residents of our community are dependent, and raises the spectre of potential financial exploitation of these extremely vulnerable individuals. I fear that, over time, degradation of the care provided in the PACE operation will occur in spite of any regulatory oversight, as the consequence of improperly aligned financial incentives. Nevertheless, if the transaction is allowed to proceed, it should incorporate the highest level of protection for the participants. Finally, the proceeds of a sale should be absolutely segregated from the control and influence of individuals currently associated with Innovage or with the new for-profit company.

Sincerely,

Alan Lazaroff, M.D.