



## Statement regarding the Colorado AG's opinion on the InnovAge case

*Elisabeth Arenales, Health Program Director for the Colorado Center on Law and Policy, issued the following statement about the Colorado Attorney General's opinion in the conversion of Total Community Options Inc. (InnovAge):*

Colorado Attorney General Cynthia Coffman on Thursday approved InnovAge's proposal to convert to a for-profit organization, with modifications. InnovAge is Colorado's largest provider of the Program of All Inclusive Care for the Elderly (PACE). The organization sought to convert from nonprofit to for-profit status late last year.

The Attorney General's opinion on the InnovAge matter reflects the importance of public comment in these types of conversions. It will also do much to ensure that InnovAge's public assets will be distributed for the benefit of the communities they were intended to serve. Having said that, the opinion fell short of community proposals which would have generated even better results for frail elderly and disabled Coloradans and their families.

InnovAge operates the second-largest PACE program in the United States. Its conversion in Colorado is the first-ever in the nation. PACE programs serve frail elderly and disabled individuals in need of medical care as well as a broad spectrum of supports and services. Most PACE participants are eligible for Medicare and Medicaid. Based in Colorado, InnovAge also operates PACE programs in California and New Mexico.

During the 2015 session of the Colorado legislature, InnovAge backed a bill that permitted Colorado's Medicaid program to contract with for-profit PACE programs -- anticipating a change in the federal law. The bill passed and the federal law did in fact change in May 2015. CCLP played a substantial role in ensuring there were basic procedures in the Colorado legislation -- including timelines and specific requirements for the converting company to file its plan of conversion and a requirement for a public comment period.

In late October of 2015, InnovAge filed a conversion plan with the Attorney General. The proposal raised concerns with numerous groups and individuals including CCLP, the Colorado Cross Disability Coalition, the Chronic Care Collaborative, the Colorado Consumer Health Initiative and Dr. Alan Lazaroff, the founder of InnovAge's predecessor organization.

CCLP submitted objections and comments raising concerns that InnovAge's assets were substantially undervalued and that InnovAge would transfer its assets upon conversion to a foundation with strong ties to the new for-profit company. CCLP maintained that the new foundation should serve the elderly *and* disabled. CCLP also advocated that InnovAge's Colorado assets should remain in the state and that the Attorney General should exercise oversight over the new foundation and new for-profit company. CCLP insisted there be no private inurement to InnovAge officers and directors as a result of the sale of the company and that PACE program participants should be protected so as to ensure no diminution of care

after the conversion. CCLP and others also sought the establishment of an ombudsman to serve the InnovAge PACE community.

The Attorney General's opinion requires the for-profit entity to provide as much as an additional \$20 million dollars to the conversion foundation, bringing the total endowment from the original proposal of \$202 million to as much as \$222 million by 2020. The opinion establishes an ombudsman program to ensure there is no diminution of care and services to InnovAge's PACE clients. It also restructures the initial foundation and InnovAge board by adding community representatives including a PACE participant or family member, an individual representing the frail elderly population and an individual representing the frail elderly disabled community. In addition, the Attorney General restructured the foundation's mission to include disabled individuals and both rural and urban areas of Colorado. She also required the foundation to set aside 80 percent of the value of the transaction plus future earnings for Colorado.

Additionally, the Attorney General's opinion requires the foundation's board of directors to submit conflict of interest statements to her office through 2021 and establishes monitoring requirements for the for-profit entity. The Attorney General will appoint a designated, ex-officio, non-voting representative to serve on the foundation board for five years. She also disallowed \$2.3 million in severance payments to InnovAge senior management.

While the Attorney General made substantial changes to the original conversion plan, CCLP's valuation expert had estimated a value substantially higher than \$222 million. We believed the valuation was closer to \$400 million because the potential market for PACE services is growing rapidly and Denver's real estate market is booming. We are also concerned that eight out of 12 members of the foundation's initial board of directors will be current InnovAge executives or InnovAge Foundation board members. We believe that an organization with direct ties to InnovAge may not be an appropriate custodian of the community assets because there is a risk the board might inappropriately favor the newly formed for-profit. InnovAge is being purchased by Welsh, Carson, Anderson and Stowe, an equity investment firm. Under the proposal, InnovAge will remain headquartered in Colorado for at least five years.

In the end, this opinion affirms our belief that a public review process is necessary and effective in ensuring that assets that are built through public funds and tax-exempt status remain in the community and benefit the people for whom they are intended.

Though the opinion substantially improved InnovAge's original proposal, CCLP will consult with members of the affected communities as we assess whether the opinion meets legal requirements and whether it is subject to court review seeking to establish greater protections and benefits for those affected.

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[The Colorado Center on Law and Policy](#) is a nonprofit, non-partisan research and advocacy organization that engages in legislative, administrative and legal advocacy on behalf of low-income Coloradans.