



November 17, 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

Re: Total Community Options, Inc.'s (InnovAge) Conversion Plan

Dear Attorney General Coffman:

This letter is to follow up with you and your office regarding the concerns addressed in our letter and initial submission of comments to you of November 13, 2015, regarding the Plan of Conversion submitted to your office by Total Community Options, Inc., d/b/a InnovAge.

In connection with, and as a vehicle to begin addressing and evaluating, the concerns raised in our previous letter, Colorado Center on Law and Policy respectfully requests your office to direct the following inquiries to InnovAge and to the InnovAge Foundation, an affiliate of InnovAge. We would request that you ask them to respond to each inquiry fully, to the knowledge of key employees, under oath if you deem appropriate, and with all pertinent documentary support. We would further request that – in view of the incomplete nature of the Conversion Plan as filed and the extraordinarily short public comment period as presently established – the full responses be received and publicly posted by your office within five business days, and in any event prior to November 24, 2015. If full and complete responses are not forthcoming by that date, the deadline for public comments should be extended by one day for each day after Nov. 24, 2015 such Responses are submitted. These requested inquiries are:

**A. Inquiries Regarding Valuation:**

1. What process was followed to find a sponsor for the for-profit conversion of InnovAge and to optimize the value transferred to the Foundation? In this regard, did InnovAge take any steps to “test the market” for the sale of its business prior to settling on its current Conversion Plan? Did it retain an investment banking firm or other form of outside advisor to assist in such effort? Did it receive any alternative proposals or bids for purchase and/or capitalization? If so, what were those proposals (supplemented by any documentary support)?
2. Please explain the discrepancy in valuation figures addressed in CCLP’s letter of November 13, 2015 – i.e., the stated acquisition price of \$180,309,100 plus \$6,068,900 in stock shares referenced on the second page of Exhibit D and the 2015

valuation of \$211,814,000 on the last page of Exhibit C of the Conversion Plan as submitted. How were these changes or variations arrived at? Please provide a single clear table showing how the \$186.4 million figure in Exhibit D to the Conversion Plan was calculated – including the \$180.3 million in cash and the 5% interest valued at \$6.1 million.

3. The valuation report for the Conversion Plan refers to a “working capital surplus” of \$37.3 million (on page 68 of the VMG Health report) and Exhibit D refers to an “...adjustment to account for net working capital and closing cash amounts.” Please detail how the \$37.3 million was calculated by VMG Health, and how InnovAge proposes to calculate the final closing adjustments for net working capital and closing cash.
4. The last page of Exhibit C to the Conversion Plan refers to an adjustment for “bond defeasance” of \$38.1 million. Please provide backup for that calculation, including the date when the outstanding balance on the bonds was calculated.
5. Was consideration given to the retention of any other firm to conduct the business valuation for the Conversion Plan? If so, what other firms were considered, why were they rejected and why was VMG Health chosen to conduct the valuation?
6. Was an accounting firm other than Baird Kurtz and Dobson ever considered to do the audits for InnovAge in the 2013, 2014 or 2015 period and if so, identify the firm and state the reason for non-selection thereof.
7. What were the reasons underlying the decision to proceed with the capitalization transaction with Welsh Carson, Anderson, & Stowe XII, L.P.?
8. Please explain why InnovAge has accumulated approximately \$100 million in cash, board designated funds, and investment funds rather than using some or all of said funds for the benefit of their frail and elderly clients in Colorado. Please explain if and how InnovAge proposes to “true up” that figure at closing.
9. Please state whether the level of operating income over operating expenses has increased or decreased for the 4 month period ending October 31, 2015 and by how much, compared to the similar period ending October 31, 2014.
10. Please state whether there has been any appraisal of any or all of the Real Estate described as having a book value of \$77 million plus in the June 30, 2015 Financial Statement. If not, please state the reasons therefor. If so, provide a copy of all appraisals. Please also explain how, and the methodologies by which, the values attributed to Real Estate on the last page of Exhibit C to the Conversion Plan were arrived at.

11. The June 30, 2015 Financial Statement p. 27 describes a Deferred Compensation Plan for key employees. Please describe the amounts distributed to employees in 2015, and obligated by the Employer to be paid or paid under the Plan. Please provide a copy of the Deferred Compensation Plan in effect for any part of 2014 and/or 2015, and please explain the reasons for any termination, modification, or amendment of the Plan from January 1, 2014, to the present.
12. Have the amounts, if any, paid for Conversion legal assistance and for Conversion financial or investment advice been allocated to ordinary operating expenses or General and Administrative for the years ending June 30, 2014 and 2015. How much has been allocated in each year. Have any such expenses been obligated for the period ending Nov. 6, 2015 and will any additional such expenses be due from InnovAge at or before the contemplated Closing transaction?
13. Has InnovAge or the InnovAge Foundation ever prepared for internal use or discussed with prospective investors or acquirers any analysis or projections of the dual eligible population in Colorado, in New Mexico, in California, and/or any other States, or have they discussed externally prepared documents regarding the same? Has InnovAge-Lowry, an affiliated entity, prepared any such analysis or projection? Are InnovAge or the InnovAge Foundation aware of any third party analyses or projections by VMG Health or others? If so, please provide copies.
14. What entity owns InnovAge-Lowry after July 1, 2015, and what entity will own InnovAge-Lowry if the Plan of Conversion is effectuated? Please identify the names of its current key employees and the key employees it is expected to have after the Conversion has been effectuated. Has the fair market value of InnovAge-Lowry been estimated by anyone? If so, what is that estimated value?
15. The valuation report from VMG Health was completed July 22, 2014 based on data as of February, 2014. Has the valuation been updated based on more recent data? How would you propose that more recent valuations and appraisals be included?
16. Please clarify how InnovAge Senior Housing Thornton will be handled in the conversion – and, specifically, the assets associated with the contributed capital of \$8.2 million in FY2015, and \$923,998 in FY2014. Also, please verify that US Bancorp Community Development Corporation is the source of the contributed capital, and their ongoing relationship with InnovAge – currently and after the conversion.

**B. Inquiries Regarding Post-Conversion InnovAge Foundation:**

17. Please state the reasons why did InnovAge proposed to select its own foundation to be the recipient of the conversion proceeds, as opposed to distributing the proceeds to one

or more existing Colorado foundations or creating a new wholly independent foundation?

18. Have either InnovAge or the InnovAge Foundation prepared or considered any estimates of the annual costs of operating a new Foundation. What are the estimates and what staffing was considered in making the estimates?
19. What are the estimated costs of operating the Johnson Center? If the Johnson Center is not anticipated to be self-supporting, to what extent will its operations be funded by or through the Foundation? What impact is this anticipated to have upon the finances of the Foundation? What are the Foundation's long-term goals for the Johnson Center? Are there any existing restrictions on the operations or mission of the Johnson Center that could affect projected costs?
20. What are the qualifications of the proposed InnovAge Foundation Board members? What, if any, consideration was given to other persons for Board membership or an independent process to select initial directors of the post-conversion Foundation?
21. Please provide copies of all draft or final new or amended organizational and operational documents for the InnovAge Foundation as may be pertinent to its post-conversion operations, to include, without limitation, new and amended articles, bylaws, mission statements, resolutions, or minutes pertinent to post-conversion structure or operations.
22. What steps are being taken to assure that there will be no conflicts of interest between the InnovAge Foundation board and staff and the new for-profit InnovAge successor entity? Will any of the nine proposed InnovAge Foundation board members have any relationship with the new for-profit entity? If so, please list which proposed InnovAge Foundation Board members and please describe the nature of the relationship with the for-profit entity going forward. Will any InnovAge Foundation executive staff have any relationship with InnovAge following the conversion, e.g. is there any continuing relationship or overlap between the foundation executive staff and the company going forward?
23. Does the InnovAge foundation have a mission statement or proposed mission statement applicable to its post-conversion operations? If so, please provide it.

**C. Inquiries Regarding Avoidance of Private Benefit and Conflicts of Interest:**

24. Has or will any form of compensation, bonus, incentive, benefit, or inurement of any kind flow to any individual or entity presently associated with InnovAge or the InnovAge Foundation in connection with any aspect of this conversion transaction or thereafter? If so, please explain the nature and value thereof and provide copies of all documents related thereto.

25. Are there any arrangements or commitments – in organizational documents, orally, or otherwise – for support, assistance, or cooperation of any kind to flow from the post-conversion InnovAge foundation to or for the benefit of the successor for-profit entity?
26. Please state the amount of total compensation of any kind for each of the key employees of InnovAge in 2013, 2014 and 2015 to date. Please state the amount of compensation of each key employee of the InnovAge Foundation for the same periods. Please also state whether there has been any compensation of any of the members of the Boards of Directors of either InnovAge or the InnovAge Foundation during 2014 and 2015.
27. Are the key employees of the InnovAge PACE program and InnovAge-Lowry subject to noncompete agreements so that they are barred from competing with the Foundation and successor for profit entity after the Conversion? If not, why not?

**D. Inquiries Regarding Post-Conversion Quality of Care and Monitoring:**

28. What steps are being taken to assure that the level and quality of services being provided to the community presently served by current InnovAge will be maintained in the wake of the conversion to for-profit status?
29. Please provide copies of all transaction service agreements (or the most recent drafts thereof) related to the conversion transaction.

**E. Miscellaneous:**

30. Please provide the minutes of meetings of the Board of Directors and committees thereof of InnovAge and the InnovAge Foundation for the period Jan. 1, 2013 to date, and state whether they were contemporaneously recorded, and if subsequent revisions were made, describe the revisions and provide the original versions thereof.

We again request that appropriate extensions of the public comment period and public hearings be arranged to allow sufficient time for members of the public to consider the responses to these inquiries and submit their comments and questions with regard thereto. At a minimum, we request that any extensions granted to InnovAge to respond to the inquiries set forth in this letter be reflected in an at least comparable extension of the comment period.

Thank you again for your consideration of our requests and submissions regarding this very substantial conversion process.

Respectfully submitted,

Colorado Center on Law and Policy

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