

**BEFORE THE ATTORNEY GENERAL
STATE OF COLORADO**

IN THE MATTER OF THE INNOVAGE MASTER PLAN OF CONVERSION

JURISDICTION OF THE ATTORNEY GENERAL

1. On October 30, 2015, Total Community Options, Inc. d/b/a InnovAge (“InnovAge”) presented a Master Plan of Conversion under which it and its subsidiaries would convert from nonprofit to for-profit corporations as part of a capitalization transaction with Welsh, Carson, Anderson & Stowe XII, L.P. (“Welsh”). This opinion refers to the subject matter of the conversion as the “Transaction.”
2. InnovAge is a provider under the Program of All-Inclusive Care for the Elderly (“PACE”). PACE is a program through which individuals who are 55 years of age or older, eligible for Medicare or Medicaid, and at a nursing home level of care can receive comprehensive medical and social services to help them remain in the community. Additional information about the PACE program can be found at the websites for the Centers for Medicare and Medicaid Services and the Colorado Department of Health Care Policy and Financing. *See Program of All-Inclusive Care for the Elderly (PACE)*, Medicaid.gov, <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/integrating-care/program-of-all-inclusive-care-for-the-elderly-pace/program-of-all-inclusive-care-for-the-elderly-pace.html>; *Program of All-Inclusive Care for the Elderly (PACE)*, Colo. Dep’t of Health Care Pol’y & Fin., <https://www.colorado.gov/pacific/hcpf/program-all-inclusive-care-elderly>.
3. As a PACE provider, InnovAge must give notice to the Attorney General, including specific information, of any proposed conversion from nonprofit to for-profit status. C.R.S. § 25.5-5-412(14)(a) (2015). InnovAge transmitted its complete notice to the Attorney General on November 6, 2015.
4. The Attorney General has reviewed the Transaction under Colorado’s PACE statute, C.R.S. § 25.5-5-412, and pursuant to the Attorney General’s common law authority over charitable trusts, *see* C.R.S. §§ 25.5-5-412(14)(c), 24-31-101(5). In analyzing the conversion of a nonprofit corporation to a for-profit corporation, the Attorney General is guided by the cy pres doctrine.
5. Pursuant to the principles of cy pres and trust oversight, the Attorney General has determined that the scope of the review will focus on the following four factors:
 - a. whether the entity can demonstrate that continued operation is impossible or impracticable without the sale of its assets;
 - b. whether fair market value is received for the assets of the nonprofit charitable corporation;

- c. whether the transaction will preserve the assets of the nonprofit charitable corporation for the charitable purposes to which they were dedicated in Colorado; and
 - d. whether the transaction is in the public interest.
6. The General Assembly has expressly authorized the conversion by statute and has created a process for conversion. *See* C.R.S. § 25.5-5-412. Because InnovAge is complying with that process, the Attorney General deems the first factor satisfied for this case.

DECISION

7. Based on review of the Transaction, documentation, public comment, testimony at public hearing, and consultation with independent experts and advisors, the Attorney General finds and determines that the Transaction involves the conversion of a nonprofit charitable healthcare corporation to a for-profit corporation and is therefore subject to the Attorney General's jurisdiction pursuant to C.R.S. § 25.5-5-412 and the common law of the State of Colorado. *See, e.g.,* C.R.S. §§ 24-31-101(5), 2-4-211.

8. Based on review of the materials listed in paragraph 7, the Attorney General further finds and determines the following:

- a. The Transaction, as modified pursuant to the Attorney General's request, results in fair market value being received for the assets of the nonprofit charitable corporation.
- b. The Transaction, as modified pursuant to the Attorney General's request, will preserve the assets of the nonprofit charitable corporations for the charitable purposes to which they were dedicated in Colorado.
- c. The Transaction, as modified pursuant to the Attorney General's request, is in the public interest.

9. Accordingly, the Attorney General concludes that the Transaction may proceed pursuant to the modifications requested by the Attorney General and outlined below.

BACKGROUND

A. The Parties.

- i. *Total Community Options, Inc. d/b/a InnovAge.*

10. Total Community Options, Inc. is a Colorado nonprofit corporation. The corporation was originally incorporated on May 22, 2007.

11. Total Community Options, Inc. does business as InnovAge.

12. InnovAge has tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

13. The stated purposes of InnovAge are to operate “exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.” Arts. of Incorporation of Total Community Options, Inc., art. III(a). The specific purposes and objectives of InnovAge are “to plan, develop, implement and provide comprehensive health care and other services for the benefit of persons in need of long term care, including but not limited to preventative, medical, diagnostic, treatment, rehabilitation, mental health, dental, housing, social and follow-up services through the operation of appropriate facilities, through the provision of technical assistance, and by any other means that may be necessary or desirable.” *Id.*

14. InnovAge subsidiaries include the following:

a. *Seniors!, Inc.*

15. Seniors!, Inc. (“Seniors”) is a Colorado nonprofit corporation. It was originally incorporated on October 8, 1969, as Comprehensive Services for the Aging. Its name was changed to Senior Services, Inc. on June 25, 1970, and then again to Seniors!, Inc. on April 27, 1977.

16. InnovAge acquired Seniors in January 2009.

17. Seniors delivers the InnovAge Home Care service line. This service line provides in-home services—including skilled care, non-skilled care, and other direct support services—to elderly individuals. InnovAge, 2014 Annual Report 10 (2014), *reproduced in* Letter from M. Hewitt to C. Coffman, at Attach. 1 (Dec. 26, 2015).

18. Seniors also does business as Seniors, Inc.; Moonlight Classic; InnovAge Home Care; InnovAge Home Care in Trinidad; InnovAge Home Care in Pueblo; InnovAge Home Care in Canon City; InnovAge Home Care in Thornton; InnovAge Home Care in Denver; InnovAge Home Care Prime; InnovAge Home Care - Thornton; and InnovAge Home Care South.

19. Seniors has tax-exempt status under section 501(c)(3) of the Internal Revenue Code and is a registered Colorado charity.

20. Seniors was incorporated to “assist, encourage, and promote activities serving the broad range of needs of older people.” Arts. of Incorporation of Comprehensive Services for the Aging, art. III(a). It lists, as examples, (1) “To conduct research and study and to promote the development of programs”; (2) “To facilitate communication among institutions and agencies, both public and private”; (3) “To disseminate information and advice to individuals, agencies, institutions, and other organizations”; (4) “To provide staff services to such agencies, institutions, or organizations”; and (5) “To sponsor and provide direct services to the aging.” *Id.*

21. The stated charitable purpose of Seniors is to “promot[e] independence and enrich[] the quality of life as we age” and “to support families, caregivers and elders through programs, services and activities that include in-home support, caregiving, companionship, transportation, money management, resource identification, prescription drug counseling, Medicaid outreach, community education, volunteerism, community service and older worker employment.”

b. *InnovAge Senior Housing-Thornton, LLC.*

22. InnovAge Senior Housing-Thornton (Managing Member), LLC is a Colorado limited liability company. It was organized on March 29, 2013. It is a member-managed LLC.

23. InnovAge Senior Housing-Thornton, LLC is a Colorado limited liability company. It was organized on May 18, 2012. It is a member-managed LLC.

24. InnovAge is the sole member of InnovAge Senior Housing-Thornton (Managing Member), LLC. *See* Total Community Options, Inc. d/b/a InnovAge and Subsidiaries, Independent Auditor's Report and Consolidated Financial Statements June 30, 2015 and 2014, at 10. InnovAge Senior Housing-Thornton (Managing Member), LLC has a 0.01% membership interest in InnovAge Senior Housing-Thornton, LLC, with the remaining 99.99% interest being held by U.S. Bancorp Community Development Corporation. *See id.*

c. InnovAge Senior Housing-Thornton II, LLC.

25. InnovAge Senior Housing-Thornton II, LLC is a Colorado limited liability company. It was organized on June 11, 2013. It is a member-managed LLC.

26. InnovAge is the sole member of InnovAge Senior Housing-Thornton II, LLC.

d. Johnson Adult Day Program, Inc.

27. Johnson Adult Day Program, Inc. ("Johnson Program") is a Colorado nonprofit corporation. It was incorporated on November 17, 2008.

28. Johnson Program is a subsidiary of InnovAge.

29. Johnson Program does business as InnovAge Johnson Adult Day Program, innovAge Johnson Adult Day Program, Innovage Johnson Adult Day Program, innovage Johnson Adult Day Program, InnovAge JADP, innovAge JADP, Innovage JADP, and innovage JADP.

30. Johnson Program has tax-exempt status under section 501(c)(3) of the Internal Revenue Code and is a registered Colorado charity.

31. The stated purposes of Johnson Program are to operate "exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code." Attachment to Arts. of Incorporation of Johnson Adult Day Program, Inc., art. III(a). The specific purposes and objectives of Johnson Program are "to provide clients with dementia with a day program that is activity-based, focused on client-centered care and provide support for adults with a range of health challenges, including Alzheimer's and Parkinson's disease, or the after-effects of stroke. Services and programs shall include supervised exercise and walks, wellness monitoring, administration of all medications, referrals to doctors, social workers, psychiatrists, nursing homes, case management, personal hygiene services, and daytrips and outings for many ability levels." *Id.*

ii. Total Longterm Care, Inc.

32. Total Longterm Care, Inc. ("TLC") is a Colorado nonprofit corporation. It was founded and incorporated on December 4, 1989. Amended and Restated Articles of Incorporation were filed on May 1, 1998, on April 12, 2000, and again on May 22, 2007.

33. TLC was acquired by InnovAge as part of the transaction creating InnovAge on May 22, 2007.

34. TLC was the original PACE provider and continues to deliver the PACE service line of InnovAge.
35. TLC does business as InnovAge Greater Colorado PACE; InnovAge Greater Colorado PACE-Pueblo; InnovAge Greater Colorado PACE-Cody; InnovAge Greater Colorado PACE-Thornton; InnovAge Greater Colorado PACE-Chambers; InnovAge Greater Colorado PACE-Central Denver; InnovAge Greater Colorado PACE - Denver; InnovAge Greater Colorado PACE - Capitol; InnovAge Greater Colorado PACE - North; InnovAge - PACE; InnovAge Greater Colorado PACE - Loveland; InnovAge PACE Home Care; InnovAge PACE Home Care Chambers; InnovAge PACE Home Care Denver; InnovAge PACE Home Care Cody; InnovAge PACE Home Care North; and InnovAge PACE Home Care Thornton.
36. Changes to the TLC bylaws or articles of incorporation require the consent of the InnovAge board of directors. Am. & Restated Arts. of Incorporation of Total Longterm Care, Inc., art. VIII.
37. TLC has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is a registered Colorado charity.
38. The original stated purpose of TLC is to operate “exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” Arts. of Incorporation of Total Longterm Care, Inc., art. III(a). The specific purposes and objectives of the corporation are “to plan, develop, implement and provide comprehensive health care services for the benefit of the frail dependent elderly, including but not limited to preventative medical, diagnostic, treatment, rehabilitation, mental health, dental, social and follow-up services through the operation of appropriate facilities, through the provision of technical assistance, and by any other means that may be necessary or desirable.” *Id.* In 2007, the phrase “frail dependent elderly” was replaced by “those in need of long term care.” Am. & Restated Arts. of Incorporation of Total Longterm Care, Inc., art. III(a).
39. The stated charitable purpose of TLC is to “operate[] adult day centers, provide[] home health assistance, and other healthcare related services to the frail elderly in the Denver metro area and Pueblo through a Program of All Inclusive Care for the Elderly.”
40. TLC Subsidiaries include the following:
- a. *TLC Inland, LLC.*
41. TLC Inland, LLC is a Delaware limited liability company. It was organized on September 20, 2011.
42. TLC Inland, LLC has filed a Statement of Foreign Entity Authority with the Colorado Secretary of State.
43. TLC Inland, LLC is a subsidiary of TLC.
- b. *Continental Community Housing, Inc.*
44. Continental Community Housing, Inc. (“CCH”) is a Colorado nonprofit corporation. It was incorporated on December 23, 2008.
45. CCH also does business as InnovAge Senior Housing – Pinewood.

46. CCH is “organized and shall be operated exclusively for charitable purposes within the meaning of section 39-3-112(3)(c) of the Colorado Revised Code.” Arts. of Incorporation of Continental Community Housing, Inc., art. III(a). Section 39-3-112(3)(c) permits property tax exemption for residential structures occupied by “[s]ingle individuals or families who occupy a transitional housing facility which is owned and operated by an organization which is exempt from federal income tax pursuant to the provisions of section 501 (c) (3) of the ‘Internal Revenue Code of 1986’, as amended.”

47. CCH is a subsidiary of TLC.

c. InnovAge Greater Colorado PACE - Loveland, LLC.

48. InnovAge Greater Colorado PACE - Loveland, LLC is a Colorado limited liability company. It was organized on December 26, 2012.

49. TLC is the sole member of InnovAge Greater Colorado PACE - Loveland, LLC.

d. Total Community Care, LLC.

50. Total Community Care, LLC is a Colorado limited liability company. It was organized on July 23, 2003.

51. When it was organized, Total Community Care, LLC had two members: Community Care Organization, Inc. and TLC. Community Care Organization, Inc. is a Wisconsin corporation that is now known as Community Care, Inc.

52. TLC is now the sole member of Total Community Care, LLC. A Statement of Change was filed on December 31, 2007, and an Amended and Restated Operating Agreement transferring membership became effective on May 23, 2008.

53. Total Community Care, LLC “may engage in any lawful business, subject to any provisions of law governing or regulating such business.” Am. & Restated Op. Agreement of Total Community Care, LLC § 7.

54. Articles of Amendment were filed on November 16, 2004. Those articles provide that Total Community Care, LLC “cannot merge, consolidate or be converted to an organization which is a for profit entity.” Arts. of Amend. of Org. for Total Community Care, LLC, art. g.

iii. Total Community Options Foundation.

55. Total Community Options Foundation (the “Foundation”) was incorporated on May 28, 2008. The Foundation is a Colorado nonprofit corporation.

56. The Foundation does business as TCO Foundation, InnovAge Foundation, and NextFifty Initiative.

57. Any amendment to the articles of incorporation or bylaws of the Foundation requires the consent of the board of directors of InnovAge. Total Community Options Foundation Attachment to Arts. of Incorporation, arts. VII-VIII.

58. The Foundation has tax-exempt status under section 501(c)(3) of the Internal Revenue Code and is a registered Colorado charity.

59. The Foundation is “organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.” Arts. of Incorporation of Total Community Options Foundation, art. III(a). The “specific purposes and objectives of the corporation shall be to secure broad-based community support for the programs of [InnovAge, including TLC], and Total Community Care, Inc., Colorado nonprofit corporations. The corporation seeks to educate the community on the work of these organizations, solicit financial support from a variety of funding sources (including individuals, corporations and foundations), and administer the funding it receives so as to preserve the intention of the donor and advance the mission of the corporation.” *Id.*

60. The stated charitable purposes of the Foundation are the same.

iv. Welsh, Carson, Anderson & Stowe.

61. Welsh, Carson, Anderson & Stowe focuses on investing in healthcare and information/business services. Welsh was organized in 1979 as a venture capital firm. The firm now employs an equity partnership model and has a total capitalization of \$22 billion invested in healthcare and information/business services companies. *See Our Firm*, Welsh, Carson, Anderson & Stowe, <http://wcas.com/our-firm/general-partners'-letter>.

62. Welsh, Carson, Anderson & Stowe XII, L.P. is a Delaware limited partnership. It was formed on January 31, 2014.

63. Welsh is registered in New York as a foreign limited partnership. The main office for Welsh is in New York, NY.

64. Welsh is not currently registered with the Colorado Secretary of State.

65. TCO Acquisition Corporation, which is the buyer in the Transaction, and TCO Group Holdings, Inc. are both entities affiliated with Welsh. Those entities are not currently incorporated or registered in Colorado.

B. Proposed Conversion.

66. Under the proposed conversion, InnovAge and its subsidiaries will convert to for-profit entities, owned by Welsh; the Foundation will be restructured; and Welsh will pay conversion proceeds to the Foundation as consideration for the acquisition, in order to preserve the charitable assets of the nonprofit charitable corporations.

i. Proposed Corporate Restructuring.

67. The parties propose that when the Transaction is finalized, InnovAge, TLC, Seniors, and CCH will each convert from nonprofit to for-profit corporations. Master Plan of Conversion § 1.

68. Upon conversion, InnovAge will issue 100% of the shares of its stock to TCO Acquisition Corporation. *Id.* § 4(b)(i).

69. TCO Group Holdings, Inc. will be the sole stockholder of TCO Acquisition Corporation. *Id.* at 12, ex. D.

70. Upon conversion, TLC and Seniors will each issue 100% of the shares of their stock to InnovAge, who will be the sole shareholder of each. *Id.* § 4(b)(ii).

71. At the conversion, CCH will issue 100% of the shares of its stock to TLC, who will be its sole shareholder. *Id.* § 4(b)(iii).

72. The Transaction identifies TLC Inland, LLC; InnovAge Greater Colorado PACE – Loveland, LLC; Total Community Care, LLC; InnovAge Senior Housing-Thornton, LLC; and InnovAge Senior Housing-Thornton II, LLC as the LLC Subsidiaries. *Id.* § 1(a).

73. Upon conversion, the LLC Subsidiaries will automatically convert to for-profit limited liability companies. *Id.* The Plan of Conversion states that the governance and membership of those companies will remain the same following the conversion. *Id.*

74. Welsh has committed to maintaining the headquarters of InnovAge in Colorado for a period of at least five years following the conversion. *Id.* at 12, ex. D.

ii. Proposed Foundation Restructuring.

75. Upon conversion, InnovAge will relinquish any rights it has in the governance or election of directors of the Foundation, and the Foundation will continue as an independent Colorado nonprofit memberless corporation. *Id.* § 1(b).

76. The Foundation intends to “be a grantmaking, not an operational, charity promoting independence and dignity for the vulnerable and under-served aging population by encouraging and supporting innovative, affordable and coordinated services and initiatives.” *Id.* at 8, ex. B.

77. The Foundation also intends to “step into the shoes of [InnovAge] after the Conversion to continue supporting and operating the nonprofit Johnson Center in Englewood, a legacy provider of specialized adult day care and related services for the frail aging population in the Denver-metro community.” *Id.*

78. The Foundation’s board of directors will consist of between seven and seventeen directors with staggered three-year terms. *Id.* Directors can serve a maximum of two consecutive three-year terms. The Foundation’s permanent governing board will be “a broad, community-based body which reasonably represents its diverse constituency taking into account geographic, cultural and other relevant considerations.” *Id.* at 9, ex. B.

79. The Foundation’s initial transitional board will serve from conversion until the Foundation’s annual meeting in 2017, when the permanent community-based board structure will be fully implemented. *Id.*

80. The Foundation’s initial transitional board contains four individuals who currently serve on the Foundation’s board, four individuals who currently serve on InnovAge’s board, and one individual who serves on both boards. *Id.*

iii. Proposed Transaction Purchase Terms.

81. As consideration for the acquisition of the stock of InnovAge, TCO Acquisition Corporation will pay \$180,309,100, subject to adjustment for net working capital and closing cash amounts. *Id.* at 12, ex. D. These items, which are defined terms in the Transaction, represent cash held by InnovAge at closing. This cash will first be used to pay debt and defease bonds held by InnovAge at closing. The excess cash remaining after debt payment and bond defeasance will then be added to the purchase price.

82. TCO Holdings Group, Inc., which is the parent and sole stockholder of TCO Acquisition Corporation, will issue shares representing a 5% interest and valued at \$6,068,900 to the Foundation. *Id.*

83. As part of the Transaction, \$15,842,130 will be held in escrow for a four-year period. *Id.*

84. The parties estimate that InnovAge will incur \$5,734,200 in expenses in connection with the Transaction. This amount will be finalized at closing.

85. The parties estimate, as of December 31, 2015, that excess cash after payment of InnovAge debts and bond defeasance will total \$15,530,000 at closing. This amount will be finalized at closing.

86. Accordingly, the distribution of proceeds to the Foundation under the proposed conversion plan are as follows:

Purchase Price	\$	180,309,100
<i>Less:</i> InnovAge expense incurred in the Transaction	- \$	5,734,200
<i>Plus:</i> Excess cash after debt payment and bond defeasance (est. 9/30/15)	+ \$	21,802,000
<i>Plus:</i> 5% interest in TCO Holdings Group, Inc. (est. 10/30/15)	+ \$	6,068,900
Total value to Foundation	\$	202,445,800
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<i>Less:</i> Amount held in escrow for a four-year period	- \$	15,842,130
Total value immediately available to Foundation	\$	186,603,670

87. Thus, the value that the Foundation will receive from the proposed conversion will be \$180,309,100 minus the expenses of the Transaction, currently estimated at \$5,734,200; plus excess cash at closing after debt payment and bond defeasance, currently estimated at \$21,802,000; plus a 5% interest in TCO Holdings Group, Inc., currently valued at \$6,068,900; for a total of \$202,445,800. The approximate sum of \$186,603,670 will be immediately available to the Foundation.

C. Review Process.

i. Regulatory Structure.

88. The Colorado General Assembly permitted PACE providers to convert from nonprofit entities to for-profit entities with the passage of Senate Bill 15-137, codified at section 25.5-5-412(14). The statutory change became effective August 5, 2015. Ch. 163, secs. 1-3, § 25.5-5-412, 2015 Colo. Sess. Laws 496-98.

89. The Centers for Medicare and Medicaid Services (“CMS”) in the federal Department of Health and Human Services submitted a final report on for-profit PACE providers to Congress on June 3, 2015. As of this date, federal law permits PACE providers to operate as for-profit entities.¹

ii. InnovAge Submissions.

90. InnovAge transmitted its initial notice of conversion to the Attorney General on October 30, 2015. That submission triggered a public comment period under the PACE statute that would run until at least November 29, 2015. *See* C.R.S. § 25.5-5-412(14)(b).

91. InnovAge’s initial submission lacked one of the items required by the PACE statute. InnovAge completed its submission with that missing document on November 6, 2015. The Attorney General extended the comment period to December 7, 2015, to allow additional time for public comment on the complete packet.

92. One item included in the submission was an independent valuation of InnovAge performed by VMG Health (“VMG”). *See* C.R.S. § 25.5-5-412(14)(a)(I)(A). VMG issued an initial report dated July 22, 2014, and an updated report dated November 24, 2015. *See* Master Plan of Conversion at 10, ex. C; VMG Health, Fair Market Value Analysis Executive Summary (Nov. 24, 2015) [hereinafter VMG Updated Valuation].

93. InnovAge initially requested that the Attorney General conclude her review by the end of January 2016. The Attorney General accommodated that request while still receiving and reviewing public comment for an extended period. InnovAge subsequently requested an extension to that date.

94. The InnovAge submission was posted on the Attorney General’s website. Subsequent information provided by InnovAge was also posted on the website.

95. During her review, the Attorney General also considered certain privileged or confidential information and documents that were not posted on the website.

iii. Public Comment.

96. The Attorney General established a dedicated email address to receive public comment on the submission. Thirty public comments received by the Department of Law during the public comment period were posted to the website.

97. Initial public comment strongly indicated a desire for additional time to comment on the Transaction. *E.g.*, Public Comment #3, Letter from Colo. Ctr. on L. & Pol’y 1, 5 (Nov. 17, 2015); Public Comment #5, Letter from Rose Cmty. Found. et al. *1 (Dec. 2, 2015). In response, the Attorney General extended the comment period to January 8, 2016.

98. The Attorney General also scheduled, noticed, and conducted a public hearing to receive public comment regarding the Transaction on December 17, 2015, at the Ralph L. Carr Colorado Judicial Center from 6 p.m. to 8 p.m. InnovAge was invited to present the Transaction, which it did. The Foundation was also invited to speak about the Transaction, which it did. Members of the

¹This opinion does not address any regulatory issues between InnovAge and CMS or the Colorado Department of Health Care Policy and Financing.

public were then given the opportunity to provide public comment. All members of the public who wished to speak were permitted to do so. Twenty-one individuals or representatives of organizations spoke at the public hearing. The public hearing was audio recorded. The recording was posted to the Attorney General's website following the hearing.

99. Public comment, both oral and written, was either overwhelmingly opposed to the Transaction or articulated concerns about the Transaction. Indeed, the only comments that supported the Transaction as structured were received from the parties to the Transaction.

100. Public comment, while varied, focused on common themes, including the following:

- a. concerns about the accuracy of the valuation, *e.g.*, Public Comment #26, Letter from Karin Hall 1-2 (Jan. 8, 2016); Public Comment #27, Letter from Bell Pol'y Ctr. *2 (Jan. 8, 2016); Public Comment #7, Objections and Comments by Colo. Cross Disability Coal. et al. 10-12 & appx. 1 (Dec. 10, 2015);
- b. a lack of post-conversion monitoring, *e.g.*, Public Comment #22, Letter from Nancy M. McMahon 2 (Jan. 7, 2016); Public Comment #3, Letter from Colo. Ctr. on L. & Pol'y 5 (Nov. 17, 2015);
- c. the need for a PACE ombudsman, *e.g.*, Public Comment #18, Letter from Colo. Respite Coal. *1 (Jan. 7, 2016); Public Comment #25, Letter from Hope West *2 (Jan. 7, 2016);
- d. InnovAge's apparent control of the Foundation, *e.g.*, Public Comment #30, Letter from Home Care Ass'n of Colo. *1 (Jan. 8, 2016); Public Comment #8, Letter from Alan Lazaroff *2-3 (Dec. 15, 2015); and
- e. the exclusion of individuals with disabilities from the Foundation's mission, *e.g.*, Public Comment #15, Letter from Colo. Consumer Health Initiative *3 (Jan. 7, 2016).

iv. Expert Review of InnovAge Valuation.

101. The Attorney General engaged Pershing Yoakley & Associates, P.C. ("PYA") as a consultant to assist in the review of the Transaction. PYA is the ninth largest privately held healthcare management consulting firm in the country and has extensive expertise in valuation of healthcare companies.

102. PYA evaluated the VMG report using the report itself and supporting materials provided by VMG and InnovAge.

103. PYA also considered two confidential alternative offers for the purchase of InnovAge, along with supplemental financial information provided by InnovAge, VMG, and Welsh.

104. PYA used all of the above information to evaluate, corroborate, and adjust VMG's valuation. The Attorney General's findings and determinations regarding valuation, as outlined below, reflect PYA's conclusions from this process.

ANALYSIS AND FINDINGS

A. As modified, the Transaction results in fair market value being received for the assets of the nonprofit charitable corporation.

105. The first factor the Attorney General considers is whether the Transaction results in fair market value being received for the assets of the nonprofit corporation.

106. For the purposes of this analysis, the relevant value is fair market value at the time the conversion takes place.

107. As the Transaction is currently structured, the Foundation will receive an approximate value of \$202,445,800, as described in paragraph 86, in connection with the conversion. The amount the Foundation will receive before cash adjustments and transaction costs is \$186,378,000.

108. As discussed, the Attorney General retained her own valuation expert, PYA, to evaluate VMG's analysis and review valuation of InnovAge. PYA analyzed VMG's valuation report, the alternative purchase offers for InnovAge, and supplemental financial information submitted by the parties. It concluded that the Transaction as proposed does not result in fair market value being received for the assets of InnovAge:

i. VMG Valuation.

109. The updated VMG report concludes that the fair market value of InnovAge, before considering excess cash after debt payment and bond defeasance, is \$204,310,000. VMG concluded that the range of value for InnovAge was from \$194,094,500 to \$214,525,500. VMG Updated Valuation at 4.

110. Thus, as a threshold matter, the Attorney General finds that the proposed purchase price for InnovAge is \$17,932,000 below the fair market value identified in VMG's independent valuation.

111. PYA concluded that VMG's general valuation approach was sound and consistent with normal business practices for performing valuations.

112. However, PYA expressed concern about three components of VMG's valuation analysis.

113. First, PYA concluded that VMG's revenue and Earnings Before Income, Taxes, Depreciation, and Amortization ("EBITDA") growth projections were overly aggressive. These projections raised VMG's valuation.

114. Second, PYA concluded that VMG's estimates for several components of discount rate were too low. These estimates all lowered VMG's valuation.

115. Third, PYA concluded that VMG's estimates of working capital ratios for two components of InnovAge's business were too high. These estimates also lowered VMG's valuation.

ii. Other Offers.

116. InnovAge also submitted two other confidential purchase offers it received in 2014. Both offers were made in 2014 and were based on projected Fiscal Year Ending ("FYE") 2015 data.

117. The alternative offers were structured as multiples of EBITDA.

118. PYA concluded that the alternative offers used reasonable multiples. However, PYA noted that these alternative offers were initial offers subject to further negotiation. PYA also concluded that such multiples would need to be used in conjunction with higher EBITDA figures to reflect more recent company performance. This revision results in a higher valuation than reflected in the 2014 alternative offers, but a lower valuation than found by VMG.

iii. Additional Information.

119. InnovAge and Welsh both provided additional information to the Attorney General in support of the purchase price negotiated for InnovAge.

120. This information included proposed comparable market sales, revised EBITDA multiples, and additional proposed adjustments to EBITDA. InnovAge also provided year-to-date financials and updated fiscal year projections to reflect actual performance to date.

iv. Final Valuation.

121. PYA considered the VMG valuation, other offers, and all additional financial information provided by the parties.

122. After considering all information provided by InnovAge, PYA provided a range of value for the company. The range of value was adjusted downward through the review process as additional information was provided. After final review, PYA concluded that the current fair market value of the company is between \$196,000,000 and \$233,000,000, before adjustments for cash, bonds, and debt, and permitted Transaction expenses. Thus, PYA concluded that VMG's valuation of \$204,310,000, before adjustments, was within the range of value and was at an appropriate point in that range considering all available information.

123. PYA's valuation relied in part on VMG's analysis, including VMG's projections for InnovAge's future financial performance.

124. In response to PYA's valuation range, Welsh argued that VMG's projections for InnovAge's future financial performance are too optimistic.

v. Final Adjusted Values.

125. The Attorney General recognizes that financial valuation is an imprecise process, and that fair market value may, in some cases, be more accurately represented as a range of values. The Attorney General determines that such a range is appropriate in this case because of uncertainty surrounding VMG's financial projections for InnovAge, which inform VMG and PYA's valuation.

126. Based on all of the information provided, the Attorney General finds and determines that the range of fair market value of InnovAge is between \$196,000,000 and \$233,000,000, before adjustments for cash, bonds, debt, and permitted Transaction expenses.

127. The Attorney General further finds and determines that \$204,310,000, before excess cash and adjustments, is a reasonable estimate of fair market value of InnovAge. This is the value arrived at by InnovAge's own expert and is corroborated as being within the range provided by PYA, the Attorney General's independent expert.

vi. *Earn-Out.*

128. The Attorney General finds and determines that the offer of \$186,378,000, before excess cash and adjustments, is below the range of fair market value.

129. Thus, the Attorney General finds and determines that the proposed Transaction does not result in fair market value being received for the assets of the charitable nonprofit corporation.

130. The Attorney General finds and determines that Welsh would have to increase the offer for InnovAge, before excess cash and adjustments, by \$9,622,000 to satisfy the lower bound of fair market value, and by \$17,932,000 to satisfy the reasonable estimate of fair market value of the charitable nonprofit corporation.

131. Because the range of fair market value for InnovAge is driven in part by uncertainty regarding the accuracy of VMG's financial projections, because Welsh and InnovAge contest these figures, and because the accuracy of these figures is an empirical question that will ultimately be answered with the passage of time, the Attorney General requested an earn-out structure that will address both the lower bound and reasonable estimate of fair market value. The Attorney General asked that the earn-out proceed as follows:

- a. At closing, Welsh pays \$196,000,000 to the Foundation, before adjustments for cash, debt payment, bond defeasance, permitted Transaction expenses, and escrow. This is a pure cash payment.
- b. Welsh pays an additional \$8,310,000 (the difference between the purchase price and the reasonable estimate) to the Foundation in an earn-out. The earn-out would be triggered if InnovAge meets or exceeds capitation revenue for the PACE programs of \$286,000,000 in fiscal year ending ("FYE") 2018.

132. According to the Attorney General's experts, the earn-out trigger of \$286,000,000 in FYE 2018 reflects the amount of PACE capitation revenue required to achieve VMG's EBITDA projections for that year. The Attorney General's experts further assert that achieving this trigger would validate VMG's financial projections as a whole. The experts also conclude that PACE capitation revenue constitutes a metric of InnovAge's future financial performance that both serves as a reasonable proxy for the company's overall financial performance and is not subject to significant manipulation.

133. Because the earn-out detailed above will address the range of fair market value by reference to InnovAge's actual future performance, the Attorney General determines that such an earn-out would result in receipt of fair market value for the assets of the charitable nonprofit corporation.

134. Welsh has agreed to the earn-out as detailed in paragraph 131 above.

vii. *Transaction Expenses.*

135. The current Conversion Plan specifies that all InnovAge expenses associated with the Transaction will be deducted from the purchase price before the remainder is paid to the Foundation. *See* Master Plan of Conversion at 12, ex. D; Letter from M. Hewitt to C. Coffman 6 (Dec. 27, 2015). These expenses include (1) legal, consulting, and lobbying fees incurred by InnovAge in the course of the Transaction, (2) the fee charged by InnovAge's investment banker,

Ziegler Healthcare Corporate Finance (“Ziegler”), and (3) severance payments to InnovAge senior management under existing employment contracts.

136. InnovAge has reported that these Transaction expenses are as follows:

Estimated legal, consulting, and lobbying fees incurred by the company.	\$ 600,000
Ziegler’s fee in procuring bidders for the company.	\$ 2,795,700
Severance payments for senior management.	\$ 2,338,500

137. The Attorney General also incurred expenses in the course of her review, including fees for Special Assistant Attorneys General and financial valuation experts.

138. Colorado law specifies that InnovAge must “bear all costs associated with public oversight and review by the Attorney General of the conversion, including the retention of outside experts, if any.” C.R.S. § 25.5-5-412(14)(a)(II). This provision applies to the above expenses as follows:

139. First, with regard to legal, consulting, and lobbying fees, the Attorney General finds that these fees were either incurred by InnovAge prior to conversion or are debts that were incurred and must be paid by InnovAge regardless of whether the Transaction closes or not. Thus, the Attorney General concludes that these expenses may be deducted at closing.

140. Second, with regard to Ziegler’s fee, the Attorney General finds that this fee was incurred prior to her review. The Attorney General concludes that this expense may be deducted at closing.

141. Third, the Attorney General has reviewed the severance payments proposed under the existing employment contracts with senior management and rejects these payments. The employment contracts provide for severance payments if officers quit after InnovAge has been acquired. In particular, the employment contracts provide that an employee may terminate her employment “for Good Reason which shall be deemed to occur if [employee] terminates her employment within six (6) months after” a change of control, which includes merger, acquisition, affiliation or sale of substantially all of the Company’s assets. *E.g.* Master Plan of Conversion ex. E-1 § 5.3(a). In “the event of termination in accordance with Sections 5.3 and 5.4 only, [employee] shall be entitled to the salary as set forth herein below (‘Severance Payment’).” *Id.* § 5.5(a). The severance payment is contingent on the employee not competing with the company for a one-year period after termination and not using confidential information for a two-year period after termination of employment. § 5.6(a), (b).

142. Commenters expressed concern about potential conflicts of interest for the current officers and directors of InnovAge, and emphasized that these fiduciaries should not receive any compensation in connection with the Transaction. *E.g.*, Public Comment #17, Supplemental Objections, Comments, and Requests by Colo. Cross Disability Coal. et al. 6 (Jan. 7, 2016).

143. The receipt or promise of a payment in connection with the Transaction would create a conflict of interest for members of the senior management team. These managers are officers of the nonprofit corporation and trustees of its charitable funds. As such, they owe a fiduciary duty to both the company and to the members of the public, who are the beneficiaries of the charitable trust. Even the possibility of such payments could induce the officers to consider their own personal gain over the best interests of the company and the trust beneficiaries in the course of the Transaction.

144. Accordingly, the Attorney General concludes that InnovAge may not pay senior management, nor promise to pay senior management, severance payments or any other compensation in connection with the Transaction. This prohibition does not affect the company's obligations under an employment contract if an employee terminates his or her employment permanently and in good faith.

145. Finally, with regard to expenses incurred by the Attorney General in the course of her review, the Attorney General finds and determines that these expenses were "costs associated with the public oversight and review by the Attorney General of the conversion." C.R.S. § 25.5-5-412(14)(a)(II). Thus, the Attorney General concludes that these expenses must be paid by InnovAge and that InnovAge may not deduct these costs from the conversion proceeds at closing.

146. The Attorney General finds and determines that it would not be in the public interest for the Foundation to pay any other Transaction expenses.

viii. Summary of Modified Transaction

147. The modifications to the offer required by the Attorney General and described in this opinion are as follows:

	InnovAge Proposal	AG Modified
Closing: Purchase Price	\$180,309,100	\$196,000,000
<i>Plus:</i> 5% interest in TCO Holdings Group, Inc.	\$6,068,900 (est. 10/30/15)	n/a
<hr/>		
Total before adjustments	\$186,378,000	\$196,000,000 (FMV lower bound)
<i>Less:</i> Legal, consulting, and lobbying fees	- \$600,000	- \$600,000
<i>Less:</i> Ziegler consulting fees	- \$2,795,700	- \$2,795,700
<i>Less:</i> Employee severance payments	- \$2,338,500	- \$0
<i>Plus:</i> Excess cash after debt payment and bond defeasance	+ \$21,802,000 (est. 9/30/15)	+ \$21,802,000 (est. 9/30/15)
<hr/>		
Total with adjustments	\$202,445,800	\$214,406,300
<i>Less:</i> Total held in escrow for a four-year period	- \$15,842,130	- \$16,660,000
<hr/>		
Total immediately available to Foundation	\$186,603,670	\$197,746,300
2018: <i>Plus:</i> FYE 2018 earn-out		+ \$8,310,000
<hr/>		
Total intermediate value to Foundation	\$186,603,670	\$206,056,300
2020: <i>Plus:</i> Escrow addback	+ \$15,842,130	+ \$16,660,000
<hr/>		
Total ultimately available to Foundation	\$202,445,800	\$222,716,300

148. Thus, the value that the Foundation will receive from the modified conversion will be \$196,000,000³ minus the permitted expenses of the Transaction, currently estimated at \$3,395,700; plus excess cash at closing after debt payment and bond defeasance, currently estimated at \$15,530,000; for an immediate total of \$208,134,300. This total is subject to an (increased) escrow withholding of \$16,660,000.⁴ Moreover, the Foundation will receive an additional \$8,310,000 in the form of an earn-out, triggered if InnovAge collects PACE capitation revenues equal to or greater than \$286,000,000 in FYE 2018.

149. The Attorney General finds and determines that as modified, the Transaction results in fair market value being received for the assets of the nonprofit charitable corporation.

B. As modified, the Transaction will preserve the assets of the charitable nonprofit corporations for the charitable purposes to which they were dedicated.

150. The next factor the Attorney General considers is whether the assets of the charitable nonprofit corporations are preserved for the charitable purposes to which they were originally dedicated.

151. The charitable purposes of the nonprofit corporations at issue in this Transaction are detailed above. They all focus on the population of the PACE programs; i.e., those who are 55 years of age or older, are eligible for Medicare or Medicaid, and who are eligible for long-term care.

152. Key considerations regarding preservation of the charitable purposes of InnovAge include the Foundation mission, the Foundation board, potential conflicts of interest and organizational transparency, Foundation grantmaking, and regulatory oversight.

i. Foundation Mission.

153. The Foundation has articulated that its mission going forward will be “[t]o promote independence and dignity for the vulnerable and under-served aging population by encouraging and supporting the innovative, affordable and coordinated services and initiatives.” Draft Am. Arts. of Incorporation of Foundation, art. V, *reproduced in* Letter from M. Hanrahan to C. Coffman, at ex. B (Dec. 8, 2015).

154. The Articles of Incorporation proposed by the Foundation state that the purpose of the Foundation will include “funding mission-driven, senior care and other related initiatives that improve community services directed toward the aging population and associated caregivers.” Draft Am. Bylaws of Foundation § 2.2(d), *reproduced in* Letter from M. Hanrahan to C. Coffman, at ex. B (Dec. 8, 2015).

155. Commenters were concerned that the Foundation’s mission restricted it to serving InnovAge’s clients. *E.g.*, Public Comment #8, Letter from Alan Lazaroff *3 (Dec. 15, 2015). Members of the public pointed to the statement that the Foundation would “promote the best interests of the under-served aging population historically served by InnovAge” and that it would

³ To ensure complete separation and avoid any potential conflicts, the parties agreed on a cash-only payment with no equity interest in TCO Holdings Group, Inc.

⁴ Under the modified transaction, escrow is increased to reflect the increased purchase price.

“provide funding for continued support of the frail elderly community served by the Company.” Master Plan of Conversion at 8, 11, exs. B, D; *e.g.*, Public Comment #15, Letter from Colo. Consumer Health Initiative et al. *2 (Jan. 7, 2016).

156. Commenters were also concerned that the Foundation would not adequately serve the frail elderly or those with disabilities. *E.g.* Public Comment #12, Denver Reg’l Council of Gov’ts 1 (Dec. 22, 2015).

157. The Attorney General finds and determines that the mission as stated in the Master Plan of Conversion does not fully preserve the charitable purposes of the converting nonprofit corporations.

158. The Attorney General requested a number of modifications to the mission of the Foundation to address concerns expressed in public comment.

- a. First, the Attorney General requested that the mission incorporate individuals with disabilities who would be eligible for PACE and otherwise fully embrace the population PACE InnovAge serves.
- b. Second, the Attorney General requested that the mission be modified to reflect that the Foundation will not only serve InnovAge’s clients.
- c. Finally, the Attorney General requested that the mission be modified to reflect a commitment to engage in grantmaking that will benefit rural (non-urban) Colorado.

159. The Foundation has agreed to all of these requests. The revised mission of the Foundation will be “[t]o promote independence and dignity for the aging population, to include the needs of low and moderate income persons encompassing individuals with physical, cognitive and/or behavioral disabilities, by encouraging and supporting innovating, affordable and coordinated services and initiatives.” A board resolution, modifiable only with consent from the Attorney General, will state that the Foundation’s grants “shall not be solely or substantially limited to assisting persons served by InnovAge” and that the “Foundation’s overall grant-making activity shall consider existing needs and available opportunities relevant to communities and populations historically served by InnovAge, including both rural and urban areas.”

ii. Foundation Board.

160. The parties have proposed an initial Foundation board of directors comprised of four members of the InnovAge board, four members of the existing Foundation board, and one member who serves on both boards. Letter from M. Hanrahan to C. Coffman, at 2 (Dec. 8, 2015).

161. This initial Foundation board will serve until the 2017 annual meeting of the Foundation’s board. *Id.* at 3.

162. The bylaws proposed by the Foundation state that the permanent Foundation board, seated after the initial board, “should be a broad, community-based board which reasonably represents the Foundation’s diverse constituency with respect to geographic, cultural and other important variables and related considerations, and which is qualified to advance the Foundation’s charitable purposes.” Draft Am. Bylaws of Foundation, § 2.2, *reproduced in id.* ex. B, at 11.

163. Numerous public comments raised three key concerns about the makeup of the initial board.

- a. First, public commenters expressed concern that individuals on the InnovAge board represent a majority of votes on the Foundation board. *E.g.*, Public Comment #17, Supplemental Objections, Comments, and Requests by Colo. Cross Disability Coal. et al. 5 (Jan. 7, 2016).
- b. Second, members of the public were concerned about the lack of board representation from the communities served by InnovAge on the initial board, which will make many important structural decisions in the first year. *E.g.*, Public Comment #12, Letter from Denver Reg'l Council of Gov'ts 1 (Dec. 22, 2015); Public Comment #10, Letter from Tina Klika *1 (Dec. 17, 2015); Public Comment #4, Letter from Colo. Cross-Disability Coal. *1 (Dec. 3, 2015).
- c. Third, commenters were concerned that the structure of the Foundation board does not directly include PACE clients with disabilities who have historically been served by InnovAge. *E.g.*, Public Comment #24, Letter from Colo. Senior Lobby, Inc. *2 (Jan. 8, 2016); Public Comment #5, Letter from Rose Cmty. Found. et al. *1 (Dec. 2, 2015).

164. The Attorney General requested a number of modifications to address these concerns.

- a. First, the Attorney General asked the Foundation to expand its initial nine-member board to a twelve-member board. The Attorney General requested that one member have no prior affiliation with InnovAge; four members be appointed from the current InnovAge board; four members be appointed from the current Foundation board; one member will represent the frail elderly community; one member represent the frail elderly with disabilities; and the final member be a person currently enrolled in a PACE program, a person previously enrolled in a PACE program at some point in the prior two years, or an immediate family member of a person in either category.
- b. Second, the Attorney General requested that the initial Foundation board have 90 days from closing to recruit new members, and there be a timeout until the board is fully expanded on decisions regarding (1) operating or capital budget for 2016, (2) further amendments, if any, to the Foundation's Amended Articles of Incorporation or Bylaws, and (3) new grantmaking activities or awards.
- c. Third, the Attorney General requested that she be allowed to designate an ex officio, non-voting board member to fully participate on the Foundation board for a five-year period from conversion. This board member could report any information he or she sees fit to the Attorney General, as long as it does not violate a fiduciary duty.
- d. Fourth, with respect to the ongoing Foundation board, the Attorney General requested that the Foundation always have on its board at least one board member representing the frail elderly community and at least one board member representing the disability community.

165. The Foundation agreed to these requests.

iii. *Grantmaking.*

166. Public commenters were concerned that the Foundation would focus its grantmaking activities outside of the State of Colorado. *E.g.*, Public Comment #16, Letter from Chronic Care Collaborative *1 (Jan. 7, 2016); Public Comment #20, Letter from Rose Cmty. Found. et al. *1-2 (Jan. 7, 2016); Public Comment #29, Letter from William Orr *1 (undated).

167. The Attorney General finds that the large majority of the funds that will pass to the Foundation were generated in, or because of, InnovAge's nonprofit charitable status in Colorado.

168. Accordingly, the Attorney General requested that 80% of total conversion proceeds paid to the Foundation—including cash, equity, escrow, and any earn-out—be dedicated to a separate Colorado fund. As part of her request, the Attorney General asked that the corpus and earnings of the separate Colorado fund be accounted for separately, and that the corpus and earnings of the separate Colorado fund be granted and spent only in Colorado.

169. The Foundation agreed to this request in full.

iv. *Ombudsman.*

170. Public commenters requested that InnovAge be overseen by a PACE ombudsman to ensure quality of care after the conversion. *E.g.*, Public Comment #18, Letter from Colo. Respite Coal. *1 (Jan. 7, 2016); Public Comment #25, Letter from Hope West *2 (Jan. 7, 2016).

171. The Attorney General finds that the Long-Term Care Ombudsman Program provides a model for patient care monitoring that offers important protections to frail or disabled clients and is not duplicative of existing regulatory programs. An ombudsman serves as an independent advocate for patients, not affiliated with their medical providers and empowered to work on their behalf. *See* Public Comment #12, Letter from Denver Reg'l Council of Gov'ts 1 (Dec. 22, 2015). Existing programs under the federal Older Americans Act of 1965, 42 U.S.C. § 3085g, serve nursing home and assisted living facilities, but have not been extended to providers of PACE services.

172. Consistent with public comment, the Attorney General agrees that extending the Long-Term Care Ombudsman Program to include PACE providers would benefit the program.

173. The Attorney General requested that the Foundation fund a PACE ombudsman position in the Colorado Department of Human Services (“DHS”) to oversee the InnovAge PACE program for a five-year period from conversion, unless the General Assembly funds the position before the expiration of that period. As discussed in the next section, the Attorney General also requested that InnovAge agree to cooperate with this PACE ombudsman and to provide the access and data needed to perform such monitoring.

174. The Attorney General will lend support to passage of a bill to create a state-funded ombudsman program for all PACE providers regardless of nonprofit or for-profit status.

175. The Foundation agreed to this request.

v. *Conflict of Interest and Transparency.*

176. Multiple commenters were concerned that there would be a conflict of interest for Foundation board members because of their previous connection to InnovAge. *E.g.*, Public

Comment #15, Letter from Colo. Consumer Health Initiative *2 (Jan. 7, 2016); Public Comment #9, Letter from Kelly O'Connor *1 (undated).

177. The Attorney General requested a number of modifications to address these concerns:

- a. First, the Attorney General requested that Foundation board members file conflict of interest forms with the Attorney General upon conversion and each January 1, annually, through 2021, representing that they are free of any conflicts with InnovAge.
- b. Second, the Attorney General requested that the Foundation prepare and make easily available to the public annual reports detailing its grantmaking for the previous year, compensation, if any, to its board members, and administration costs (i.e., staff salaries) for as long as the Foundation is in existence. The annual reports will break out these items for the separate Colorado fund described in paragraph 168.
- c. Third, the Attorney General requested that the Foundation post each annual report required in the preceding item on its website and maintain the previous five years of reports on its website on an ongoing basis.

178. The Foundation agreed to all of these requests.

179. Accordingly, the Attorney General finds and determines that with modifications described in this section, the Transaction preserves the assets of the nonprofit charitable corporations for the charitable purposes to which they were dedicated.

C. As modified, the Transaction is in the public interest.

180. The next factor the Attorney General considers is whether the Transaction is in the public interest.

i. Post-Conversion Monitoring of InnovAge.

181. InnovAge is a healthcare provider that serves over 29,000 of the most vulnerable Colorado residents annually. Letter from M. Hewitt to C. Coffman 1 (Dec. 26, 2015). It is the second largest PACE provider in the nation and serves 12% of all PACE clients. Presentation by M. Hewitt at Conversion Public Hearing 5 (Dec. 17, 2015). It is by far the largest PACE provider in Colorado.

182. This conversion is the first of its kind anywhere in the nation. The conversion affects a disproportionate share of frail elderly Coloradoans due to the size of InnovAge. Colorado has an interest in ensuring that the conversion of the charitable nonprofit corporation providing these healthcare services does not negatively impact PACE clients or the community.

183. The Attorney General does not assume that InnovAge will perform in any way that would negatively impact its client population or provide anything other than good service under the PACE program.

184. However, public commenters expressed concern that InnovAge would have different incentives as a for-profit corporation and that those incentives would negatively affect patient care or services. *E.g.*, Public Comment #23, Letter from Rocky Mountain MS Ctr. *1 (Jan. 8, 2016); Public Comment #28, Letter from Colo. Dep't of Health Care Pol'y & Fin. 1 (Jan. 8, 2016); Public

Comment #21, Letter from Ctr. for Elder Care and Advanced Illness 1 (Jan. 7, 2016); Public Comment #13, Letter from Dick Wisott *1 (undated); Public Comment #19, Letter from Rosario C. de Baca *1 (undated).

185. The Attorney General finds and determines that it is in the public interest to require monitoring and reporting for a five-year period after the conversion to ensure that there is no negative impact to the PACE clients or the community.

186. The Attorney General asked the parties to modify the Transaction in the following ways to fulfill the need for post-conversion monitoring and reporting:

- a. For a five-year period from conversion, require InnovAge to continue to produce annual reports that detail information from the previous year, including changes in client population, any change in service line or other reduction in services, any regulatory action taken against the company, and measures of quality.
- b. Require InnovAge to post each annual report required under the first item on its website and maintain each report on the website for a total of six years.
- c. Require InnovAge to cooperate with and provide access and data to the ombudsman at DHS, discussed in paragraph 173, for a five-year period from conversion to assist in its post-conversion monitoring.
- d. Invite an independent organization selected by the Attorney General to conduct a three-year post-conversion assessment of for-profit PACE using InnovAge as a case study. Require InnovAge to pay the costs of this study up to \$50,000.

187. The parties agreed to these changes.

ii. Community Representation on InnovAge Board.

188. As an additional safeguard against diminishment of services, public comment suggested that the InnovAge board include community representation. Public Comment #10, Letter from Tina Klika *1 (Dec. 17, 2015).

189. The Attorney General determines that temporary community representation on the InnovAge board immediately following the Transaction will help ensure that InnovAge maintains the level and quality of service historically provided to its client communities. The Attorney General determines that such representation will further the public interest.

190. Thus, the Attorney General requested that, for a five-year period from closing, InnovAge appoint at least one board member representing the frail elderly community; one board member representing the frail elderly with disabilities community; and at least one board member who is a current or previous client of InnovAge, within the immediate two years, or the immediate family member of such a client.

191. The parties agreed to this request.

iii. Continuation of the Home Care Service Line.

192. Lastly, public commenters expressed concern about possible diminishment of the Home Care service line. See Public Comment #22, Letter from Nancy M. McMahan *1-2 (Jan. 7, 2016);

Public Comment #13, Letter from Dick Wisott *1 (undated). This service line provides in-home services—including skilled care, non-skilled care, and other direct support services—to elderly individuals. InnovAge, 2014 Annual Report 10 (2014), *reproduced in* Letter from M. Hewitt to C. Coffman, at Attach. 1 (Dec. 26, 2015).

193. The Attorney General finds that the Home Care service line provides valuable services to a vulnerable population of Colorado residents.

194. The Attorney General further finds that, historically, the Home Care service line has operated at a loss. *E.g.*, InnovAge, 2014 Annual Report 10 (2014) (reporting operating loss of \$1.4 million for fiscal year 2014), *reproduced in* Letter from M. Hewitt to C. Coffman, at Attach. 1 (Dec. 26, 2015). The Attorney General took this loss into consideration when considering the fair market value of InnovAge. Such financial performance could create an incentive for InnovAge to diminish or eliminate the Home Care service line after the Transaction.

195. The Attorney General determines that elimination or substantial diminishment of the Home Care business line would not be in the public interest.

196. To address this possibility, the Attorney General requested that InnovAge maintain the Home Care service line, without substantial diminishment in service, for a five-year period from conversion.

197. InnovAge and Welsh agreed to this request.

198. Accordingly, the Attorney General finds and determines that the Transaction, as modified, is in the public interest.

CONCLUSION

199. In reaching this decision, the Attorney General considered the specific charitable purposes of the charitable nonprofit corporations as set forth in articles of incorporation and other organic documents, the details of the Transaction, all documents provided by the parties or their consultants, all information provided by the Attorney General's consultants, the public testimony taken at the hearing held on December 17, 2015, and all timely-filed public comment.

200. Based on the foregoing, and pursuant to the authority granted to the Attorney General under the PACE statute and the common law, the Attorney General concludes that the Transaction may proceed in modified form, as detailed above.

Issued this 24th day of March, 2016.



CYNTHIA H. COFFMAN
Colorado Attorney General

CERTIFICATE OF DELIVERY

This is to certify that I have duly served the within IN THE MATTER OF THE INNOVAGE MASTER PLAN OF CONVERSION upon all parties herein by mailing copies of same to their office this 24th day of March, 2016 addressed as follows:

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