



**COLORADO**  
Department of Health Care  
Policy & Financing

1570 Grant Street  
Denver, CO 80203

December 23, 2021

*Via Certified Mail and Electronic Mail*

Maureen Hewitt  
Chief Executive Officer  
InnovAge dba Total Longterm Care, Inc.  
8950 E. Lowry Blvd  
Denver, CO 80230  
[MHewitt@myinnovage.com](mailto:MHewitt@myinnovage.com)

**Re: Notification of Material Breach - Program of All-Inclusive Care for the Elderly Contract the State of Colorado acting by and through the Department of Health Care Policy and Financing and InnovAge dba Total Longterm Care, Inc.**

Dear Ms. Hewitt:

This letter serves as notice of InnovAge dba Total Longterm Care, Inc.'s ("InnovAge Colorado") failure to perform material contract obligations and that InnovAge Colorado is in material breach of §§ 11, 12, and 14 of the Program of All-Inclusive Care for the Elderly Contract 20-140742 ("Contract") between the State of Colorado by and through the Department of Health Care Policy and Financing ("HCPF") and InnovAge Colorado effective August 27, 2019, including all amendments executed thereafter. Additionally, pursuant to the authority of Sections 1894(e)(6)(A) of the Social Security Act that establishes the Program Agreement and 42 C.F.R. § 460.48, ***HCPF hereby notifies InnovAge Colorado effective December 23, 2021, that HCPF is suspending InnovAge Colorado PACE enrollments of new Medicaid beneficiaries under the Contract for the following centers:***

1. *Aurora PACE Center* - 3551 N. Chambers Aurora, CO 80011
2. *Denver PACE Center* - 1265 South Broadway Denver, CO 80210
3. *Lakewood PACE Center* - 8405 W. Alameda Ave. Lakewood, CO 80226
4. *Northern Colorado PACE Center* - 1303 E. 11<sup>th</sup> St. Loveland, CO 80537
5. *Pueblo PACE Center* - 401 W. Northern Ave. Pueblo, CO 81004
6. *Thornton PACE Center* - 445 E. 124<sup>th</sup> Ave. Thornton, CO 80241



In addition, HCPF requests that InnovAge Colorado submit a corrective action plan to HCPF for review and approval, outlining appropriate actions to correct the deficiencies cited in the final audit report (Attachment A).

***This enrollment sanction will remain in effect until CMS and HCPF are collectively and individually satisfied that InnovAge Colorado has corrected the causes of the violations, and InnovAge Colorado fully demonstrates that the violations are not likely to recur as outlined in an approved corrective action plan.*** This enrollment suspension will apply to the enrollment of all Medicaid beneficiaries including dual eligible individuals.

### **Background**

Per Contract § 2.11 of Exhibit B and 42 C.F.R. § 460.192, the State shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, considering the performance level of a provider and compliance of a provider with all significant requirements of these sections, regulations and contractual provisions.

On May 26, 2021, HCPF, and the Colorado Department of Public Health and Environment (“CDPHE”) at the request of HCPF, began conducting an audit of InnovAge Colorado operations for all centers. As a result of the audits, the State identified numerous concerns related to the delivery of services, timeliness of service provision, and appropriate level of staffing to meet participant needs. The findings illustrated Medicaid beneficiaries were not provided services in accordance with contractual obligations and PACE federal requirements.

In addition, CMS conducted an audit starting June 21, 2021, of InnovAge Colorado’s operations, raising additional concerns related to service delivery. CMS will be releasing their audit findings and actions separately.

As an outcome of these audit results, HCPF has concluded that InnovAge Colorado failed substantially to provide its participants with medically necessary items and services covered under PACE, which adversely affected or had the substantial likelihood of adversely affecting its participants. This determination was made as a result of deficiencies discovered during an audit. **Consequently, HCPF has determined that the seriousness of these deficiencies requires the suspension of any new enrollments of Medicaid beneficiaries for all of InnovAge’s Colorado centers.**

Violations of the PACE program requirements are contained in the accompanying audit report ([Attachment A](#)). These violations, in summary, include:



1. Failure to provide all Medicare and Medicaid covered services, as well as other services determined necessary by the interdisciplinary team (IDT) to improve and maintain the participant's overall health status;
2. Failure to ensure accessible and adequate services to meet the needs of its participants;
3. Failure of the IDT to coordinate 24-hour care delivery and to track and share important information from other team members, participants, and caregivers; and
4. Failure of the InnovAge primary care providers (PCP) to manage their participants' medical needs and facilitate their participants' access to medical specialists.

### **PACE Requirements**

The PACE program provides comprehensive medical and social services to certain frail, elderly individuals, most of whom are dually eligible for Medicare and Medicaid benefits. PACE programs are designed to provide a range of integrated preventive, acute care, and long-term care services to manage the often complex medical, functional, and social needs of the frail elderly. PACE organizations are responsible for designing and providing health care services designed to meet the following objectives:

1. Enhance the quality of life and autonomy for frail, older adults;
2. Maximize dignity of, and respect for, older adults;
3. Enable frail, older adults to live in the community as long as medically and socially feasible; and
4. Preserve and support the older adult's family unit.

A PACE organization must provide all items and services that are covered or specified under the PACE statute and regulations, including all Medicare and Medicaid covered items and services, and other services determined necessary by the IDT to improve and maintain the participant's overall health status. Participants must have access to necessary covered items and services 24-hours per day, every day of the year. In implementing this requirement, a PACE organization must establish and implement a written plan to furnish care that meets the needs of each participant in all care settings. See Sections 1894(b)(1)(A), (B) and (D) and 1934(b)(1)(A), (B) and (D) of the Act; 42 C.F.R. §§ 460.70(a), 460.90(b), 460.92, and 460.98(a)).

While a participant is enrolled in the PACE organization, they must receive Medicare and Medicaid benefits solely through the PACE organization. If the PACE provider cannot provide those items and services directly, it must specify them and arrange for the delivery of those items and services through a contractor. A PACE organization must have a written contract with each outside organization, agency, or individual that furnishes administrative or care-



related services not furnished directly by the PACE organization except for emergency services. Interdisciplinary Team, Plan of Care, Primary Care Provider, and Service Delivery (Sections 1894(f)(2)(B)(iii) and 1934(f)(2)(B)(iii) of the Act; 42 C.F.R. §§ 460.98, 460.102, 460.104, 460.106).

PACE organizations are required to establish an IDT, composed of members filling specific roles at each PACE center, to comprehensively assess and meet the individual needs of each participant. The IDT is responsible for conducting initial assessments and periodic reassessments of participants, developing and executing a plan of care, and coordinating 24-hour care delivery. The IDT must continuously monitor the participant's health and psychosocial status, as well as the effectiveness of the plan of care, through the provision of services, informal observation, input from participants or caregivers, and communications among members of the IDT and other providers in implementing the plan of care for a participant. Each IDT member is responsible for the following:

1. Regularly informing the IDT of the medical, functional, and psychosocial condition of each participant;
2. Remaining alert to pertinent input from other team members, participants, and caregivers; And
3. Documenting changes in a participant's condition in the participant's medical record consistent with policies established by the medical director.

One of the required members of the IDT is the participant's primary care provider (PCP). PCPs are responsible for managing a participant's medical situations and overseeing a participant's use of medical specialists and inpatient care. In addition, the PACE organization must ensure that participants receive any services authorized or approved by the IDT in a manner that meets the participants' needs. Furthermore, PACE organizations must be sufficiently managed, staffed and equipped to ensure that services are accessible and adequate to meet the needs of participants. Delays in receiving necessary services can result in adverse outcomes for participants.

Pursuant to §18.E of the Contract, InnovAge Colorado "shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established..." Exhibit B § 4 states, InnovAge Colorado "shall comply with all requirements of the Program Agreement" and "shall arrange for and furnish Medicare and Medicaid covered services described in 42 C.F.R. § 460.92 for all Participants residing within the Contractor's service area."



## Corrective Action Plan

Per Exhibit B §10, at HCPF's request, InnovAge Colorado shall investigate the causation of these concerns or issues presented by the Department related to compliance with any requirement of this Contract. Based on its investigation into the causation of these concern or issue, InnovAge Colorado shall create a written response to the concern or issue that includes all the following, as appropriate:

1. A brief, clear description of the causation of the concern or issue.
2. The efforts InnovAge Colorado took to investigate the causation of the concern or issue.
3. The outcomes of InnovAge Colorado's investigation of the concern or issue.

InnovAge Colorado shall develop a Corrective Action Plan that includes the following:

1. All steps necessary for InnovAge Colorado to resolve the concern or issue and ensure that InnovAge Colorado follows all requirements of their Contract.
2. A timeline for the implementation of all steps outlined in the Corrective Action Plan.
3. An identification of the specific staff member of InnovAge Colorado responsible for each step outlined in the Corrective Action Plan.
4. All actions necessary to ensure that the concern or issue does not occur in the future.

InnovAge Colorado shall deliver its written response, including the Corrective Action Plan, to HCPF for review *within thirty (30) Business Days* following this letter. If InnovAge Colorado determines that it needs additional time to investigate a concern or issue and draft the Corrective Action Plan, InnovAge Colorado shall request additional time from HCPF in writing.

Once HCPF has approved a written response to the concerns or issues and Corrective Action Plan, InnovAge Colorado shall comply with all requirements of the Corrective Action Plan contained in the written response. If InnovAge Colorado determines that it will not be able to comply with any timeline contained in a Corrective Action Plan, InnovAge Colorado shall provide HCPF with a written explanation of why it will not be able meet the timeline and what efforts it has made toward completion of the Corrective Action Plan. Based on its review of InnovAge Colorado's explanation, HCPF may grant a written extension of the timeline contained in the approved Corrective Action Plan. If HCPF grants an extension to the timeline, the Contractor shall comply with the new extended timeline.

InnovAge Colorado shall cooperate with HCPF on all follow-up audits or reviews related to any Corrective Action Plan. InnovAge Colorado shall provide all necessary information, as determined by HCPF to ensure that the Contractor has complied with all Corrective Action Plans. The use of a Corrective Action Plan shall not limit other remedies under the Contract.



Once HCPF has determined that InnovAge Colorado has successfully implemented a Corrective Action Plan and has clearly demonstrated successful compliance with all requirements, HCPF will provide notice to the Contractor of this determination.

InnovAge shall also seek pre-approval of any official press releases or external correspondence on the audit, the Corrective Action Plan, or anything in relation to the official State action.

Further, InnovAge shall draft a letter to all current and pending Medicaid-funded PACE participants of the State of Colorado. This correspondence shall outline the new sanctions placed against InnovAge, the general findings of the audit, a clear summary of their rights as a PACE participant, information for contacting their PACE case manager/social worker, and the intake number for the Single-Entry Point in that region. This letter shall be drafted and submitted to [Bryan.Fife@state.co.us](mailto:Bryan.Fife@state.co.us) of the Department for review no later than 5pm Friday, December 24<sup>th</sup>. HCPF will return an edited or approved final version by 5pm Monday, December 27<sup>th</sup>. InnovAge shall distribute the approved letter to all its Medicaid participants by 5pm on December 29, 2021.

### Outstanding Concerns

Along with the Audit investigation and to ensure the health, safety and welfare of Medicaid members, HCPF directs InnovAge Colorado to submit an addendum to the corrective action plan regarding the following:

1. Policies and Procedures with respect to eligibility criteria and enrollment denials. This is due to InnovAge Colorado's misinterpretation of eligibility criteria as evidenced by denying individuals residing in a memory care unit of an Alternative Care Facility (ACF) or Assisted Living Residence. InnovAge Colorado incorrectly determined that these individuals did not meet eligibility criteria and did not submit the requisite enrollment denial based on the finding that the ACF/ALR memory care unit is a community based program. [ACF Secured Environment Memo](#)
2. Policies and Procedures with respect to expedited appeals. This request is in reference to InnovAge Colorado's improper practice of requiring an internal physician to determine whether the expedited request was justified. Pursuant to 42 C.F.R. § 460.122(f), it is within the belief of the participant whether an expedited appeal process is required. [Expediated Appeals Memo](#)



3. Policies and Procedures regarding involuntary disenrollment when InnovAge Colorado cannot locate a participant. These policies and procedures must address how InnovAge Colorado will locate the participant. Additionally, the policies and procedures must account for submitting an involuntary disenrollment timely in the event that the individual cannot be located, and services are not rendered for 30 days. [Involuntary Disenrollment Memo](#)

Furthermore, please conduct an internal analysis of individuals currently enrolled but have not received a service within thirty (30) days including the reasons for not receiving a service. InnovAge Colorado will submit the addendum and results of the analysis along with the Corrective Action Plan.

### Fiscal Solvency

Pursuant to Contract 20-140742, Exhibit B Statement of Work, §§ 9.4 and 9.5, InnovAge Colorado must submit all financial information as requested by HCPF as itemized below. HCPF will be reviewing these requested reports with its financial consultants and may determine and issue minimum requirements for items 1-3 below. These financial reports must include InnovAge Colorado and InnovAge national documentation of the following:

1. Total assets greater than total unsubordinated liabilities.
2. Sufficient cash flow and adequate liquidity to meet obligations as they become due.
3. A net operating surplus or a financial plan for maintaining solvency.
4. Most recent audited financial report.
5. Current Risk Reserve amount.
6. Past three (3) years of medical expenses and revenue, quarter by quarter.
7. Past three (3) years of year-end assets and unsubordinated liabilities, quarter by quarter.
8. InnovAge's historic debt ratio for the past three (3) years.
9. A balance sheet reporting admitted assets, liabilities, capital and surplus
10. Statement of cash flow.
11. Statement of changes in capital and surplus.
12. Income statement for the past three (3) years.
13. Quarterly Earnings Report.
14. Any insurance coverage policies for overages liability.

Accordingly, HCPF requests that InnovAge demonstrate fiscal solvency to continue PACE services for its current Colorado census by submitting these financial reports at regular



intervals starting fifteen (15) days after receipt of this letter, at three (3) months, six (6) months and a one (1) year per § 9.5, Ad-Hoc reporting. This report should demonstrate InnovAge's ability to serve its clients for the next thirty (30), sixty (60), and one hundred and twenty (120) days. Along with the above, we also require from InnovAge by site (including the home office) staffing totals, divided into a) Direct Care Workforce and b) Administrative and Managerial for each quarter beginning January 2019 through January 1, 2022 as well as the average number of PACE participants cared for out of that site by quarter. Last, please distinguish between Medicaid and Medicare earnings within the report.

Please submit an attestation on formal letterhead within *fifteen (15) business days* from receipt of this letter that Medicaid enrollments have been suspended; and submit a Corrective Action Plan with addendum as provided above within *thirty (30) business days* to Bryan Fife ([Bryan.Fife@state.co.us](mailto:Bryan.Fife@state.co.us)) and Winter Roberts ([Winter.Roberts@state.co.us](mailto:Winter.Roberts@state.co.us)). We look forward to InnovAge's full and swift cooperation.

Sincerely,



Kim Bimestefer  
Executive Director  
Department of Health Care Policy and Financing

cc: Jill Hunsaker-Ryan, Executive Director, CDPHE  
Bonnie Silva, OCL Office Director, HCPF  
Randy Kuykendall, Division Director, CDPHE  
Colin Laughlin, OCL Deputy Office Director, HCPF  
Elaine McManis, Deputy Division Director, CDPHE  
Michele Craig, Section Manager, HCPF  
Steve Cox, Branch Chief Home and Community Facilities, CDPHE  
Bryan Fife, PACE Program Administrator, HCPF  
Winter Roberts, PACE Compliance Specialist, HCPF  
Rachel Entrican, Legal Division Director, HCPF  
Jennifer Weaver, First Assistant Attorney General, AGO  
Gina Deblassie, Chief Operating Officer, InnovAge  
Caroline Zemmerman, Deputy Director, Division of Analysis, Policy and Strategy, CMS  
Daniel Diesroth, Division of Analysis, Policy and Strategy, CMS

