



**COLORADO  
LAWYERS  
COMMITTEE**



**COLORADO CENTER  
on LAW & POLICY**

Justice and Economic Security for all Coloradans

**Colorado Legal Services**

For low-income Coloradans seeking legal assistance and Colorado legal advocates

September 7, 2011

HAND DELIVERY

Governor John W. Hickenlooper  
136 State Capitol  
Denver, CO 80203-1792

Dear Governor Hickenlooper:

We are writing you on behalf of three Colorado legal advocacy organizations regarding the Computer Benefits Management System (CBMS), the proposed health care exchange and other improvements to health care insurance required by the Patient Protection and Affordable Care Act.

We are the Executive Directors of the Colorado Lawyers Committee, the Colorado Center on Law and Policy and Colorado Legal Services. The **Colorado Lawyers Committee** is a nonpartisan coalition of 56 Colorado law firms that improve conditions for children and the underprivileged through *pro bono* legal advocacy. Our work is accomplished by more than 650 volunteers who participate in 20 different task forces; last year these individuals donated over \$2.5 million worth of time to make a difference in our community. The **Colorado Center on Law and Policy (CCLP)** is an advocacy organization dedicated to promoting justice, economic security, access to health care and sound fiscal policies. Through its work on health care, welfare reform, fiscal policy and other critical issues, CCLP has gained a strong reputation in providing policymakers, opinion leaders, nonprofit organizations and the general public with research and education about issues of import to lower-income Coloradans. CCLP advocates in the legislature and before executive decision makers on behalf of those issues and litigates them when necessary. **Colorado Legal Services** is a nonprofit corporation that has assisted seniors and low income individuals in the State of Colorado for over 85 years. The mission of Colorado Legal Services is to provide meaningful access to high quality, civil legal services in the pursuit of justice for as many low-income persons and members of vulnerable populations throughout Colorado as possible.

Our three organizations have decades of experience with health care and public benefits for low-income individuals. Colorado Legal Services sees hundreds of clients each year whose benefits are improperly denied or terminated and is familiar with the continuing shortcomings in State benefits delivery as a result of that client contact; CLS has also met periodically with HCPF managers and staff to discuss these problems and possible solutions. Since 2004, volunteers from the Colorado Lawyers Committee and the Colorado Center on Law and Policy have closely monitored developments with CBMS and have advocated (and litigated) regarding the system's failure to process food stamp, Medicaid and other essential benefit applications within the deadlines specified in federal law.<sup>1</sup> We are writing you because we believe the next several years provide both extraordinary opportunities and significant risks as the State continues to grapple with the flawed CBMS computer system and begins to implement the health care exchange and other computer systems required by the Patient Protection and Affordable Care Act. Our three organizations have joined together with a number of other advocates to offer our expertise as your administration grapples with these challenges. A list of the individuals involved in this effort is attached.

Although the recent settlements in the CBMS case have been important to resolving the State's failure to timely process benefit applications, the system remains deeply flawed and fraught with a multitude of other issues that create serious obstacles for homeless and other individuals desperately in need of assistance. We are enclosing a list of some of the long-term, ongoing issues with which we are familiar. Many of the

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<sup>1</sup> This letter speaks to matters outside the scope of the Settlement Agreements approved by the Denver District Court earlier this year.

problems on this list have existed for more than 6 years and "fixes" have been promised for a number of these for a long time. All of these create significant hardships for the individuals affected and are violations of federal law.

We believe our conclusion is confirmed by two documents you recently received. The July 1, 2011 audit by the federal Centers for Medicare and Medicaid Services identifies serious problems with Colorado's processing of Medicaid benefits. Similarly, the March 2011 *The Enrollment Strategic Assessment Report* funded by the Colorado Health Foundation, notes that "Colorado's eligibility determination and enrollment systems and processes ... are costly, inefficient, unwieldy to maintain and lagging enhanced practices already proven by other states."

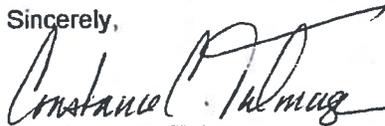
As organizations that represent and advocate on behalf of low income Coloradans, we have an obligation to assure that public benefit recipients receive the benefits to which they are entitled under federal law. We remain prepared to appropriately litigate, if necessary, to accomplish this objective. However, we are eager to see Colorado move out of the quagmire of computer issues that has plagued public benefit recipients and create a system that not only correctly and timely processes benefit applications and redeterminations but also supports the required components of the new health care exchange which will impact millions of Coloradans by 2014. We believe at least three mechanisms should be utilized to assure that Colorado will be able to "efficiently, effectively and elegantly" deliver benefits and health insurance to those affected no later than January 1, 2014, the effective date of the federal Patient Protection and Affordable Care Act. These mechanisms are:

- Consumer/client representation in any committee or other group planning for and implementing the delivery benefits system, in order to have the benefit of the client's unique perspective on processes to be utilized.
- An independent third party analysis of whether CBMS is capable of being the foundation for the future delivery and information system and whether it is the best and least costly (over the long run) and sufficiently flexible system for doing so, and
- Hiring an Independent Verification and Validation (IVV) contractor to monitor the technical and systems progress toward implementation of the system to be employed; and strengthening the contracts between the State and Deloitte or other system design contractors to assure accountability.

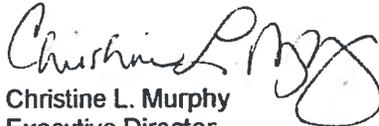
We are excited about the possibilities and are prepared to offer our assistance. In addition to our suggestions above, we are enclosing a summary of the "Lessons Learned" regarding the implementation of CBMS. We believe these comments may be helpful as you move forward.

We would like to meet with you and your staff to discuss your plans to move Colorado forward and how we might help. We will contact you in the next several days to schedule a time for a meeting.

Sincerely,



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## **Public Benefits "Fix" Task Force**

**A Joint Effort of the Colorado Lawyers Committee, the Colorado Center on Law and Policy and Colorado Legal Services**

### **Task Force Participants**

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## Current State and Federal Law Violations in Colorado's Delivery of Public Benefits

Type of Benefits	State and Federal Law Violations
All Benefits	Applications not processed within the statutory deadline, including long-term care
All Benefits	Inability or difficulty transferring benefits when recipient moves to a different county
All Benefits	Confusing/Inaccurate and repetitive notices, sometimes with contradictory information; sometimes as long as 12 pages and received as often as weekly
All Benefits	Benefits not continued when a recipient files a timely appeal.
All Benefits	Applications and redeterminations lost or not recorded
Medicaid & CHP+	Auto termination of benefits if redetermination data not entered timely, although data submitted timely by recipient
Medicaid	Medicaid unlawfully terminated when SSI is terminated, even though recipient may remain eligible (these include Disabled Adult Children, Disabled Widows, Pickles, HCBS eligibles, etc.)
Medicaid	SSI recipients not automatically enrolled in Medicaid, necessitating a lengthy, labor intensive application process
Medicaid	Medicaid not automatically reinstated after an SSI suspension is lifted
Medicaid	Benefits terminated when they are supposed to be suspended, e.g., short term placement in jail or CMHI
Medicaid	Failure to identify persons eligible for Medicaid under the "Pickle Amendment," even when they apply
Medicaid	Pharmacies and doctors not given timely notification of Medicaid approval or accurate eligibility periods
Medicaid	Persons with disabilities moving from a nursing facility to a Medicaid covered community placement unlawfully required to reapply, although the eligibility criteria are identical
All Benefits	Lack of flexibility and Inability to timely implement statutory and regulatory changes, e.g., Medicaid buy-in for working people with disabilities (Hospital Provider Fee, HB 2009-1293)



## Lessons Learned From the Failures of CBMS

Plaintiffs' counsel in the CBMS case believe the following are the Top 10 Lessons Learned with respect to future State technology design, implementation and functionality.

- 1. State Contracting Must Be Improved.** The contract with the prime contractor had no or ineffective remedies. Sophisticated lawyers, well-versed in software and hardware contracts, would have insisted on meaningful benchmarks (performance standards) and meaningful remedies (liquidated damages increasing in size as failure persisted or increased.) The State should retain lawyers versed in large system contracts and software design and implementation to construct the appropriate contracts with appropriate safeguards and remedies.
- 2. The Recommendations of the IVV Contractor Must Be Followed.** Large system contracts, such as CBMS, require an independent third party with expertise (the IVV contractor) to review Project Management and Implementation and to make recommendations for improvement. In the CBMS matter, the IVV contractor reported on very serious problems and recommended changes in implementation strategy and structure. Instead of following these recommendations, the contract for IVV was not renewed and the recommendations were ignored by the Governor. Very serious failures followed on implementation 8 months later.
- 3. State IT Employees Should Not Be Given Primary Responsibility For Key Aspects of the Software Such As Decision Tables.** In the CBMS contract, EDS did not undertake to design or construct the Decision Tables, a key operative element. (The Decision Tables assess information about the applicant and determine whether or not the applicant is eligible for the program being applied for, or other programs.) Problems with the Decision Tables continued for a long time, demonstrating that the State employees who did this work were not adequate to the task. The key or most difficult parts of computer software should be worked on by the persons most experienced and talented in software design. That did not happen with CBMS. Moreover, normal project development of enterprise solutions include business analysts who are subject matter experts that work with programmers to translate operational rules and regulations into appropriate code. Business analysts are essential to the design of any data base.
- 4. The Design and Development of CBMS was Hindered by Abandonment of the Original Design, Lack of Funding, and an Accelerated Time Line.** The CBMS contractor shifted the design in several ways between development and installation, resulting in the design of a

system which was less capable and functional than what was originally proposed. The Joint Budget Committee refused additional funding for design improvements and additional Testing and Training. The Governor insisted on implementation in September, 2004 over the unanimous objection due to insufficient preparation and testing by Colorado's 64 counties which were charged with providing the manpower for implementation

5. **The Lack of Adequate Testing and Training was Profound.** Contrary to best practices which call for parallel testing (running an existing system while implementing a new system until performance is proved) and scaling up implementation (starting with one county and slowly moving to all 64 counties), the State implemented the System suddenly without such preparation. In addition, the testing actually employed pre-arranged "scripts", rather than live clients with real case issues. Thus, the testing employed likely guaranteed failure rather than success.
6. **There was a Fragmented Decision-Making Structure and a Fragmented Line of Authority.** Two State Departments (the Department of Human Services and the Department of Health Care Policy and Finance) were charged with directing the development and implementation of CBMS. Historically, these two departments had not communicated well. Neither Director had experience with contemporary large-scale computer systems. Counties had major responsibility for implementation but lacked authority. No one "owned" the project. Difficulties in aligning goals, responsibilities and solutions remain.
7. **There was a Failure to Acknowledge Ongoing Problems.** While it was apparent there were very serious problems immediately upon implementation, the State Government took a public position before the press and the court that all was under control and nothing unusual was happening. Had the Executive Branch spokesmen been honest, a constructive set of solutions could have been explored from the beginning. Instead, the State was left with major litigation for years, and tried to remedy the problems without publicly acknowledging them – a "1984" situation for benefits applicants, agencies helping them, and counties, as well as State employees. The refusal to publicly acknowledge reality largely continues to this day.
8. **CBMS was not State of the Art but Obsolescent when Installed, and is More Difficult to Upgrade and Improve Upon than a More Current System Would Have Been.** In 2004, when CBMS was installed, web-based systems and sophisticated data base systems were state of the art. Business software contained extensive self-reporting capabilities. Business software typically contained the capability of "remembering information" from one entry to another – such as client addresses. None of this was installed in CBMS at the outset. Instead, CBMS used version 3 of ORACLE which was no longer supported by the manufacturer then on version 8. To some degree, the system still lacks some basic attributes and capabilities. Building on the current system, without an evaluation of how the capabilities and costs of a new system over time would compare, is very unwise. An independent third party should promptly be brought in to make such an evaluation. In any new system, the most up to date software must be used, and a maintenance plan should be included in the pricing so that the vendor is able to continue to support the system supplied.

9. **There Was and Continues a Lack of Communication.** This failure included Department heads with each other, counties with the departments, county workers with each other, clients with their case managers and vice versa, and others. Some of it persists to this day. By and large, neither the State Departments nor the counties monitor client communications for feedback. How long does the average client wait for the phone to be answered? For an email to be answered? For a referral to the person who can answer their questions. What is the level of client satisfaction with the service being provided? What is the level of worker satisfaction with the system, with training, with supervision? If such information has been collected, the information has not been made publicly available, nor, so far as we know, has it been used to improve the System. In parallel, whether a new system or improvements to the current system are selected, there should be client/consumer representatives in an oversight role to provide useful feedback from an important constituency, previously neglected, as design and implantation go forward.
  
10. **There is No Effective Self-Reporting Capability within CBMS.** Modern data-base and business systems have the capability that when asked questions about how they are performing, can produce reports summarizing the applicable information. CBMS does not have this capability. Instead, new reports need to be individually programmed at substantial cost. An adequate self-reporting capability must be a part of any new or successor benefits processing system.

June 7, 2011  
Ed Kahn

