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# 2013 Legislation in Review

## An Analysis of the Key Health Policy Trends

MAY 2013

**Colorado's legislative session** is typically a jam-packed, non-stop, 120-day whirlwind, and 2013 was no exception. After a slow start, the legislature picked up steam to pass hundreds of bills – 440 to be exact – on a multitude of issues. And while topics such as gun control, education finance, civil unions and recreational marijuana drew most of the headlines, health care was a major focus for legislators. Indeed, many of this year's health-related laws will continue to have coverage and cost implications for years, even decades, to come.

Each year, the Colorado Health Institute analyzes the major health policy trends that emerged during the session. Four major health policy themes characterized the bulk of the health care legislation passed in 2013.

- **Theme 1: Implementation of Federal Health Care Reform**
  A number of major bills paved the way for the full implementation of Obamacare beginning in 2014.
- **Theme 2: Increased Investment in Health Care**
  More money in the state budget allowed for significant investments in Colorado's health care system, particularly for behavioral and oral health.
- **Theme 3: New Reporting Requirements and Regulations**
  Several bills aimed to reduce fraud, waste and abuse within the health care system, while others sought to improve transparency or consumer protections.
- **Theme 4: System Efficiency**
  A number of bills promoted policy changes that will help to modernize and streamline Colorado's health care system, setting the stage for future improvements.

This report includes details on the major bills within each of these categories, gives an overview of what this year's budget means for health care and provides a sneak preview of the policy issues on the horizon for next year's legislature.

*Note: All information current as of May 22, 2013. Some bills were pending the governor's signature.*

***By the Numbers***
*The 2013 Colorado Legislative Session*

| 613 | 440 | 72% | 3.7 | 31% |
|---|---|---|---|---|
| Number of bills introduced | Number of bills passed | Percentage of bills that passed | Average number of bills passed per day | Percentage of lawmakers new to the legislature |

# Setting the Stage

***Before delving into the details of the session, it's important to revisit the health care landscape in January 2013. Three key events significantly impacted the legislative session.***

### • Obamacare Became the Law of the Land

With the Supreme Court's decision to uphold the individual mandate and President Obama's reelection, supporters and opponents of the health reform law now accept that – like it or hate it – the Affordable Care Act is here to stay. This reality shifted the political tone at the Capitol, resulting in less of the fierce rhetoric from years past. Most of Colorado's Republican lawmakers remain opposed to federal health reform, but several bipartisan bills were passed to help facilitate a smooth implementation of the law.

### • Colorado Democrats Took Control of Both Chambers

The balance of power remained the same in the Colorado Senate, with Democrats holding a 20-15 seat majority. Control of the Colorado House of Representatives, however, shifted from Republicans to Democrats, who picked up five seats for a 37-28 seat majority. With control of both chambers – and a Democratic governor – the Democrats wielded significant power in getting their agenda passed.

### • The Economy Saw Slow But Steady Progress

Difficult budget discussions and painful cost cutting dominated previous legislative sessions, but this year's Joint Budget Committee had an easier task. Colorado's economic recovery outpaced the nation, and General Fund dollars were up 5.5 percent in fiscal year (FY) 2013-14. With more money in state coffers, legislators restored cuts and made new investments in health care and other programs. The budget passed on a party-line vote, with Democrats praising it as a smart and strategic approach to state spending and Republicans saying it isn't prudent enough and doesn't spend money in the right places.

| 57 | 43 | 3 | 17 | 7 |
|---|---|---|---|---|
| Number of Democratic lawmakers | Number of Republican lawmakers | Number of health committees | Number of House health committee members | Number of Senate health committee members |

# Theme 1: Implementation of Federal Health Care Reform

The federal Affordable Care Act contains nearly a thousand pages of new rules and regulations. Most go into effect in 2014. And while much of federal health reform is mandatory, states have a role in determining some of the nuts and bolts of how the law will be implemented. In addition, parts of the law – such as expanding eligibility for Medicaid or setting up state-run insurance exchanges – are optional for states. Colorado, for example, decided to create its own insurance exchange in 2011 with SB 11-200.

Implementing health reform was front and center for the Colorado legislature, which passed several key pieces of legislation paving the way for full implementation of the federal law.

- **HB 13-1266: Health Insurance Alignment with Federal Law**

Aligns Colorado law with the new mandates of the Affordable Care Act and enables Colorado's insurance commissioner to regulate health insurers to meet the new requirements of the federal law. Proponents argued that conforming Colorado statutes to the new federal mandates will simplify and clarify the rules for insurance providers, businesses and individuals.

- **HB 13-1245: Funding Mechanisms for the Colorado Health Benefit Exchange**

Allows the exchange – now called Connect for Health Colorado – to assess a monthly fee on small group and individual health insurers, capped at $1.80 per member per month for health insurance carriers and up to 18 cents per member per month for dental plans. Also creates a tax credit for insurance carriers that voluntarily contribute to the exchange, capped at $5 million annually statewide. Proponents say the bill will help the exchange remain financially viable after federal funding ends in 2015.

- **HB 13-1115: Repeal of CoverColorado**

Ends the non-profit organization that has provided health insurance for high-risk, hard-to-cover Coloradans, effective April 1, 2014. Because insurers will no longer be able to deny coverage based on pre-existing conditions, and the health exchange will offer coverage options for almost everyone, CoverColorado will no longer be necessary.

- **HB 13-1290: Regulation of Stop-Loss Health Insurance**

Changes the law regulating stop-loss health insurance, a type of policy that provides protection to self-insured small employers by covering medical claims above a certain dollar amount, known as an "attachment point." The bill increases the minimum attachment point and prohibits companies from having different attachment points for different employees. Proponents hope the bill will encourage companies to buy their policies on the exchange rather than self-insuring. Opponents contend it will drive up costs for self-insuring small businesses.

# *Medicaid Expansion: A Landmark Bill*

Senate Bill 13-200 was arguably the most noteworthy – and talked about – health care bill of the session. The bill itself is simple: It increases the income eligibility for the Medicaid program to 133 percent of the federal poverty level, effectively 138 percent. This equates to about $15,000 in annual income for an individual or $31,000 for a family of four.

The Supreme Court ruled last year that each state could decide whether to expand Medicaid eligibility in conjunction with the Affordable Care Act. The federal government will cover all expansion costs for the first three years beginning in 2014, then taper down to 90 percent in 2020. Colorado's current Medicaid program is funded with a 50-50 federal match.

**Gov. John Hickenlooper congratulates Sen. Irene Aguilar after signing Senate Bill 13-200 into law.**

Governor Hickenlooper announced his support of the expansion in January, and Democratic lawmakers followed by introducing SB 13-200 in early March. During the debate, lawmakers arguing in favor of the bill said it would improve the health of the state's most vulnerable while reducing costly uncompensated care for the uninsured. Opponents called the Medicaid system broken and inefficient. They said expansion would cost too much and questioned the federal government's long-term commitment to funding the program. Many organizations spoke in support of the bill at committee hearings. But, in a surprise to many observers, not a single opponent testified against it.

In the end, the bill passed, garnering votes from all the Democrats and one Republican – Sen. Larry Crowder of Alamosa. Senator Crowder said during floor testimony that, given the poverty and uninsurance levels in his district, he felt it was the right thing to do.

A study conducted by the Colorado Health Institute for The Colorado Trust estimates that the new law will add 240,000 Coloradans to the Medicaid rolls by 2022, costing the state $1 billion over the same period. The federal share will be an estimated $11.4 billion for a total 10-year cost of $12.4 billion. The law is set to go into effect on January 1, 2014.

# Theme 2: Increased Investment in Health Care

With a healthier state budget, the legislature invested in Colorado's health care system – particularly in behavioral and oral health. Lawmakers also set up task forces that could lead to additional investments down the road.

- **SB 13-242: Dental Services for Medicaid Adults**

Adds a dental benefit for adults covered by Medicaid. A stakeholder group will determine the details of the benefit, which will go into effect by April 1, 2014. Funds from the Unclaimed Property Trust Fund, which had funded CoverColorado, will help cover the cost of the services.

- **SB 13-261: Oral Health Community Grants Program**

Establishes an Oral Health Community Grants program to be administered by the Colorado Department of Public Health and Environment (CDPHE). Grants will be awarded for fluoridation of public water supply systems, school-based initiatives to prevent tooth decay, such as dental sealant programs, and other evidence-based programs that promote oral health.

- **SB 13-008: Elimination of the Waiting Period Under the Children's Basic Health Plan**

Eliminates the waiting period that requires some children to be uninsured for three months before applying for the Children's Health Plan *Plus* (CHP+), a public program that provides health insurance to low-income children and pregnant women.

- **SB 13-222: Access to Childhood Immunizations**

Removes the statutory prohibition on a statewide purchase and delivery system of child immunizations and creates a stakeholder process to determine the most efficient way to purchase and deliver them in the future. Under the current system, individual providers must stock separate supplies of vaccines for publicly- and privately-insured patients. Proponents say the bill will decrease costs and administrative burdens for small and rural providers, improving access to vaccines and putting the state in a better position to respond to outbreaks.

- **HB 13-1006: Breakfast After the Bell Nutrition Program**

Requires schools in which at least 80 percent of students are eligible for free or reduced-price lunches to offer a free breakfast to each student beginning in FY 2014-15. The program will expand the following year to include schools with at least 70 percent of students eligible for free or reduced -price lunch. Exemptions are allowed for schools in small rural districts with fewer than 1,000 students.

# *Behavioral Health in the Spotlight*

Governor Hickenlooper announced plans last December to overhaul the state's behavioral health system, including major improvements to mental health services and substance abuse treatment programs. The governor, speaking a few months after the mass shootings at an Aurora movie theater, said that while no single plan can prevent all harm, his proposal "will reduce the probability of bad things happening to good people."

Building on the governor's direction, the legislature passed several major bills that beef up investments in mental and behavioral health initiatives statewide.

- **SB 13-266: Creation of a Behavioral Health Crisis Response System**

Directs the Department of Human Services (DHS) to create a statewide coordinated behavioral health crisis response system, including walk-in crisis centers, mobile crisis response units, short-term residential services, a 24-hour crisis telephone hotline and a public information campaign to raise awareness of the services. The bill allocates $19.8 million in General Fund money to implement the system in FY 2013-14.

- **SB 13-210: Employment Conditions for Correctional Officers**

Although the bulk of this bill deals with working conditions for correctional facility employees, a last-minute amendment designates $2.8 million to turn a portion of the Fort Lyon Correctional Facility into a transitional housing center for the homeless that provides substance abuse services, medical care and job training. The project was a top priority for the Hickenlooper administration, which lobbied for the Fort Lyon amendment.

- **HB 13-1296: Civil Commitment Statute Review Task Force**

Creates a task force to study mental health, substance abuse and alcohol-related civil commitment statutes and to make recommendations regarding involuntary civil commitments. It also redefines definitions of "gravely disabled" and "danger to self or others." The task force must report back to the legislature by November 2013.

# Theme 3: New Reporting Requirements and Regulations

A number of bills changed health-related reporting requirements and other regulations. Many of the measures aim to reduce fraud, waste and abuse, while others seek to improve transparency and protect consumers.

**• HB 13-1068: Inspections of Medicaid Providers**
Aligns state law with federal law by allowing the Centers for Medicare & Medicaid Services as well as the Department of Health Care Policy and Financing (HCPF) to conduct on-site inspections of Medicaid providers without advance notice. Requires the state to conduct pre-enrollment and post-enrollment site visits of providers that are considered moderate to high fraud risks.

**• SB 13-137: System Improvements to Prevent Fraud in the Medicaid Program**
Directs HCPF to solicit information from various vendors on the use of "predictive analytics technologies" in the Medicaid program. The goal is to identify strategies that will reduce fraud, waste and abuse *before* claims are paid in order to save the state money.

**• SB 13-277: Development of a Prior Authorization Process**
Requires the Commissioner of Insurance to develop a uniform process to be used by insurance carriers as they decide whether to grant prior authorization for drug benefits beginning in 2015. Insurance carriers will be required to make the process available electronically and to use evidence-based guidelines when deciding whether to cover a patient's medication.

**• SB 13-111: Requiring Reports of Elder Abuse and Exploitation**
Creates a new class of protections for "at-risk elders" under Colorado's Adult Protective Services system. Mandates reporting of abuse, neglect and financial exploitation of at-risk seniors who are 70 and older and makes failure to report a class 3 misdemeanor. The bill will also reduce county caseload levels from 34 patients to 25 patients per caseworker, increase funding for services

for at-risk adults, and provide training and quality assurance activities in the Department of Human Services (DHS).

- **SB 13-026: Expansion of the Michael Skolnik Medical Transparency Act of 2010**

Requires additional types of health care professionals, such as massage therapists and athletic trainers, to disclose information about their practice history to the Department of Regulatory Agencies (DORA) whenever they obtain or renew a license.

- **HB 13-1015: Disclosure of Mental Health Claims Information by Small Group Health Plans**

Repeals the prohibition on disclosure of certain mental health information by small group carriers, allowing them to report claims information to the All-Payer Claims Database (APCD). The goal is to improve the validity of APCD data on health care costs.

## *Alternative Health Care: The Next Big Thing?*

Nearly 40 percent of Americans use some type of alternative health care treatment. These services can include everything from acupuncture and meditation to dietary supplements and Reiki therapy. The legislature passed two bills to regulate the growing alternative health care industry.

- **SB 13-215: Alternative Health Care Consumer Protections**

Requires practitioners of complementary and alternative health care services who are not licensed health care professionals to disclose their educational background and the nature of the services provided. They must inform clients that they are not licensed by the state. Prohibits these providers from certain treatments, such as performing surgery or prescribing prescription drugs.

- **HB 13-1111: Regulation of Naturopathic Doctors**

Requires naturopathic doctors (NDs) to obtain a license to practice in Colorado, with specific requirements for education, competency exams, patient disclosures, record keeping and continuing education. The bill also defines the scope of practice for NDs and establishes an advisory committee to advise DORA in regulating the profession.

# Theme 4: System Efficiency

Lawmakers worked to modernize Colorado's health care system and improve overall efficiency. Several bills target wasteful services in the Medicaid program. Others restructure and consolidate the health-related duties of various state departments, aiming to pave the way for better and more efficient patient care.

- **HB 13-1196: Reporting Waste Prevention Methods in the Accountable Care Collaborative**

Requires HCPF to report annually to the legislature about efforts to reduce waste and duplication within the Accountable Care Collaborative, the Medicaid program that aims to reduce costs through care coordination and patient medical homes.

- **HB 13-1202: Counseling by Medicaid Providers Relating to Medical Orders for Scope of Treatment**

Makes counseling for Medical Orders for Scope of Treatment (MOST) eligible for reimbursement under the Medicaid program, provided federal cost sharing is available. The MOST process helps people to plan for and make end-of-life decisions. Currently, providers are not eligible to be reimbursed for the service. The added cost of MOST reimbursements is expected to be offset by the end-of-life cost savings, according to fiscal analysts.

- **HB 13-1314: Transfer of Developmental Disability Programs**

Creates the Office of Community Living in HCPF and transfers multiple programs serving people with intellectual and developmental disabilities from DHS to this new office, including three Home-and Community-Based Services Medicaid waiver programs and family support services. Proponents say the state will be able to manage the multiple waiver programs more efficiently. Others think the measure is a first step in determining whether some of the programs can be simplified or even consolidated.

- **HB 13-1117: Alignment of Child Development Programs**

Transfers and consolidates several child development programs from CDPHE to DHS, including the Nurse Home Visitation Program, the Colorado Student Dropout Prevention and Intervention Program, and the Tony Grampsas Youth Services Program, among others.

- **HB 13-1074: Reallocation of the Primary Care Office from the Prevention Services Division to CDPHE**

Relocates the Primary Care Office from the Prevention Services Division within CDPHE to the department generally. Also reduces the number of members of the Colorado Health Service Advisory Council and revises the qualifications.

# ***Leaders of the Pack:*** *Who's Leading the Health Policy Charge?*

***Between turnover, term limits and lost elections, the Colorado General Assembly saw many members leave after the 2012 session – including former health care committee chairs Sen. Betty Boyd and Rep. Ken Summers. But new health care leaders emerged during the 2013 session, and they successfully led the passage of dozens of health care bills. Below are the lawmakers who led the Senate and House health committees.***

**Sen. Irene Aguilar (D-Denver)**
As chair of the Senate Health and Human Services Committee – and a doctor at the Denver Health Westside Family Health Center – few legislators had more influence over health care policy than Senator Aguilar. She sponsored an extraordinary number of health-related bills this session, most notably SB 13-200 to expand Medicaid eligibility and SB 13-266 to establish a behavioral health crisis response system.

**Rep. Beth McCann (D-Denver)**
Representative McCann took over as chair of the House Health, Insurance and Environment Committee, where she worked on an impressive number of health-related bills. She sponsored several noteworthy measures related to the implementation of federal health reform, including HB 13-1115 to repeal CoverColorado, HB 13-1245 to fund the Colorado Health Benefit Exchange and HB 13-1266 to align state statutes with the new mandates of the federal law.

**Rep. Dianne Primavera (D-Broomfield)**
Representative Primavera, who returned to the legislature after regaining her seat in House District 33, was appointed chair of the House Public Health Care and Human Services Committee. She sponsored SB 13-242 in the House to establish a dental benefit for adults covered by Medicaid.

**Sen. Ellen Roberts (R-Durango)**
A long-standing member of the Senate Health and Human Services Committee, Senator Roberts was the ranking Republican member this year. She sponsored several bills focused on reducing fraud in Medicaid, including SB 13-137 and HB 13-1068.

**Rep. Amy Stephens (R-Monument)**
Representative Stephens was the ranking Republican member on both House health committees. Perhaps best known for her 2011 bill establishing the Colorado Health Benefit Exchange (SB 11-200), she turned her attention this year to bills addressing efficiency and cost containment issues in Medicaid. Her bipartisan bill to reduce waste and duplication in the Accountable Care Collaborative (HB 13-1196) passed unanimously in both the House and Senate.

# Health Care and the Budget

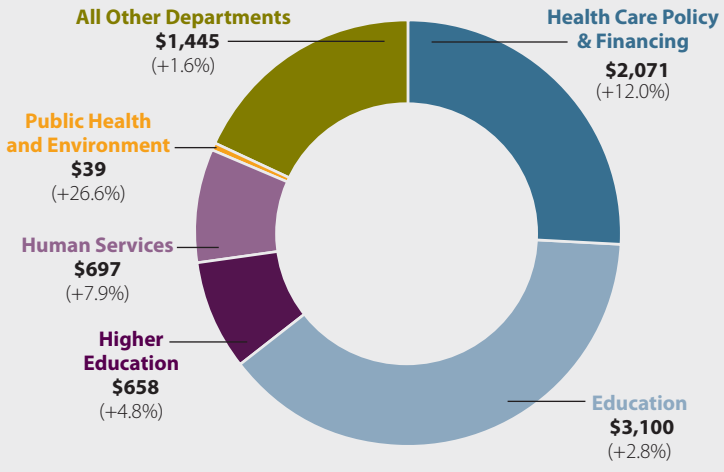
The FY 2013-14 budget approved by the legislature has important implications for health care in Colorado. The state's improving economy allowed lawmakers to restore funding to many health-related programs that had seen budget cuts over the past few years. With the approved budget, Colorado will see hundreds of millions of dollars in new health-related spending in the coming year, including:

- Shoring up the state's **behavioral health** programs and services.
  - $19.8 million for a new statewide behavioral health crisis system;
  - $4.3 million in additional funding for community-based mental health centers;
  - $2.8 million for enhanced mental health services for criminal offenders;
  - $2.1 million for a new 20-bed jail-based center to treat defendants who have been declared incompetent to stand trial and require behavioral health services;
  - $1.1 million to increase community behavioral health resources in schools;
  - Enhancing substance abuse disorder benefits for Medicaid clients to expand treatment options and duration of services such as rehab.
- A two percent across-the-board **increase in reimbursement rates** for most Medicaid providers. Private-duty nurses and home health and community-based services will get a 4.5 percent increase in FY 2012-13 and an additional 3.6 percent increase in FY 2013-14. Reimbursements for dental services will go up 4.5 percent, except for Federally Qualified Health Centers, which will get a two percent increase.
- Adding the equivalent of 7.4 **full-time employees** to HCPF's staff to help handle Medicaid caseloads, improve stakeholder relations and address requirements of federal health reform.
- **Overhauling the Medicaid Management Information System** (MMIS), the computerized program used to pay claims in the state's Medicaid program, as well as funding to beef up the call center that fields inquiries from Medicaid clients.
- Allocating $9 million for **Federally Qualified Health Centers** and **Rural Health Centers** to bring the state into compliance with federal law regarding Child Health Plan *Plus* reimbursements.
- Authorizing $1.2 million to HCPF for the treatment of Medicaid-eligible women with **breast or cervical cancer**.

## *FY 2013-14 Appropriations and Increases by Department**

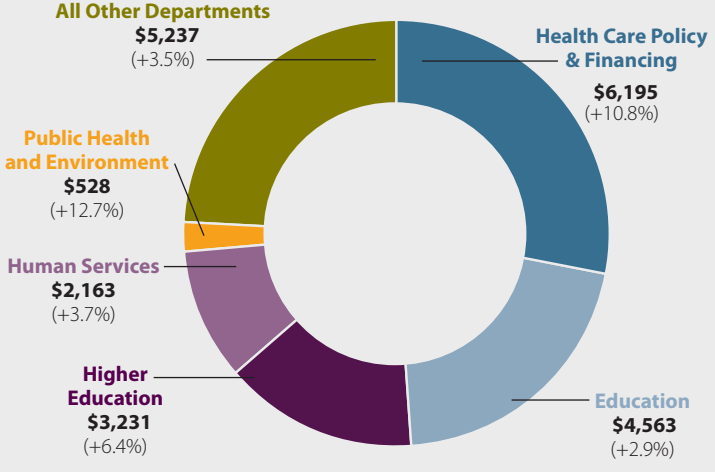
### General Fund *(In Millions)*

**Total:** $8.0 billion **Increase From Last Year:** 5.5 percent




### Total Funds *(In Millions)*

**Total:** $21.9 billion **Increase From Last Year:** 6.0 percent




* Source: Joint Budget Committee Staff and FY 2013-14 Long Bill Narrative. Figures are subject to change and do not include bills with appropriations outside of the Long Bill or any line item vetoes.

- Increasing funding for the **Colorado Commission on Family Medicine** by $315,000, plus an additional $500,000 to support the establishment of rural residency programs.
- Increasing **school-based health center grants** by $4.3 million.
- **Reducing waiting lists** for those with developmental disabilities by 765 people through increased funding.

# *Is Marijuana a Health Policy Issue?*

Colorado voters passed Amendment 64 in 2012 legalizing the recreational use of marijuana for adults 21 and older. But the jury is out on whether recreational marijuana should be considered a health policy issue. Concerns about public health and safety have certainly been one of the arguments used by opponents, while supporters argue that marijuana has fewer health risks than alcohol.

**Senate Bill 13-283** does address some of the public health issues associated with marijuana legalization. The bill makes marijuana subject to the same indoor air quality restrictions as tobacco products and requires CDPHE to monitor the drug's health effects, including changes in drug use patterns across the state and any emerging data on how marijuana usage impacts overall health. Among other things, the bill also requires the state to make recommendations to the legislature on any criminal laws that will need to be revised in response to Amendment 64.

Otherwise, the legislature focused on how to tax and regulate marijuana as it scrambled to pass these bills in the final three days of the session:

- **HB 13-1317** creates the regulatory framework for the sale of marijuana and gives oversight responsibilities to the Department of Revenue (DOR), including the licensure of marijuana businesses and the testing, labeling, packaging and advertising of recreational marijuana.
- **HB 13-1318** creates up to a 15 percent excise tax and 10 percent sales tax on the purchase of recreational marijuana and dictates how the taxes will be used. This measure must go to a statewide vote in November 2013. If passed, gross revenues for both taxes are expected to generate over $50 million annually by FY 2014-15.
- **HB 13-1325** creates a limit for law enforcement to determine whether drivers are driving under the influence of marijuana, set at five nanograms or more of THC per milliliter of blood.

This issue will make appearances in future sessions. The Colorado Health Institute expects that the legislature will continue to grapple with recreational marijuana policies as Amendment 64 is fully implemented.

# Looking Ahead

**When lawmakers return in 2014,** they are likely to continue their work on many of the health care themes and discussions that were initiated during the 2013 session.

Several bills established committees or task forces that will meet over the summer and into the fall, producing recommendations that will likely result in new legislation. For example, a task force on mental health commitments will analyze the process for involuntary civil commitments, and another task force convened by CDPHE will determine more efficient ways to purchase and deliver childhood immunizations.

In addition, recreational marijuana is sure to see additional scrutiny. Colorado is at the forefront of this groundbreaking law, so there are likely to be additional regulatory tweaks as Amendment 64 is fully implemented. Whether any of these laws focus on the public health aspects of marijuana remains to be seen.

Lawmakers will also continue to tackle improvements and innovations in the Medicaid program. With hundreds of thousands of additional Coloradans expected to join the Medicaid rolls over the next decade, policymakers are placing a priority on cost containment, efficiency improvements and fraud reduction. In addition, HCPF will soon begin implementing Medicaid payment reform pilot projects in conjunction with House Bill 12-1281. The results of these pilot programs and the ongoing Accountable Care Collaborative could have significant policy implications for how Medicaid is structured in the future.

When it comes to the budget, there is likely to be continuing tension between education and health care funding. Several bills introduced during the 2012 session would have prioritized K-12 and higher education funding over health care. These measures ultimately failed, but the issue is far from dead. With limited dollars in the budget – and several major new investments in health care – some lawmakers are concerned that health care spending could come at the expense of education. If the economy continues to improve, this tension could be lessened, but there is no question that lawmakers will be watching these costs closely over the coming years.

Finally, the implementation of federal health care reform will continue to be a burning issue in 2014 and beyond. Lawmakers will be watching for unanticipated consequences – both positive and negative – with the launch of the Colorado health insurance exchange and other sweeping changes to the health care system.

## *The Colorado Health Institute's Legislative Services Program*

The Colorado Health Institute (CHI) is a nonpartisan health policy data and analysis center that serves as a resource for objective information for Colorado legislators, their staffs and key leaders throughout the state. CHI provides a suite of services to contribute to an informed, evidence-driven legislature, including one-on-one sessions with lawmakers; responses to specific requests for information; publications on health policy topics; an annual series of Legislative Roundtables for interactive learning and discussion; presentations to constituent groups; and a "Hot Issues in Health Care" symposium for new and returning lawmakers each election year.


## *Acknowledgments*

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