

Colorado's Senate Race: An Analysis

OCTOBER 7, 2014

Health care plays a starring role in the 2014 campaign for Colorado's U.S. Senate seat.

The discussion on the campaign trail has been a reflection of the national debate. Incumbent **Sen. Mark Udall**, a Democrat, and his Republican challenger, **Rep. Cory Gardner**, have sparred over health policy, especially regarding abortion, birth control and parts of the Affordable Care Act (ACA). Meanwhile, unaffiliated candidate **Steve Shogan** brings health care ideas to the debate that don't fit neatly into either Republican or Democratic orthodoxy.

Udall and Gardner have divergent interests when it comes to health care.

Udall voted with Democrats for the ACA and has focused on disease treatment and research during his tenure in the Senate. A former mountain guide, Udall also has concentrated on population health goals such as promoting exercise. Gardner is a staunch opponent of the ACA and has sponsored or cosponsored 33 bills to limit



Sen. Mark Udall



Sen. Cory Gardner

or repeal it. He also has advanced conservative alternatives to the design of the national health care system.

The Colorado Health Institute has examined Udall's and Gardner's publicly stated health policy platforms, plus bills they have cosponsored in the past eight years. Each candidate attached his name to roughly the

same number of health bills during those eight years, 105 for Udall and 95 for Gardner. Only 16 of the federal bills passed and became law. Udall was a cosponsor on 13 of those bills, and Gardner three. But Udall has been in Congress four years longer than Gardner and he served for a few years when it was easier to pass bills because Democrats controlled both chambers.

Shogan, a neurosurgeon, does not have a legislative history to examine. Instead, CHI interviewed him about his ideas on health reform.

Continued on next page



Udall and the ACA

The ACA has many provisions, but at its core it requires most people to buy health insurance and many employers to offer it. The law provides federal tax credits to those with low incomes, as well as cost-sharing reductions in some cases. Insurance companies can't deny coverage to people with preexisting conditions, and policies must meet minimum coverage standards, including annual checkups with no co-pays. Under the law, states or the federal government operate online insurance marketplaces to allow people to comparison shop for ACA-compliant policies.

Udall voted for the ACA and has defended its basic principles. That said, he has called for some changes, including a slower phase-in of insurance mandates for small- and medium-size businesses. When technical problems plagued the rollout of the online marketplaces – particularly the national version, but also to a much lesser extent in Colorado during the first days – Udall cosponsored two bills to give people more time to purchase insurance policies through the marketplaces and to make sure website glitches did not interrupt coverage. The Obama administration extended the deadlines on its own, eliminating the need for Udall's bills.

Gardner has many criticisms of the ACA, but he and Colorado Republicans have focused on the law's minimum benefits standards for insurance policies, which led carriers in 2013 to cancel policies for 339,548 Coloradans, according to the state Division of Insurance (DOI). However, 92 percent of those people were offered early renewals, allowing them to keep the policy for another year if they chose. Approximately 6,000 more policies have been cancelled in 2014. The Division of Insurance did not keep track of cancellations prior to the ACA, so it's not possible to say how many policies were voided because of the federal law. However, there is widespread agreement in the insurance industry that most of the cancellations happened because the policies did not meet the ACA's standards.

The cancelled policies are politically potent because they contradict an argument by supporters of the ACA, including Obama, who said, "If you like the plan you have, you can keep it." Udall has tried to defuse criticism of cancellations, introducing the Continuous Coverage Act, allowing the old policies to continue through 2015. The bill has not received a hearing or vote in the

Mark Udall

- **Age:** 64
- **Home:** Eldorado Springs
- **Family:** Wife Maggie Fox, two adult children
- **Work before Congress:** State legislator, executive director and teacher at Colorado Outward Bound School.
- **Health policy focus:** Defense and improvement of Affordable Care Act, reducing obesity, funding treatment and research for diseases like cancer, multiple sclerosis and Parkinson's.

Cory Gardner

- **Age:** 40
- **Home:** Yuma
- **Family:** Wife Jaime, two children
- **Work before Congress:** State legislator, communications director for National Corn Growers Association, staffer for Sen. Wayne Allard, R-Colorado, employed at his family's farm implement dealership.
- **Health policy focus:** Repeal of the Affordable Care Act, limiting malpractice lawsuits allowing insurance to be sold across state lines.

Senate. However, in May 2014, the DOI decided to allow insurance carriers to offer non-ACA compliant plans in Colorado for another year, letting people stick with their old policies until the end of 2015, if the carriers continued to offer them.

In early 2014, Udall's congressional staff was at the center of a controversy over emails that attempted to persuade the DOI to change the way it defined "cancellation," giving more emphasis to the offer of early renewals for people whose policies were nixed. In an internal DOI email obtained by a conservative website, Complete Colorado, a Division of Insurance staffer complained about a "very hostile" phone call from an official in Udall's senatorial office. Barbara Kelley, director of the state Department of Regulatory Agencies, which oversees the DOI, said in a January letter that there was no intimidation from Udall's staff, and the senator's input was helpful in presenting a more complete picture of the discontinued policies.

Gardner and the ACA

Since he arrived in Congress, more than 40 percent of the bills cosponsored by Gardner have aimed to repeal, defund or roll back the ACA.

In its place, Gardner backs options shared by many Republicans that seek to lower costs by promoting competition in the health care industry. At the top of Gardner's list, according to his congressional website, is limiting malpractice lawsuits. He also wants to allow consumers to buy insurance from out-of-state companies, expand health savings accounts, increase tax deductions for health insurance and subsidize coverage for people who are turned down for insurance because of pre-existing conditions.

Most of these ideas are found in the American Health Care Reform Act of 2013, which Gardner and 131 other Republicans cosponsored. It has not been brought up for a vote in the House.

Gardner has been interested in creating an interstate insurance market since he was a freshman state legislator. Currently, each state regulates its own insurance market. Gardner cosponsored four Republican bills in the state legislature that would have let people shop across state lines. None of these bills was passed, in part because of criticisms that insurance companies might base their policies on the state or territory with the lowest standards for coverage.

To address the problem of insurance companies turning away chronically ill people, Gardner is the prime sponsor of a bill to restart state high-risk insurance pools for people with pre-existing conditions. Colorado and 34 other states operated these pools prior to the passage of the ACA, which requires insurance companies to issue policies to people with pre-existing conditions.

His bill includes \$25 billion in funding through 2024, or an average of \$2.5 billion a year, to subsidize the high-risk policies. State pools had varying degrees of success. CoverColorado had nearly 14,000 people enrolled when it ended on December 31, 2013. Economists James Capretta and Tom Miller, writing in the conservative policy journal National Affairs, said the main shortcoming of the state pools was a lack of funding to subsidize policies for sick people. They estimate that federal subsidies of \$15 billion to \$20 billion would be needed every year for a high-risk pool system that covered everyone who needed it.

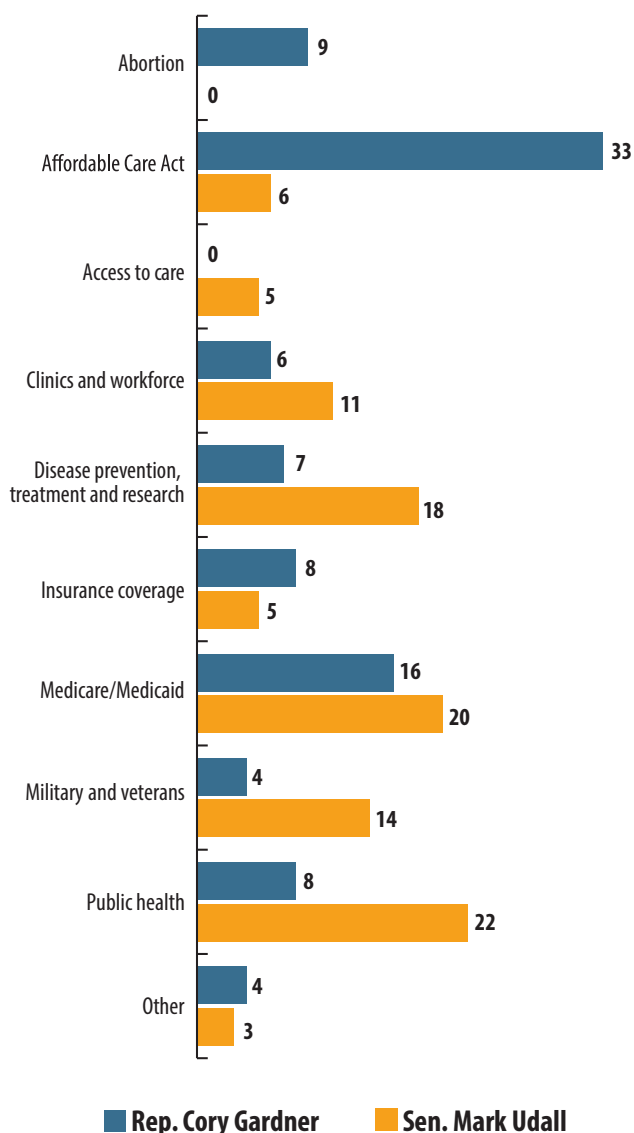
Continued on Page 5

Comparing the Bills

To get a better sense of Udall's and Gardner's health policy priorities, CHI analyzed the bills they have cosponsored since 2007, the first year they served concurrently. Cosponsorships can provide more information than voting records because so few bills in Congress are put up for a final vote.

Gardner served in the Colorado legislature from 2007 through 2010, and the U.S. House of Representatives from 2011 through 2014. Udall was in the U.S. House from 2007 through 2010 and the U.S. Senate from 2011 through today.

Sponsored and Cosponsored Bills, 2007-2014



The Third Candidate: Steve Shogan

A third candidate in Colorado's U.S. Senate race is courting voters who aren't enamored of either Democratic or Republican ideas on a variety of issues, including health care.

Steve Shogan, a Denver neurosurgeon and former board chair of the Colorado Health Foundation, espouses a mix of free-market and government-centered ideas to reshape the American health care system, which he shared in an interview with the Colorado Health Institute. (Shogan was a founding trustee of the Colorado Health Institute, but he is no longer associated with our organization.)



Steve Shogan

Shogan criticizes Democrats for the ACA, which he says did not go far enough and will not guarantee coverage to everyone – the stated aim of health care reformers. He praises Republicans for having some good ideas, such as limiting malpractice lawsuits, but notes that those ideas would not come close to universal coverage. He also criticizes Republicans for wanting to repeal the ACA without offering what he calls a suitable replacement.

Shogan would replace the ACA with a two-tier system that mixes the liberal concept of single-payer health coverage with conservative calls for more free-market competition.

Under Shogan's system, every person in the United States, regardless of citizenship status, would be guaranteed basic health coverage, with the details of covered services to be hashed out by a public process. A new tax – he prefers a sales tax or value-added tax – would pay for the basic services.

People who want or need additional coverage could enter the second tier and buy health insurance from private companies. Policies would not be subject to the

government mandates for minimum coverage levels that have been a controversial aspect of the ACA. Employers could offer second-tier insurance policies as an employee benefit, but they would be under no mandate to do so. There would be no government-funded subsidies to people who buy private insurance on the second tier.

His idea could mean the end of most employer-sponsored health insurance. Shogan blames Democrats for creating the Hobby Lobby birth control problem by demanding through the ACA that employers provide health insurance benefits.

Like Republicans, Shogan criticizes the ACA for expanding Medicaid eligibility. However, the motives for his opposition differ from those of many Republicans, who oppose the additional federal spending. Shogan believes Medicaid is creating a bifurcated system in which people with federal coverage get inferior care because they have a harder time seeing a doctor.

Shogan thinks the national conversation over health is largely missing the point, because clinical health care accounts for a small portion of the factors that make people well. More attention is needed on families, neighborhoods, living conditions and other population health topics, he said.

Steve Shogan

- **Age:** 63
- **Home:** Denver
- **Family:** Wife Jessie, three adult children
- **Work before Campaign:** Neurosurgeon, lawyer, chairman of the board of the Colorado Legacy Fund, former chairman of the Colorado Health Foundation Board of Trustees.
- **Health policy focus:** Replacement of the Affordable Care Act with a system blending universal basic health insurance and added private insurance.

Abortion and Birth Control

The debate over when life begins is on full display in Colorado's Senate race. This question is fundamental to controversies over abortion, the personhood movement and the Supreme Court's 2014 ruling on birth control in the Hobby Lobby case.

Udall supports abortion rights. Gardner opposes abortion in most cases and has cosponsored nine bills in his legislative career to restrict it, including a bill in the state legislature to allow doctors to be charged with a Class III felony for providing an abortion. The bill made an exception for doctors who were trying to save the mother's life.

The abortion debate in Colorado turned to the question of personhood in 2008 with the introduction of Amendment 48. By clearly defining the beginning of life at the moment of conception – before an egg implants in the womb – a personhood law could open challenges to the legality of stem cell research, in-vitro fertilization and certain forms of birth control that might act to prevent implantation of a fertilized egg.

In early 2014, Gardner disavowed his previous support for state ballot initiatives sponsored by the personhood movement – 2008's Amendment 48 and 2010's Amendment 62 – citing their potential to ban some forms of birth control. A version of the same idea, Amendment 67, is on the ballot this year.

Gardner remains a cosponsor of the federal Life at Conception Act, which, like Colorado's personhood ballot initiatives, declares that legal protections extend to fertilized eggs. In media interviews, Gardner has maintained that the Life at Conception Act is not a personhood bill. That conflicts with the assertions of personhood supporters, including Personhood USA, the organization behind Colorado's initiatives.

The debate over the beginning of life is at the heart of the U.S. Supreme Court's ruling in *Hobby Lobby vs. Burwell*. In the ruling, the court said employers can refuse to offer insurance coverage for certain forms of birth control because of their religious objections. Four forms of birth control were at issue in the Hobby Lobby case – the Plan B or "morning after" pill, the Ella pill and two types of intrauterine devices (IUDs). The plaintiffs consider them to be "abortifacients," a term used by personhood supporters to describe drugs that could

prevent a fertilized egg from attaching to the womb.

Udall cosponsored a bill that sought to overturn the Hobby Lobby ruling, but a Republican filibuster blocked it from a vote. Gardner said the Supreme Court made the right decision and added that it highlights the need to make birth control available over the counter. The ACA mandates insurance coverage for birth control, but Gardner thinks by selling it without a prescription, debates over employers' beliefs could be sidestepped. The American Congress of Obstetricians and Gynecologists supports making birth control available over the counter, but it noted the importance of insurance coverage because birth control can be costly – up to \$1,000 a year for some methods, such as IUDs.

Other Health Policy Positions

• Physical Fitness

Udall has twice been the prime sponsor of bills to give grants to each state to promote early childhood health, as well as two bills for grants to promote outdoor recreation to kids.

Gardner is cosponsor of a bill to allow direct Medicare reimbursement to behavioral therapists, as well as Medicare Part D drug coverage for anti-obesity drugs for some patients.

None of either candidate's public health bills has passed Congress.

• Veterans Health

Udall has cosponsored 14 bills on health care for veterans or active-duty military personnel, including six bills to address mental health and suicide in the ranks. His high number of military-related bills reflects his membership on the Senate Committee on Armed Services, plus a tenure in Congress that has overlapped with the wars in Iraq and Afghanistan.

Gardner has cosponsored five military health bills, including one to expand mental health services under TRICARE, the military's health insurance program. He has also supported bills to require the Veterans Administration to refer clients to other clinics when the waiting lists at VA facilities are too long.

Continued on next page

• Disease Treatment

Udall has focused on treatment of or research into specific diseases. Among other measures, he has cosponsored eight bills related to cancer, two to HIV and two to neurological diseases, Parkinson's and multiple sclerosis. Gardner has put his name on a handful of bills to fight specific diseases, especially cancer.

• Rural Access to Care

In the state legislature, Gardner signed on to a bill to require parity in insurance reimbursements between advanced practice nurses and doctors in rural counties. He cosponsored legislation in Congress to increase Medicare payments to rural hospitals. A related bill became law in April.

Udall sponsored a 2009 bill to offer grants to recruit physicians to rural areas, but it did not pass.

Conclusion

More than four years after its passage, the ACA is still fueling the political debate in Colorado and across the nation.

Voters have a choice between two candidates who have both cosponsored legislation to delay parts of the ACA. In Udall's case, the bills were meant to smooth the law's implementation and make it more palatable to consumers. Gardner's bills were aimed at weakening or repealing the ACA, which has been his top legislative priority in the health care arena since he was elected to Congress.

Shogan takes a different tack. His prescription for a system combining single-payer and free market principles could draw both support and opposition from across the political spectrum.

Senior Communications Expert Joe Hanel is the lead author of this report. Hanelj@coloradohealthinstitute.org or 720.382.7093



The Colorado Health Institute is a trusted source of independent and objective health information, data and analysis for the state's health care leaders. The Colorado Health Institute is funded by the Caring for Colorado Foundation, Rose Community Foundation and the Colorado Health Foundation.

303 E. 17th Ave., Suite 930, Denver, CO 80203 • 303.831.4200
coloradohealthinstitute.org