

ANNUAL LEGISLATIVE FORECAST

High Stakes for Health

Policy Trends for Colorado's 2016 Legislative Session

JANUARY 2016



CHI staff members contributing to this report:

- Allie Morgan, co-author
- Joe Hanel, co-author
- Cliff Foster
- Deborah Goeken

About This Report

Thanks to Jennifer Miles and Michael Beasley, CHI's legislative monitors, for their input on this year's version of CHI's Annual Legislative Forecast.

Our Funders



The Colorado Health Foundation™



**THE
COLORADO
TRUST**
A Health Equity Foundation



A Health Grantmaker



High Stakes for Health

Policy Trends for Colorado's 2016 Legislative Session

Table of Contents

4	Introduction
5	The Political Landscape
6	Health-Related State Departments
7-9	The Budget <ul style="list-style-type: none">TABOR RefundsA Closer Look: The Hospital Provider Fee and TABORIssue: Provider Rate CutsIssue: Cash for the Cost Commission
9-10	Tough Topics <ul style="list-style-type: none">Issue: Planned ParenthoodLegislation: Aid in DyingOn the Ballot: ColoradoCareA Closer Look: Long-Acting Reversible ContraceptionIssue: Electronic CigarettesLegislation: MarijuanaOn the Ballot: Tobacco Tax
11	Insurance Issues <ul style="list-style-type: none">Legislation: Narrow NetworksA Closer Look: Connect for Health Colorado
11	Conclusion

Introduction

Health care issues may well play a starring role in the 2016 legislative session.

Although interest in health policy has not returned to the fever pitch of 2009, when the Affordable Care Act (ACA) was under debate, health care issues are more visible than in recent sessions thanks to greater attention on the cost of health coverage and hot-button social issues.

That interest, coupled with budgetary pressures and the politics of a presidential election year, make the 2016 session one to watch.

The General Assembly remains under split control, with Democrats holding a three-seat majority in the House and Republicans maintaining a one-seat advantage in the Senate. This means that every bill passing the legislature must have some measure of bipartisan support. While that could be as little as a single vote, that vote often proves elusive in today's political climate.

During the 2015 session, only 54 percent of introduced bills passed. This was significantly lower than the bill passage rate in the previous two years, which stood at about 70 percent largely because of unified Democratic control of the legislature.

We expect to see the same dynamic from 2015 this year. But many legislators will already be looking to 2017. One quarter of state legislators will be leaving their seats after the session, a shift driven largely by term limits. The limits affect Democrats more than Republicans. At least 16 Democratic legislators are term-limited or departing after 2016, compared with seven Republicans. These numbers include legislators who are leaving their seats voluntarily to campaign for other opportunities, including several House members who want to move up to the Senate.

Most of the leadership of the two chambers, including the chairs of both House health committees, will be included in the exodus. The effects of this loss of institutional knowledge remain to be seen.

Presidential politics will undoubtedly color the session.



Governor John Hickenlooper continues to draw attention for a possible role in a Democratic presidential administration.

Hillary Clinton perform well, it could give some sitting legislators the confidence and breathing room to pass compromise legislation. If not, legislators could get the message that their voters are more interested in taking uncompromising stands — and less interested in bipartisan cooperation.

With this context in mind, the Colorado Health Institute previews the top issues to watch in health care during the 2016 session, including the budget, bills, and ballot initiatives that will generate significant interest.

Legislators are asking themselves who their base voters are at a time when candidates like Donald Trump, Ben Carson and Bernie Sanders are firing up a new set of activists.

The success of these more extreme candidates has some incumbents worried about primary challenges. These concerns will be either heightened or allayed in early spring following precinct caucuses and state assemblies.

If establishment candidates like Marco Rubio and

The Political Landscape

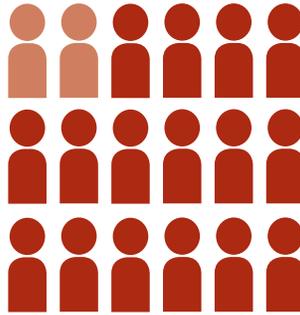
Republicans continue to control the Senate by one vote, while Democrats hold the House majority by three votes. This is the final session for at least eight senators and 15 representatives, mostly Democrats, who are term-limited or running for a different office.

THE SENATE: 18 votes to pass a bill

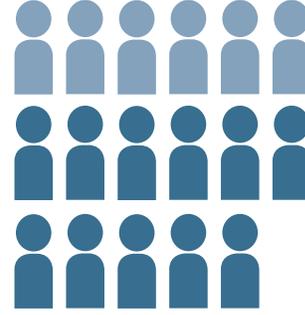


**President
Bill Cadman***
Republican,
Colorado Springs

18 Republicans



17 Democrats



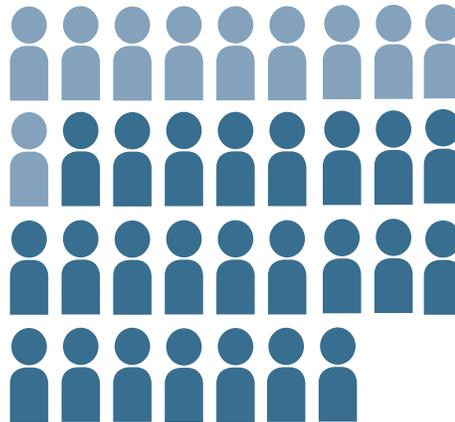

Term-limited
or departing

THE HOUSE: 33 votes to pass a bill

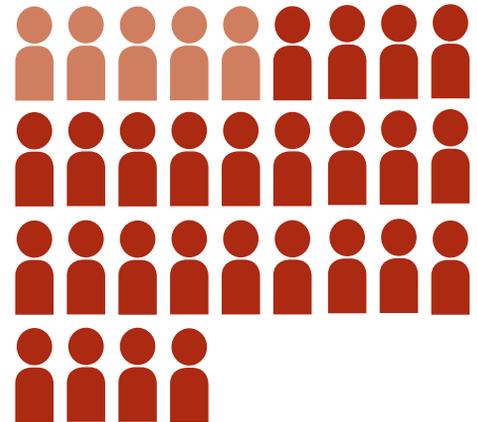


**Speaker
Dickey Lee
Hullinghorst***
Democrat,
Boulder

34 Democrats



31 Republicans



HEALTH COMMITTEES

Senate Health and Human Services

Republicans

- Sen. Kevin Lundberg, *chair*
- Sen. Larry Crowder, *vice-chair*
- Sen. Beth Martinez Humenik

Democrats

- Sen. Irene Aguilar, *ranking member*
- Sen. Linda Newell*

House Health, Insurance and Environment

Democrats

- Rep. Beth McCann*, *chair*
- Rep. Joann Ginal, *vice-chair*
- Rep. Janet Buckner
- Rep. Dianne Primavera*
- Rep. Su Ryden*
- Rep. Daneya Esgar
- Rep. Susan Lontine

Republicans

- Rep. Janak Joshi, *ranking member*
- Rep. Steve Humphrey
- Rep. Lois Landgraf
- Rep. J. Paul Brown
- Rep. Gordon Klingenschmitt*
- Rep. Kim Ransom

House Public Health Care and Human Services

Democrats

- Rep. Dianne Primavera*, *chair*
- Rep. Jonathan Singer, *vice-chair*
- Rep. Joann Ginal
- Rep. Brittany Pettersen
- Rep. Dominick Moreno
- Rep. Max Tyler*
- Rep. Jessie Danielson

Republicans

- Rep. Lois Landgraf, *ranking member*
- Rep. Kathleen Conti*
- Rep. Justin Everett
- Rep. Janak Joshi
- Rep. JoAnn Windholz

* Term-limited or departing

Health-Related State Departments

Regulatory Agencies (DORA)

\$89M

Total appropriation
2015-16 (**\$1.9 million**
from the general fund)

<0.1%

Percentage of state
general fund

- **Proposed Request 2016-17:** \$85.2 million
 - *Total Decrease:* \$3.4 million
 - *Percentage Decrease:* 3.9 percent
- **Full-Time Equivalent (FTE) Employees 2015-16:** 583.6
- **Proposed FTE Employees 2016-17:** 585.5
 - *Total Increase:* 1.9 FTEs
 - *Percentage Increase:* 0.3 percent

What to Watch

The department houses the Division of Insurance, which made headlines in October when it decertified the Colorado HealthOP, the largest player on the state insurance exchange. DOI will continue to monitor other developments, such as market consolidation, in 2016.

Health Care Policy and Financing (HCPF)

\$8.9B

Total appropriation
2015-16 (**\$2.5 billion**
from the general fund)

24.4%

Percentage of state
general fund

- **Proposed Request 2016-17:** \$8.9 billion
 - *Total Increase:* \$2.7 million
 - *Percentage Increase:* 0.0 percent
- **Full-Time Equivalent (FTE) Employees 2015-16:** 421.2
- **Proposed FTE Employees 2016-17:** 424.5
 - *Total Increase:* 3.3 FTEs
 - *Percentage Increase:* 0.8 percent

What to Watch

The governor has proposed a 1 percent rate cut for all health and human service providers except primary care physicians, but their pay isn't safe either: a rate bump for primary care under the ACA is set to expire. HCPF is slated to see virtually no change in its total budget.

Human Services (CDHS)

\$1.9B

Total appropriation
2015-16 (**\$811.9 million**
from the general fund)

7.9%

Percentage of state
general fund

- **Proposed Request 2016-17:** \$1.9 billion
 - *Total Decrease:* \$8.0 million
 - *Percentage Decrease:* 0.4 percent
- **Full-Time Equivalent (FTE) Employees 2015-16:** 4,970.9
- **Proposed FTE Employees 2016-17:** 4,837.7
 - *Total Decrease:* 133.2 FTEs
 - *Percentage Decrease:* 2.7 percent

What to Watch

A 2014 audit found a need for 650 new child welfare caseworkers across Colorado. Counties received funding for 100 hires in 2015, and the 2016-17 budget includes \$7 million to hire 100 more.

Public Health and Environment (CDPHE)

\$534M

Total appropriation
2015-16 (**\$44.5 million**
from the general fund)

0.4%

Percentage of state
general fund

- **Proposed Request 2016-17:** \$548.1 million
 - *Total Increase:* \$13.8 million
 - *Percentage Increase:* 2.6 percent
- **Full-Time Equivalent (FTE) Employees 2015-16:** 1,289.3
- **Proposed FTE Employees 2016-17:** 1,294.5
 - *Total Increase:* 5.2 FTEs
 - *Percentage Increase:* 0.4 percent

What to Watch

CDPHE will wrestle with debates over funding for family planning services. Republicans will fight against a plan to spend \$2.5 million on contraception, as well as government funding for Planned Parenthood.

The Budget

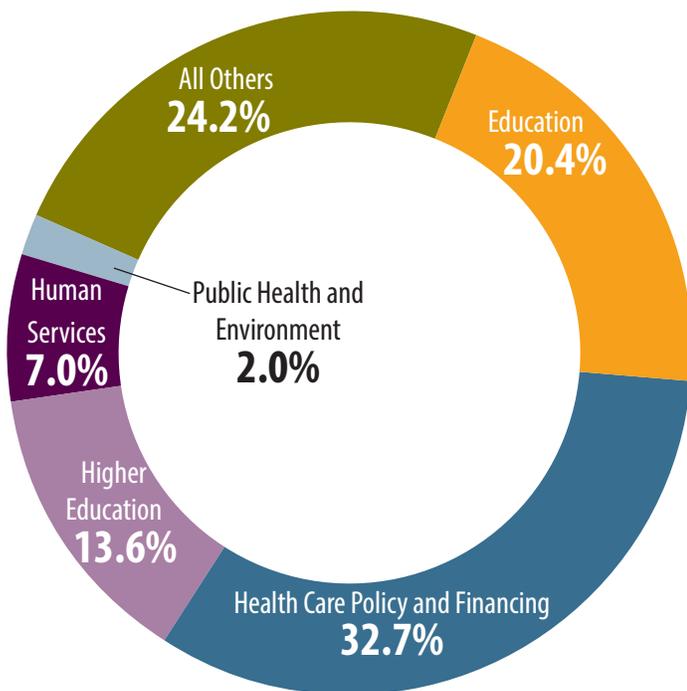
Governor Hickenlooper’s budget request calls for modest growth in the General Fund of \$395 million, or just under four percent. Two departments — Education and Health Care Policy and Financing (HCPF) — will consume more than 90 percent of that growth. The other 20 state departments will get very small increases or cuts. Higher Education stands to suffer the largest cut of nearly \$19 million.

HCPF now accounts for nearly a quarter of the General Fund. Its share has grown by nearly 30 percent since 1999, while the portion set aside for K-12 schools and colleges has shrunk nearly proportionately.

The competition for General Fund dollars between education and health care will intensify this session and in the coming years.

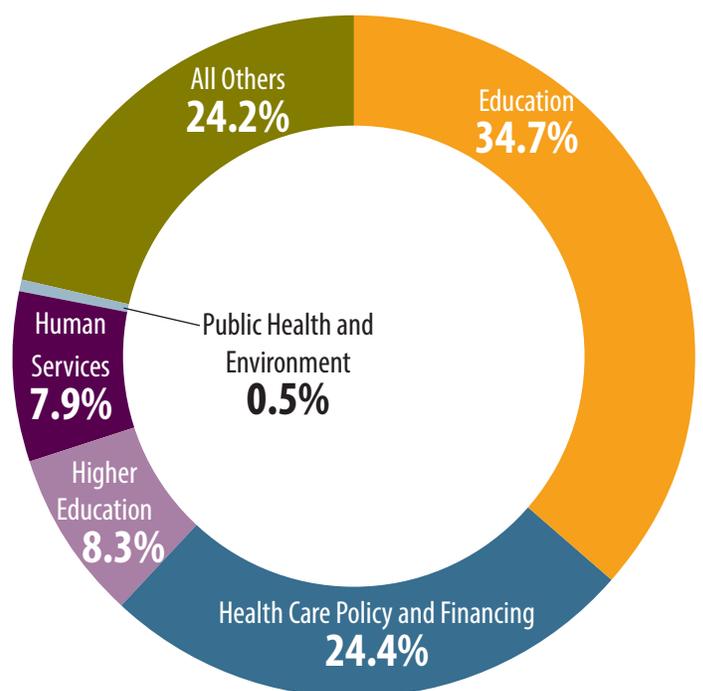
\$27.0 billion

Overall FY 2016-17 Budget Request



\$10.4 billion

General Fund FY 2016-17 Budget Request



TABOR Refunds

Economists for the legislature and the governor’s office predict the state will have to set aside money for refunds under the Taxpayer’s Bill of Rights (TABOR) in fiscal years 2016-17 and 2017-18. But the refunds could change dramatically if the legislature alters the way it accounts for the Hospital Provider Fee. (See box on the next page.)

The range of refund predictions from the governor’s office and legislative economists as of December:

2016-17: \$192 million to \$212 million

2017-18: \$341 million to \$384 million

Individual refunds would range from \$37 to \$124.

The Budget



A CLOSER LOOK:

The Hospital Provider Fee and TABOR

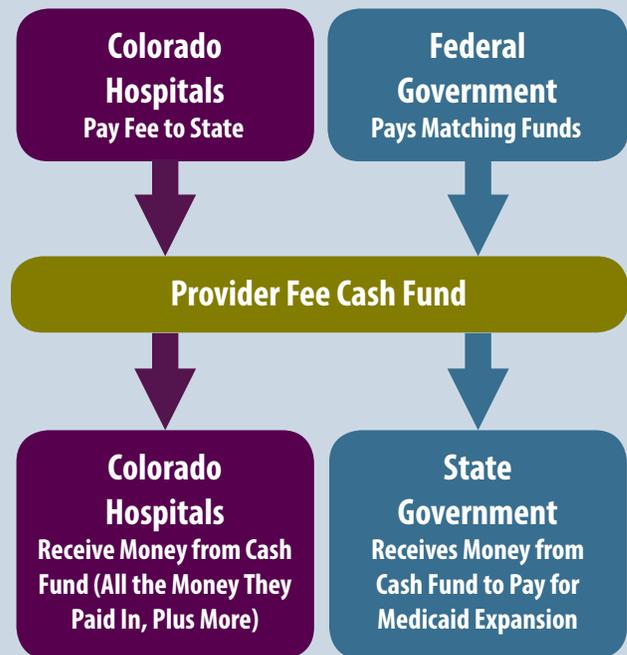
The Hospital Provider Fee has become tightly enmeshed in the debate over TABOR refunds. If the Hospital Provider Fee's revenue did not count against the state's TABOR limit, the state would not have to pay TABOR refunds until at least 2030, according to long-term projections by the Colorado Futures Center.

The legislature established the Hospital Provider Fee in 2009 as a way to draw federal matching funds to pay for a Medicaid expansion that happened before the Affordable Care Act. Although hospitals pay the fee, they get back everything they pay in, plus more, in the form of better compensation for the Medicaid patients they treat and reimbursement for the charity care they provide.

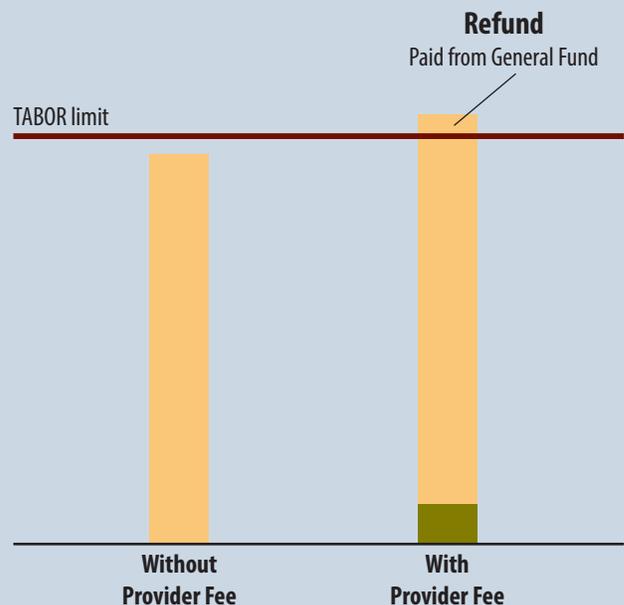
The fees that the state collects from hospitals count against the limit set by TABOR, which requires tax refunds when government revenue grows faster than a formula based on inflation and population growth. Refunds are paid out of the General Fund, leaving less money for education, courts and other government responsibilities. The Hospital Provider Fee brings in roughly \$700 million from hospitals, while the TABOR refund in fiscal year 2016-17 is expected to be roughly \$200 million.

Democratic leaders tried in 2015 to designate the Hospital Provider Fee as a state enterprise, meaning that its revenue would not count against the TABOR limit. Republicans blocked the proposal. Democrats almost certainly try will again in the 2016 session. Still, there is little reason to believe the Republican-led Senate would approve such a move.

How the Provider Fee Works



TABOR Implications



The Budget

ISSUE: Provider Rate Cuts

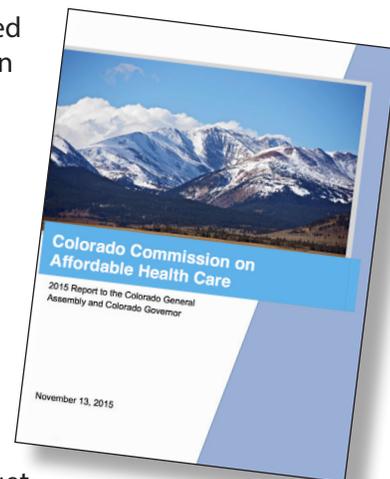
Health care providers are facing two different cuts to their pay. First, the governor's budget proposes a one percent cut in payments for anyone who provides services to state beneficiaries. A notable exception is primary care providers in Medicaid.

Second, the state has been paying increased rates for Medicaid providers since the passage of the Affordable Care Act. The state does not plan to continue the "rate bump" next year, citing a tightening budget. Providers around the state will see an estimated \$145 million in cuts, according to HCPF.

Rate cuts to medical providers should be watched closely, because they could affect the ability of Colorado's Medicaid program to find enough providers to care for its rapidly growing membership.

ISSUE: Cash for the Cost Commission

The legislature established the Colorado Commission on Affordable Health Care in its 2014 session, giving it a \$400,000 budget and asking it to recommend ways to reduce health care costs. The commission has a three-year charter, but its funding will last only through June 2016. The commission's leaders are asking the Joint Budget Committee (JBC) to include a \$424,000 appropriation in the budget. The JBC turned down the commission's first request for additional funding last fall.*



*The Colorado Health Institute is under contract with the commission to provide data and analysis.

Tough Topics

ISSUE: Planned Parenthood

Government funding for Planned Parenthood is sure to be the subject of heated discussion this year. The issue was already on many people's minds in the wake of recent undercover videos concerning the group and its use of fetal tissue. The fatal shooting of three people at a Planned Parenthood clinic in Colorado Springs has raised additional tensions.

Republicans want to end state funding for the organization, though their options are limited by federal law and Colorado court rulings. Both CDPHE and HCPF send funds to Planned Parenthood for non-abortion services, so this issue might surface during the debate over the budget.

LEGISLATION: Aid in Dying

Aid in Dying, one of the most contentious issues from the 2015 session, will be back in 2016. Last year's bill, which proposed allowing physicians to prescribe life-ending medication to terminally ill adults, met with

significant resistance from disability rights advocates, who felt it lacked appropriate safeguards for vulnerable populations. This year's version will be modeled on a recently signed California law. Expect another long and emotional hearing for this piece of legislation.

Of note: A ballot initiative to allow aid in dying has also been proposed, though it's being brought by a separate group of backers and includes several key differences.

ON THE BALLOT: ColoradoCare

A question on the November ballot seeks to make Colorado the first state to adopt a universal health coverage system. It would be known as ColoradoCare.

It comes with some sticker shock — about \$36 billion in financing, from a combination of new state payroll taxes and existing federal funding. Backers say that it would actually save money based on current projections.

Expect to hear a lot about ColoradoCare — in and out of the Capitol.

Tough Topics



A CLOSER LOOK:

Long-Acting Reversible Contraception

In addition to being a budgetary issue, long-acting reversible contraception (LARC) is a personal one for many people.

Grant funding ran out in the summer of 2015 for the Colorado Family Planning Initiative, which provided free LARC devices to young, low-income women. Some of the results were eye-catching, although the program's exact impact is difficult to quantify. A bill proposing to continue it with \$5 million in state funds failed in its first Senate hearing last year, and there was extensive media coverage of that decision

— in Colorado and by national outlets.

A new opinion from the state's attorney general says money for the program can be budgeted without running a stand-alone bill. Governor Hickenlooper has included \$2.5 million for the program in CDPHE's budget for FY 2016-17. This strategy faces two main hurdles: the JBC and the Senate floor.

If Republican opponents choose to fight the governor over this line item, that would set up a potential budget showdown.

ISSUE: Electronic Cigarettes

The popularity of electronic cigarettes has exploded in the past few years and has left regulators scrambling to catch up.

E-cigarettes do not contain tobacco and are not taxed under Colorado's tobacco tax. Purchasers pay only the sales tax.

Studies have shown that e-cigarettes deliver more nicotine than regular cigarettes. Advocates of e-cigarettes say they can help smokers quit tobacco, while critics say they serve as a gateway to get young users hooked on nicotine.

Questions were raised during a budget briefing for



CDPHE about whether the legislature should pay closer attention to e-cigarettes, perhaps through tighter regulations or higher taxes. The federal government is proposing tighter regulations on e-cigarettes, as well.

LEGISLATION: Marijuana

Last November, Coloradans voted in favor of Proposition BB, which allowed the state to keep and use marijuana tax revenue for projects such as school construction. This session, the legislature will likely confront issues such as how to ensure that plants are free from pesticides and how to clearly package and label marijuana edibles.

ON THE BALLOT: Tobacco Tax

There may be a push to increase Colorado's tobacco tax, which currently ranks in the bottom quarter of states. A group has been meeting for months to strategize around a possible 2016 ballot initiative to ask voters to increase the tax.

Insurance Issues

Insurance prices on the individual market have triggered consumer protests. Prices are going up an average of nearly 10 percent statewide. But the Western Slope — already hit hard by high health care costs — will see an increase of more than 25 percent.

Additionally, the Colorado HealthOP has closed down, making it one of a dozen co-ops to fail around the country. It offered the lowest-priced plans in most areas last year.

The large price increases are sure to catch the attention of legislators, although it's not clear if the legislature has the power to do anything about prices in the short-run.

Expect to see bills that deal with more targeted aspects of the insurance market, such as deductibles, the cost of specialty drugs, and greater clarity for consumers about which doctors are in their provider networks.

LEGISLATION: Narrow Networks

Insurance companies have been shrinking their networks of providers in order to control costs. The National Association of Insurance Commissioners has crafted model legislation, and Colorado is likely to consider at least parts of the proposal.

The plan focuses on consumer protections and transparency, especially for low-income and chronically ill patients. It also considers the availability of telehealth. It does not establish a mandatory minimum size for a provider network.

Conclusion

While this preview provides plenty to think about, it is nowhere near a complete list of what to expect in the 2016 legislative session.

There will be a multitude of other proposals focusing on topics such as abortion, tax credits for seniors, 1332 state innovation waivers, the health care workforce, and even training dogs to help veterans with PTSD.



A CLOSER LOOK:

Connect for Health Colorado

The state's online insurance marketplace is facing serious concerns about its long-term stability. It is funded by fees on policies sold on the marketplace.

Connect for Health Colorado is in the midst of a critical time: the third round of open enrollment, which ends January 31. The marketplace needs to show significant gains to prove to legislators and others that it can stay afloat financially.

Even if there is a surge in people enrolling in plans through Connect for Health Colorado, the fees might not be sufficient to cover operating costs. The marketplace is attempting to secure financial support from Medicaid to help offset the substantial time and effort its staff spends helping to direct eligible individuals to the entitlement program.

With concern and uncertainties looming, the General Assembly may start thinking about what would happen if Connect for Health Colorado fails to find itself on solid ground. A potential Plan B could include joining with the federal exchange in some capacity.

Add it all up, and legislators are facing another busy four months.

The Colorado Health Institute will follow the session closely through blogs, reports, research and presentations. Look to CHI for expert, non-partisan analysis of the latest developments at the state legislature.



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, The Colorado Trust and the Colorado Health Foundation.

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

coloradohealthinstitute.org