



colorado health  
INSTITUTE

2014

# Legislation in Review

*Analyzing Key Health Policy Trends*

Informing Policy. Advancing Health.

JUNE 2014

*The Colorado General Assembly meets for 120 days each year at the Colorado State Capitol, which opened in November 1894. It is shown here before its recent \$17 million dome restoration project.*



## **Lawmakers got down to the business of making sure that health reform works the “Colorado way” in 2014, building on the major health care policy changes – both state and federal – of the past few years.**

Legislators turned their attention to the affordable part of the Affordable Care Act, creating a high-profile commission to address the increasing cost of health care. And they made significant investments in health technology, rural residency programs, behavioral health and other health initiatives.

At the same time, the legislature passed groundbreaking health policy, establishing regulations for the newly legalized sale of retail marijuana and approving access to experimental drugs for the terminally ill.

Other bills tackled a range of issues, from childhood immunizations to suicide prevention. Not all of them made it through, and in many ways the 2014 legislative session was characterized almost as much by the health bills that *didn't* pass as it was by those that did. But even the failed measures initiated discussions that are sure to resurface in future sessions.

Key themes that emerged during the 2014 session:

- **Ensuring Affordability:** Democrats and Republicans agreed that containing health care costs and making health

insurance affordable is crucial – even if there wasn't always consensus on how to do that.

- **Fine-Tuning Health Reform Policy:** A number of bills cleaned up statutes to implement the Affordable Care Act in Colorado, while none of the Republican-sponsored measures to undermine the federal law passed.
- **Blazing the Trail on Marijuana Policy:** Several bills related to the legalization of retail marijuana, including measures addressing the public health concerns, came out of the session.
- **Investing in Health:** More money in the state budget allowed for increased investments in health and health care, as well as education, infrastructure and other areas that influence the health of Coloradans.

The Colorado Health Institute's annual *Legislation in Review* provides an overview of the major health bills, analyzes what this year's budget means for health care, and looks ahead to health policy issues on the horizon.

# Setting the Stage

*Several events heavily influenced the tone and tenor of the 2014 session.*

**1. Recall Elections:** Following passage of controversial gun control bills during the 2013 session, gun rights groups led successful recall elections against Democratic Senators Angela Giron (D-Pueblo) and John Morse (D-Colorado Springs). Senator Evie Hudak (D-Westminster) resigned amid the threat of a recall. This left the Democrats with an 18-17 majority, a one-seat margin that made it far more difficult to get their legislation passed. As a result, we saw many bills pared down significantly from their original versions in order to secure support – or even pulled from the docket when passage seemed impossible.

**2. Implementation of Federal Health Reform:** Federal health reform took the spotlight this year as most of the major provisions of the Affordable Care Act were implemented on January 1. Many legislators seemed



to adopt a “wait and see” approach to health policy, with state-level reforms taking a back seat to major changes at the federal level.

**3. Election Year on the Horizon:** With most legislators up for reelection this November, we saw an uptick in “political statement” bills. For example, many Republicans ran legislation designed to undermine Obamacare in Colorado, while Democrats ran a pro-reproductive rights bill. These bills often seemed destined to fail, but they provided political fodder for the soon-to-come election season.



# The Power of the Swing Vote

## Key Players in Health Policy

While many legislators helped to shape health policy in Colorado, a handful of key players arguably had the most influence.

On the Senate side, leaders of the Health Committee, Senators Irene Aguilar (D-Denver) and Linda Newell (D-Littleton), along with ranking Republican Senator Kevin Lundberg (R-Berthoud), are all prominent voices in health policy. Other health committee members – Senators Jeanne Nicholson (D-Black Hawk), John Kefalas (D-Fort Collins) and Larry Crowder (R-Alamosa) – also played big roles in shaping the debate.

But in this session, something unusual happened. Several senators with a significant impact on health policy didn't even serve on the Health Committee. Senators Lois Tochtrop (D-Thornton), Mary Hodge (D-Brighton) and Cheri Jahn (D-Wheat Ridge) are moderate Democrats. All three are known for an independent streak, not always voting with their party. And because the Democrats held a razor-thin majority in the Senate – just one seat – their

## The Triple Threat



*Sen. Lois Tochtrop*



*Sen. Mary Hodge*



*Sen. Cheri Jahn*

votes were often crucial in getting legislation introduced and approved.

The mere threat of a no vote from these senators caused multiple bills – health-related and otherwise – to be rewritten, amended or dropped.

The Tochtrop/Hodge/Jahn trio teamed up with Republicans at the end of the session to kill a number of measures that would have increased regulation of the oil and gas industry. The swing voters also helped to defeat a bill that would have regulated freestanding emergency rooms, even before members could take a floor vote. This was in stark contrast to last year's session, when



***Sen. Irene Aguilar (D-Denver) and Sen. Ellen Roberts (R-Durango).***

Democrats had no problem getting controversial measures through, thanks to their 20-15 seat majority.

In the House, major players in health policy included the leadership of the House health committees:

Representatives Beth McCann (D-Denver), Dianne Primavera (D-Broomfield), Sue Schafer (D-Wheat Ridge) and Dave Young (D-Greeley). Leading Republicans on the health committees included Representatives Kathleen Conti (R-Littleton), Amy Stephens (R-Monument) and Janak Joshi (R-Colorado Springs). Joshi introduced most of the anti-Obamacare bills, all of which failed in committee.

Representative Jonathan Singer (D-Denver), who serves on both House health committees, played a prominent role this year by sponsoring many of the bills on retail marijuana.

All House seats are up for reelection this year, but several long-standing members of the health committees are term limited, including Representatives Stephens, Spencer Swalm (R-Centennial) and Frank McNulty (R-Highlands Ranch). These vacancies will open up new leadership opportunities on the health committees for up-and-coming Republicans next year.

Among the Senate Health Committee members, Senators Lundberg and Nicholson are up for reelection, with Nicholson facing a particularly tough race. Senator Jahn is also up for reelection.

# Theme One: Ensuring Affordability



***Governor John Hickenlooper signs the Cost Containment Commission bill into law with Rep. Sue Schafer, Sen. Irene Aguilar and Rep. Amy Stephens looking on.***

*Colorado Center on Law and Policy*

*Cost containment was a recurring theme during the session, and we saw several bills aimed at tackling rising health care costs.*

*Not all of the measures passed, but they did bring the issue of unsustainable costs to the forefront of the health policy debate. This conversation is sure to ramp up in coming years as lawmakers grapple with how to best fund an expanded Medicaid population.*

## **SB 14-187: Colorado Commission on Affordable Health Care**

One of the session's most notable health bills established Colorado's first commission on affordable health care. This 12-member group will conduct an in-depth analysis of Colorado's health care cost drivers

and recommend ways to contain costs while improving health care access and quality.

The commission will include representatives from hospitals, providers, consumer groups, businesses and insurance carriers. It must also include subject-matter experts. In addition, commission

members must represent both urban and rural areas and be split evenly between Democrats and Republicans.

Senators Irene Aguilar (D-Denver) and Ellen Roberts (R-Durango) cosponsored the bill in the Senate, while Representatives Amy Stephens (R-Monument) and Sue Schafer (D-Wheat Ridge) cosponsored it in the House. The measure garnered bipartisan support, although some Republicans voted against it, saying that enhanced competition – not a government-mandated commission – is the key to lowering health care costs.

The Colorado Health Institute anticipates legislation in future years resulting from the commission's findings and recommendations.



## Proposed but Failed: The Bills That Didn't Make It

### **SB 14-16: Regulating Freestanding Emergency Rooms**

Proposed new licensing standards for emergency rooms that aren't affiliated with a hospital, including a requirement to serve all patients regardless of ability to pay. It also would have banned the centers from charging a facility fee. Bill proponents claimed freestanding ERs are driving up costs, but free market advocates successfully killed the measure on the Senate floor, saying it stifled competition and created overly burdensome regulations.

### **HB 14-1108: Copayments for Physical Rehabilitation Services**

Would have required insurance companies to charge customers the same copayment amount for physical therapy as they do for primary care visits in an effort to limit out-of-pocket costs. The bill made it through

both chambers despite lobbying by the health insurance industry, which argued that the bill would drive up premiums. Governor Hickenlooper vetoed the measure.

### **HB 14-1115: Medicaid Expansion Private Insurance Pilot Program**

Would have required the Colorado Department of Health Care Policy and Financing (HCPF) to evaluate the viability of a premium assistance pilot program for Colorado's Medicaid expansion population. This type of program aims to control costs by using state funds to place Medicaid enrollees in private insurance plans through the insurance marketplaces. The bill passed the House Public Health Care and Human Services Committee, but the Appropriations Committee did not approve the \$150,000 fiscal note.

# Theme Two: Fine-Tuning Health Reform Policy

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*Health reform is still top of mind in Colorado. While some bills cleaned up statutes to facilitate a smooth implementation of the Affordable Care Act (ACA), others aimed to undermine the federal law – or simply make a political statement against it.*

## **SB 14-67: Align Medical Assistance Programs with Federal Law**

Consolidates Colorado's eligibility categories for Medicaid and Child Health Plan *Plus* (CHP+) so that they are consistent with the ACA's four general categories (parents/ caretakers, pregnant women, single adults and children) and makes other regulatory updates to align Colorado and federal income eligibility requirements.

## **HB 14-1053: Pediatric Dental Benefits**

Allows the state insurance commissioner to ensure requirements for children's dental benefits are the same whether a plan is purchased inside or outside Colorado's insurance marketplace, Connect for Health Colorado. Previously, it was only mandatory to include the benefit with small-group and individual plans sold outside of the exchange.





## Proposed but Failed: The Bills That Didn't Make It

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*Republicans sponsored all of these bills. Although they had little chance of passing the Democratic-controlled legislature, they served to reiterate the GOP's continued discontent with Obamacare.*

### **HB 14-1106: Tax Deduction for Affordable Care Act Penalty**

Would have granted a tax deduction to anyone who had to pay a federal tax penalty for failing to have health insurance under the ACA. Died in committee.

### **HB 14-1134: Health Care Navigator Registration Act**

Would have created new regulations for health insurance navigators who assist consumers in finding coverage through Connect for Health Colorado. The bill would have established educational requirements and required navigators to register with the state and pay a fee. Died in committee.

### **HB 14-1135: Restrict General Funds for Medicaid Expansion**

Would have prohibited the use of money from the state's general fund to pay for any coverage costs associated with the newly eligible Medicaid population in Colorado. Died in committee.

### **HB 14-1192: Repeal the Health Benefit Exchange**

Would have repealed the 2012 law establishing Connect for Health Colorado. Died in committee.

### **HB 14-1257: Performance Audit of the Health Benefit Exchange**

Would have allowed the state auditor to conduct a performance audit of Connect for Health Colorado. The bill failed in the Senate, but the idea was resurrected during the budget debate, and legislators ultimately approved the funds for a comprehensive audit of the insurance marketplace.

# Theme Three: Blazing the Trail on Marijuana Policy

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*As the first state to legalize retail marijuana in 2012, Colorado is at the forefront of pot-related policy. Edible marijuana was also in the spotlight this session following recent deaths that were linked to the drug. From packaging and potency to banking and research, legislators passed a variety of marijuana bills this session. Most received bipartisan support, and several cleared both chambers unanimously.*

## **SB 14-155: Medical Marijuana Health Effects Grants**

Creates a \$10 million grant program to fund scientific research on the efficacy and appropriate use of marijuana for medicinal purposes.

## **HB 14-1361: Regulation of Marijuana Concentrates**

Calls for the Department of Revenue (DOR) to establish an equivalency between one ounce of marijuana flowers and marijuana concentrate products. Current law prohibits retailers from selling Colorado residents more than one ounce of

marijuana flowers per sale, but doesn't address concentrates. The bill extends the limit to all marijuana products and allows DOR to conduct scientific studies to establish a one-ounce equivalency for concentrates.

## **HB 14-1366: Edible Marijuana Products**

Requires edible marijuana products to be marked with a standardized symbol – to be determined by DOR before Jan. 1, 2016 – that indicates the product contains marijuana and is not for consumption by children. Also establishes a stakeholder group

to make new recommendations on edible marijuana packaging requirements.

## **HB 14-1398: Marijuana Financial Service Cooperatives**

Allows for the creation and regulation of marijuana financial services cooperatives, or “Cannabis Credit Co-ops,” for licensed marijuana businesses. The co-ops would operate like credit unions, providing the first-ever legal banking system for the marijuana industry. However, the law faces hurdles from the Federal Reserve, which must approve the plan.

## Marijuana Revenue Spending Plan

In the final days of session, legislators passed Senate Bill 14-215, which specifies how sales tax dollars from retail marijuana sales will be spent. Revenues came pouring in at higher than anticipated levels, and lawmakers voted to spend \$27.6 million in FY 2014-15 on a plan that emphasizes substance abuse prevention, treatment and law enforcement, including:



**\$5.5 million**

for a marijuana public awareness advertising campaign.

**\$9.8 million**  
for school-based behavioral health community programs focused on substance abuse prevention and intervention.



**\$1.6 million**

for law enforcement training and assistance.

**\$1.5 million**

for substance abuse treatment and prevention for adolescents and pregnant women.

**\$900,000**  
to administer surveys assessing youth attitudes and behaviors.

**\$2 million**  
for youth diversion services to keep kids out of jail and **\$2 million** for county jail and post-release substance abuse disorder services for adults.

**\$2 million**  
in community grants for prevention and intervention programs.

# Theme Four: Investing in Health

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*With Colorado's economy in recovery, state revenues increased again this year, giving legislators more money for health-related investments. Legislators carried on last year's trend of restoring funds to health programs that were cut during the recent recession. They also continued to make major investments in behavioral and oral health and allocated new funding to technology initiatives.*

## **Health-related highlights:**

- A two percent across-the-board increase for most Medicaid providers, with bigger rate increases for specific services.
- Funding to enroll clients eligible for both Medicaid and Medicare in the Accountable Care Collaborative (ACC).
- Funding to expand Medicaid and CHP+ coverage for eligible pregnant women and children who are legal immigrants. Previously, this population was subject to a five-year wait.
- A 36.2 percent increase in HCPF's behavioral health funding for the growing Medicaid population, as well as an enhanced substance abuse treatment benefit for Medicaid enrollees.
- Major oral health investments, including adding a

full denture benefit for adult Medicaid enrollees and allocating \$5 million to encourage dentists and dental hygienists to accept Medicaid.

- An increase of \$1 million to Denver Health and \$2 million to the Commission on Family Medicine for residency training programs.

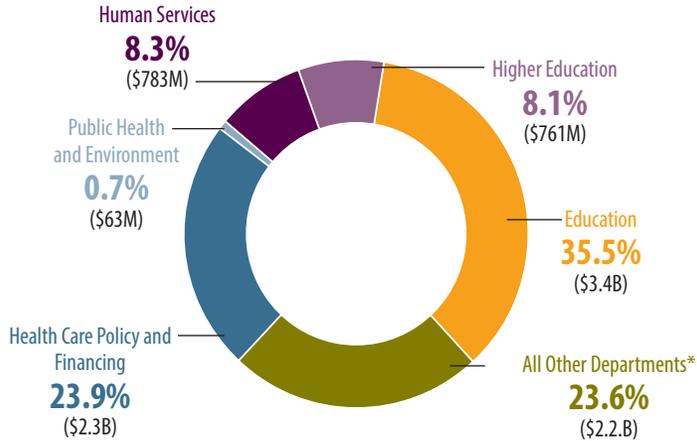
## **Health technology investments:**

- \$500,000 to give nonprofits and government agencies access to the All-Payer Claims Database.
- Funding to encourage Medicaid providers and local public health agencies to adopt electronic health records and connect to the Health Information Exchange.
- \$40.2 million to modernize Colorado's troubled Benefits Management System (CBMS), which determines which

# FY 2014-15 Budget

## FY 2014-15 General Funds

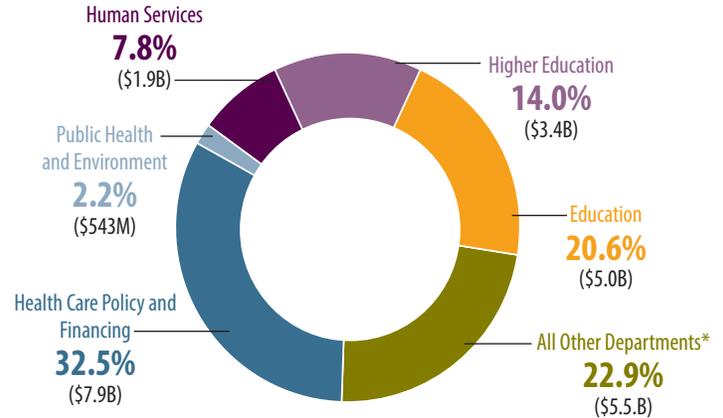
Total: **\$9.4 Billion** Increase from Last Year: **16.7%**



Source: Long Bill and FY 2014-15 Long Bill Narrative. Figures include the Long Bill and bills in the Joint Budget Committee's budget balancing package (apart from the Long Bill). Figures do not include bills outside the balancing package or any line item vetoes.

## FY 2014-15 Total Funds

Total: **\$24.2 Billion** Increase from Last Year: **7.6%**



\* Includes the following departments: Transportation, Judicial, Corrections, Treasury, Public Safety, Local Affairs, Revenue, Natural Resources, Military Affairs, Governor's Office, Personnel and Administration, Labor and Employment, Regulatory Agencies, Law, Agriculture, Legislature and the Department of State.

Coloradans are eligible for benefits like Medicaid and food stamps.

- \$537,000 to encourage medical providers to acquire

telehealth technology for remote consultations.

- Funding to improve the Medicaid eligibility determination process at the county level.

# The Grab Bag: Other Bills Worth Mentioning

*Other bills tackled a host of health-related issues, from immunizations and suicide prevention to rural residency programs and pedestrian safety.*

## **SB 14-050: Financial Assistance in Colorado Hospitals**

Allows the Colorado Department of Public Health and Environment (CDPHE) to ensure compliance with a law requiring hospitals to limit what they charge uninsured patients. Also specifies the type of information hospitals must provide to patients regarding financial assistance programs, including a requirement that the information is printed on billing statements.

## **SB 14-088: Suicide Prevention Commission**

Establishes a Suicide Prevention Commission to make recommendations to help prevent

suicides in Colorado, which has one of the highest suicide rates in the country.

## **SB 14-144: Residency Programs in Rural Areas**

Charges the Commission on Family Medicine with developing family medicine residency programs in rural and underserved areas. Also approves a study on rural residency programs, which will make recommendations on how to meet the primary care workforce needs of rural Colorado.

## **HB 14-1281: Investigational Drugs for Terminally Ill Patients**

Passed unanimously by both

chambers, the so-called “Right to Try” bill allows terminally ill patients to access drugs and therapies, with a doctor’s permission, that have not yet been approved by the U.S. Food and Drug Administration.

## **HB 14-1288: Student Immunizations**

Requires schools to make student immunization rates publicly available, and allows the State Board of Health and CDPHE to establish





## Proposed but Failed: The Bills That Didn't Make It

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rules on vaccine data collection and exemption forms. A previous version of the bill would have required parents to take an online course before they could opt their children out of vaccines, but this language was stripped out. The final bill only requires CDPHE to create an online education module about the benefits and risks of vaccines.

### **HB 14-1301: Safe Routes to School**

Allows Colorado to continue Safe Routes to School, a federally funded program that's being cut. The bill allocates \$700,000 in state funds for projects to improve pedestrian and bike safety in school areas.

### **SB 14-032: Alternative Health Care Providers Treating Children**

Would have allowed alternative health care providers and naturopaths to treat children under the age of 2. It passed the Senate but died in the House Health Insurance & Environment Committee.

### **HB 14-1253: Mental Health Civil Commitments**

Would have streamlined and consolidated the drug, alcohol and mental health civil commitment statutes. Also proposed updating the definitions for terms such as "danger to self or others" and "gravely disabled." The bill couldn't get through the House amid concerns from the gun lobby on

how involuntary commitments would impact individuals' ability to purchase firearms in the future.

### **HB 14-1263: Tobacco Products**

Would have increased the age limit for buying tobacco products from 18 to 21. Died in the House Finance Committee.

### **HB 14-1297: Health Data Regarding Oil and Gas**

Would have required CDPHE to analyze the impact of oil and gas operations on several Front Range counties. The bill passed the full House and the Senate Health Committee, but met its demise in Appropriations because of a \$700,000 price tag.

# Looking Ahead

What does the future hold for health policy in Colorado? The elections this fall surely will have profound implications – particularly if Democrats lose control of either chamber. Regardless of which party holds power come January, we can safely bet that several of the health policy discussions from 2014 will reemerge next session. Among them:

- **Health Care Spending and Cost**

**Containment:** With health expenditures taking up more than a third of the state’s total budget and a Medicaid population that continues to grow, legislators are likely to have a heightened focus on health care spending. Some may cite tensions between education and health funding, while others may propose new initiatives to promote system efficiency. Furthermore, the newly established cost containment commission is slated to bring forth recommendations for reducing health spending, which likely will result in new policy initiatives over the next two to three years.

- **Marijuana Policy:** Even with the bills that passed this session, Colorado barely has scratched the surface of the marijuana policy discussion. Because there is no precedent for the industry, there will be some trial and error over the coming years as legislators determine the most appropriate regulations for retail marijuana. In addition, an interim committee will meet over the coming months to determine how to allocate additional recreation marijuana sales tax revenues.

- **Resurrected Bills:** Many bills that died this session are likely to come back next year in one form or

another. We anticipate legislation next session on mental health civil commitments, personal belief exemptions for immunizations, and regulations on freestanding emergency rooms.

- **Health Reform:** Like other states, Colorado will have far more data on the impact of federal health reform next year. Will insurance rates go up? Will the number of uninsured go down? Will the regional cost discrepancies become more pronounced? The answers to these questions will shape the health policy debate in Colorado in future years.

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

The Colorado Health Institute (CHI) is a nonpartisan health policy data and analysis institute that serves as a resource for Colorado legislators, their staffs and key leaders throughout the state. CHI works to promote a well-informed policy-making body that makes evidence-based health policy decisions to improve the health of all Coloradans.

CHI provides a suite of services to help inform lawmakers, including one-on-one briefings; responses to specific requests for information; publications on health policy topics; an annual series of Legislative Lunch and Learns for interactive learning and discussion; presentations to constituent groups; a legislative blog; and a biennial "Hot Issues in Health Care" symposium for new and returning lawmakers.

## *Acknowledgments*

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