

# 2015

# Legislation in Review

Analyzing Key Health Policy Trends **JUNE 2015**



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## *Health policy bills succeeded or failed in nearly equal numbers during a 2015 legislative session largely defined by split party control. The sometimes contentious debates set the stage for a number of issues to return as bills or ballot initiatives in 2016.*

Democrats and Republicans each emerged from the 2014 election with a narrow majority in one chamber. This divided control resulted in a noticeably lower bill passage rate than during the previous two years for all bills, and for health policy measures in particular.

Telehealth, physician-assisted dying, funding for birth control programs, the training of advanced practice nurses, and lingering questions about the state's legal retail marijuana industry garnered the most attention when it came to health policy.

Near the end of the session, Governor John Hickenlooper stepped in to defend Reggie Bicha, executive director of the state's Department of Human Services, in the wake of a letter signed by more than 80 lawmakers concerned about oversight of the state's child welfare and mental health systems. Bicha pledged to restore lawmaker confidence in his department.

And looming concerns over the state budget and the impact of upcoming refunds under the Taxpayer's Bill of Rights (TABOR) were major topics of debate as well.

Three key themes marked the session:

- **Victories for Value: What Worked**

Bills designed to increase efficiency in the health care sector by cutting red tape or allowing licensed professionals to expand the scope of their allowed work won bipartisan support.

- **Vacillating Between Costs and Benefits: What Sometimes Worked**

Bills that both parties agreed had merit but carried big price tags saw mixed outcomes. Differing views on the role of government in health care also fell into this category.

- **Victims of the Culture Wars: What Didn't Work**

Most bills that involved partisan politics and culture war issues failed, almost always in a committee hearing.

This annual *Legislation in Review* by the Colorado Health Institute provides an overview of the major health bills that became law and the notable proposals that failed, analyzes health care's place in the state budget and looks ahead to issues that are expected to return for further discussion.



# A Legislature Divided

Colorado's 2014 election featured some of the tightest races in years. Eleven legislative races were decided by fewer than three percentage points.

The results ushered in a closely divided legislature. Republicans claimed control of the Senate for the first time in a decade, while the Democratic majority in the House narrowed to three seats.

Even with the nearly even split in power, however, the session's work was shaped by legislators with widely different ideologies. The five-member Senate Health and Human Services Committee, for example, was bracketed by Senator Irene Aguilar, a Democrat who would like to move the state toward a universal health care system, and the chairman, Senator Kevin Lundberg, a Republican who believes in limited government involvement in health care.

In the House, Representative Don Coram, a Montrose Republican, wanted to address unplanned pregnancies, which he sees as a problem for his district and the state. He sponsored bills to fund a prevention program for teen girls and to give out

free birth control — efforts that Democrats supported but that irked social conservatives. Senate Republicans killed both bills.

Meanwhile, a number of freshman lawmakers emerged as potentially influential players in health care policy, including Democratic Representatives Susan Lontine, Daneya Esgar and Jessie Danielson, and Republican Senator Beth Martinez Humenik.



In theory, a closely divided chamber can open the door for a few moderates to break from their parties and cast deciding votes. But such instances were rare this year.

Instead, the partisan split more often resulted in stalemate. House Democrats and Senate Republicans tended to cancel each other out. If a bill passed the Senate with only Republican votes, it was likely to die in its first House committee.

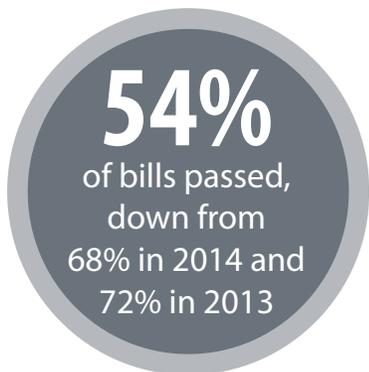
The same fate awaited many Democratic bills in Senate committees.

Because of this dynamic, health bills did not pass on close votes in 2015. Instead, successful bills were largely noncontroversial and won an overwhelming majority in both chambers.

# The 2015 Colorado Legislative Session: By the Numbers

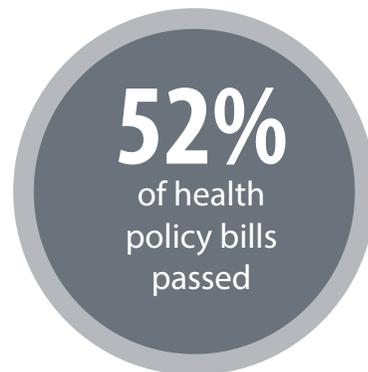
**682**  
Bills  
introduced

**367**  
Bills passed



**66**  
Health policy bills  
tracked by CHI

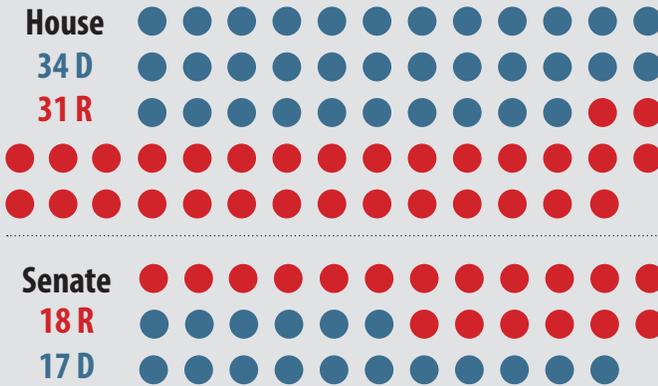
**34**  
Health policy bills passed



*Democrats controlled the House  
and Republicans ran the Senate,  
both by a slim majority*

**51** Democratic  
Lawmakers

**49** Republican  
Lawmakers



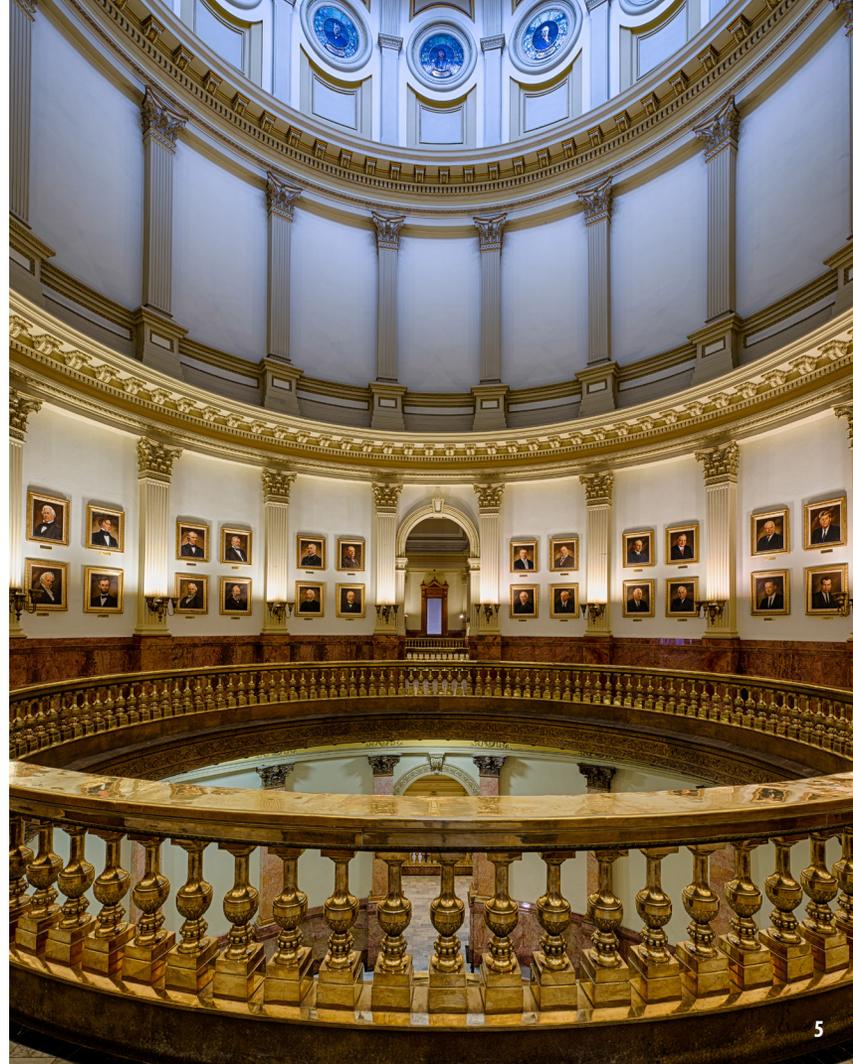
**27**  
Freshman  
legislators,  
including  
four who had  
served in the  
legislature but  
not in 2014

# Budget Battles

*The budget was a major story of the session. Conversations about funding and TABOR began immediately, when Senate President Bill Cadman introduced Senate Bill 1, which identified TABOR refunds as a top priority. That bill, along with all others addressing TABOR, ultimately failed.*

The Joint Budget Committee (JBC) was filled with rookies — four of its six members were new to the committee — but it managed to come up with a budget that garnered bipartisan support. The nearly \$26 billion spending plan (**Senate Bill 234**) passed with comfortable margins in both chambers.

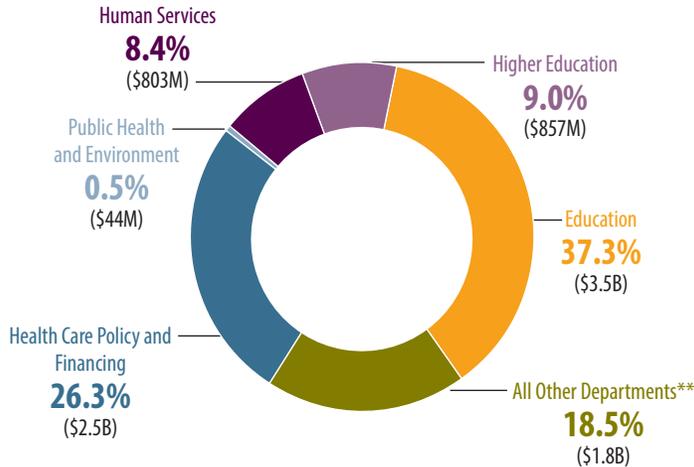
Health policy advocates scored some of their biggest successes when working directly with the JBC to secure funding. Several public health initiatives won a place in the budget, including increased funding for local public



# FY 2015-16 Budget

## FY 2015-16 General Fund

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

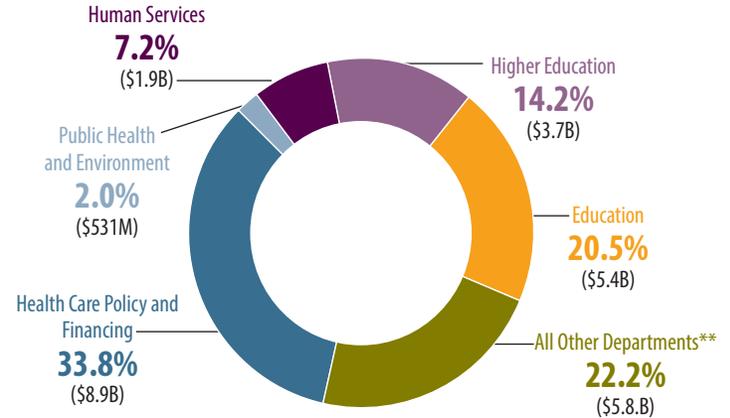


Source: FY 2015-16 Long Bill (Senate Bill 234) and Long Bill Narrative.

\* Includes \$1.5 billion in Reappropriated Funds, which are double-counted when they are moved from one department to another. Departmental totals also include Reappropriated Funds.

## FY 2015-16 Total Funds

Total: **\$26.3 Billion\*** Increase from Last Year: **6.9%**



\*\* 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.

health agencies, an expanded loan repayment program for health care providers working in underserved areas, and more than \$1 million for the state's electronic immunization registry.

The Medicaid program had several budget wins. Lawmakers approved a modest across-the-board increase in Medicaid reimbursement rates for providers, as well as 25 new staff positions for a Medicaid call center. A change from monthly to annual eligibility determinations for Medicaid and Child Health Plan *Plus* (CHP+) enrollees is scheduled to begin in fiscal year 2016-17, with the goal of reducing coverage churn that can increase the vulnerability of low-income clients.

But it was difficult to escape the TABOR discussion. The ongoing debate led to an unexpected late-session letter from Hickenlooper with a five-point plan to address what he called Colorado's budget "contradictions."

The governor proposed freeing up more state money for education, transportation and other needs by granting enterprise status to the Hospital Provider Fee, which was established in 2009 to expand Medicaid and pay hospitals for charity care. Under the proposal, the fee, expected to raise at



least \$600 million next year, would no longer count toward the TABOR spending limit, giving the state greater budgetary options.

House Speaker Dickey Lee Hullinghorst's legislation to carry out the governor's plan, **House Bill 1389**, passed the House on a party-line vote, but failed in the Senate. Its assignment to the State, Veterans and Military Affairs Committee — the so-called "kill committee" — sent a clear message about Cadman's feelings on the proposal. The bill's late introduction also seemed to heighten Republican opposition.



# Victories for Value: What Worked

*Bills to increase the value of health care by making it more efficient and effective were popular with both parties. With health care costs growing and budget concerns increasing, it's no surprise that proposals for doing more with available or even declining resources appealed to lawmakers.*

## REDUCING RED TAPE

### **HOUSE BILL 1039: Unused Prescription Donations** (Passed)

Allows nursing homes and other institutions to donate unused and unexpired medications to nonprofits. Previously, donated medications had to be at least six months from expiration and were generally limited to victims of natural disasters.

### **HOUSE BILL 1318: Consolidated Medicaid Waivers** (Passed)

Consolidates two Medicaid waiver programs for home- and community-based services for adults with intellectual and developmental disabilities to encourage effective spending and reduce case management conflicts.



#### SPOTLIGHT

### **HOUSE BILL 1029: Statewide Telehealth Reimbursement** (Passed)

The bill, the first significant health policy legislation to pass during the session, changes the telehealth payment model in Colorado. It requires insurers to reimburse remote telehealth care at the same level as in-person care in all counties, not just in small, rural counties with fewer than 150,000 residents, as was the case before.

## BROADENING SCOPES OF PRACTICE

### HOUSE BILL 1309:

#### Temporary Fillings by Dental Hygienists (Passed)

Allows qualified dental hygienists to place a temporary filling on a tooth under remote supervision through a “teledentistry” model. The bill requires the Medicaid and CHP+ public insurance programs to reimburse providers for the services.

#### SPOTLIGHT

### SENATE BILL 197:

#### Prescriptive Authority for Advanced Practice Nurses (Passed)

Permits advanced practice nurses (APNs) to prescribe medication after 1,000 hours of training under a physician or an APN with prescriptive authority, as long as the APN in training has at least three years of clinical experience. The time requirement had been 3,600 hours, and only physicians had qualified as mentors.

### HOUSE BILL 1032:

#### Mental Health Professionals Allowed to Treat Minors (Passed)

Expands the types of licensed professionals who may provide mental health care for minors between ages 15 and 18. The bill passed both chambers easily, despite the provision that parental consent is not necessary for treatment.





# Vacillating Between Costs and Benefits: What Sometimes Worked

*Even if legislators approved of a bill's benefits for consumers, the price tag often became a deal breaker. Lawmakers also had varying views on the appropriate role of government funding and oversight for health care issues.*

## **COSTS, BENEFITS AND GOVERNMENT REGULATION**

### **SENATE BILL 15:**

#### **Parity for Autism Health Benefits (Passed)**

Requires insurance carriers to provide coverage for autism spectrum disorders at a comparable level to physical health services. The bill also requires that autism must be treated as a mental illness for insurance purposes under the state's mental health parity law. This reverses a previous law that excluded autism from the definition of mental illness. Additionally, it removes caps on the number of visits or services for autism disorders.



### **SPOTLIGHT**

#### **HOUSE BILL 1143:**

#### **Tax Incentives for Senior Home Upgrades (Failed)**

Would have allowed seniors 75 and older to get a tax benefit for home health care equipment and services to enable them to age in their homes rather than in assisted living or nursing facilities. The measure would have reduced state revenue by \$30 million in the upcoming fiscal year. The bill passed the House Health, Insurance and Environment Committee before failing in House Finance.

### **SENATE BILL 123: Consumer Pharmacy Choice (Failed)**

Would have allowed customers to choose any pharmacy in their health insurance network to fill prescriptions, as long as they notified their insurance company. Under current law, insurance carriers can require consumers to fill prescriptions at designated pharmacies. The bill passed a Senate committee, but died on the Senate floor in the face of opposition from insurers and business groups.

### **SENATE BILL 228: Medicaid Provider Rate Review (Passed)**

Establishes a periodic review of Medicaid provider reimbursement rates so that each rate is reviewed at least once every five years. The bill also creates a review advisory committee whose members are appointed by leadership in both chambers. The bill, a JBC initiative, was a response to a failed measure (**HB 1151**) that sought to set a floor for state payments to Medicaid providers.

### **HOUSE BILL 1298: Posted Marijuana Warnings for Pregnant Women (Failed)**

Would have required retail and medical marijuana centers to post warnings alerting pregnant women to the dangers of marijuana use. Concerns surfaced because similar warnings are not required for other substances, such as alcohol. Several witnesses argued that placing warnings on marijuana products would be more effective than posting signs in stores.

### **SENATE BILL 259: Out-of-Network Provider Charges (Failed)**

This bill was designed to protect patients from being stuck with unreasonably high charges. It would have required out-of-network providers to disclose that they are not part of a consumer's insurance network. It also would have required out-of-network providers to submit claims for the full cost of all treatments to a patient's health insurance carrier, rather than shifting more costs onto patients themselves. Despite multiple amendments, physician opposition won out.



#### **SPOTLIGHT**

### **SENATE BILL 14: Marijuana Caregiver Regulation (Passed)**

Tightens regulation over caregivers, the people providing medical marijuana to patients outside of the retail setting. In addition to specifying four types of caregiver-patient relationships, the bill requires the state Department of Regulatory Agencies to adopt guidelines for physicians who recommend medical marijuana for patients.



# Victims of the Culture Wars: What Didn't Work

*Nearly every bill with even a hint of partisan politics or cultural clashes failed this year. Several Republican bills to restrict or ban abortions died in their first committee hearings. One exception to this trend: Democrats joined Republicans to create greater oversight of the state's insurance marketplace, Connect for Health Colorado.*

## END-OF-LIFE ISSUES

### SPOTLIGHT

#### **HOUSE BILL 1135: Physician-Assisted Dying (Failed)**

Would have allowed competent adults with a terminal illness, defined as six months or less to live, to request drugs to end their lives. After more than 10 hours of emotional testimony, the bill failed in its first committee hearing after opposition from disability advocates.

#### **SENATE BILL 125: Statewide Registry for Advance Directives (Failed)**

Would have established a statewide registry of advance directives, which include information such as desired medical treatments and medical power of attorney. The bill might have been damaged by the intense discussion about the physician-assisted dying bill because they both dealt with end-of-life matters.

## PREGNANCY PREVENTION ISSUES

#### **HOUSE BILL 1079: Teen Pregnancy and Dropout Prevention (Failed)**

Senate Republicans refused to continue funding a state program to combat teen pregnancy that has been in place since 1995. The bill's sponsorship by a Republican in both chambers was not enough to save it from being associated with the birth control fight.

### SPOTLIGHT

#### **HOUSE BILL 1194: Funding for Free Contraception (Failed)**

Would have used \$5 million in state funding to continue a successful family planning program that provides long-acting reversible contraception (LARC) to low-income women. The program was previously funded by a grant.

## OTHER PARTISAN BILLS

### SENATE BILL 77:

#### The Parent's Bill of Rights (Failed)

Would have broadened parental control — and limited state regulation — related to the education and physical and mental health care of minors. The bill also would have required parents to opt in before their kids could take health surveys at school.

#### Abortion Bills (Failed)

Several Republican bills to restrict or outlaw abortion (**HB 1041**, **HB 1112**, **HB 1128**, **HB 1162** and **SB 285**) failed in their first committee hearings.

### HOUSE BILL 1141:

#### Hospital Provider Fee Disclosure (Failed)

Would have required that the Hospital Provider Fee be listed on patient billing statements, a move Democrats said would confuse consumers.

## INSURANCE MARKETPLACE ISSUES

### Connect for Health Colorado

For the past three years, Democrats have defended the state health insurance marketplace and, by extension, the Affordable Care Act (ACA). That support softened in 2015.

Democrats killed Republican bills that would have repealed the law authorizing the state marketplace (**HB 1066**), repealed state laws related to the ACA (**HB 1163**), and required legislative approval of bonuses for Connect for Health Colorado employees (**SB 52**). But they joined Republicans to authorize an extensive performance audit (**SB 19**) and to increase legislative oversight of the marketplace (**SB 256**).



# Variety Show: Other Bills Worth Noting

*Although existing public health programs secured solid funding through the budget, it was a different story for attempts to fund public health initiatives through separate legislation, including these bills:*

## **HOUSE BILL 1003:** **Safe Routes to School (Failed)**

Would have sent \$750,000 to the Colorado Department of Transportation to continue a program to improve walking and biking routes to school, which are funded through grants to local governments and school districts.

## **HOUSE BILL 1088: Farm-to-School Grant Program (Failed)**

Would have created grants to help encourage the use of local produce in school lunch programs.



## **SENATE BILL 81: Lottery Money for Bicycle Trails (Failed)**

Would have devoted lottery money to building more recreational bicycle trails. The money would have come from lottery funds that are currently raised for Great Outdoors Colorado, the Conservation Trust Fund and Colorado Parks and Wildlife.

## **HOUSE BILL 1226: Retail Food Establishment Fees (Passed)**

Establishes a stakeholder process for the retail food industry, counties and local public health agencies to study annual license fees and other issues. The bill originally sought to increase funding for food inspections to reduce the burden on local public health agencies, but it was scaled back significantly.

*Also of note: The legislature created commissions to study aging and long-term care as well as a legislative committee to study school safety and youth mental health. It approved a measure to increase the rights of hospital patients and voted down an effort to grant legislators access to confidential health information.*

**HOUSE BILL 1033:**

**Strategic Planning Group on Aging (Passed)**

Establishes a strategic action planning group, appointed by the governor, to study issues related to the growing number of Coloradans over age 50 and to develop a comprehensive action plan.

**HOUSE BILL 1233:**

**Respite Care Study Task Force (Passed)**

Forms a nine-member task force to study the need for respite care services in the state.

**HOUSE BILL 1242:**

**Patient Caregiver Designation (Passed)**

Requires that hospitals ask patients or their guardians to designate a caregiver, someone who will help with care at home, within 24 hours of arriving at the hospital.

**SENATE BILL 214:**

**Interim Committee on Safe Schools and Youth Mental Health (Passed)**

Creates a school safety and youth mental health committee to evaluate student support programs and threat prevention.

**SENATE BILL 275:**

**Protections for Information Provided to the General Assembly (Failed)**

Would have allowed state lawmakers to receive confidential information, including individually identifiable health information, to make legislative decisions. The bill would also have changed Colorado's whistleblower law to protect state employees who provide confidential information to legislators. It raised red flags with diverse groups such as the state Department of Revenue, the Colorado Hospital Association and the American Civil Liberties Union.



## Looking Into the Crystal Ball

*The 2015 session is over, but some issues that surfaced are likely to return to the spotlight.*

### Marijuana

The November ballot will include **Proposition BB**, which will ask voters, for the second time, to allow the state to keep retail marijuana tax revenue. The second vote is needed because of a provision of TABOR. Legislators put the question on the ballot through **House Bill 1367**, which passed with backing from the full JBC and leadership in both chambers.

Legislators failed to reach consensus on better identification of marijuana-infused edibles. A 2014 law called for the Department of Revenue to adopt rules requiring manufacturers to stamp or shape edibles to clearly identify them by January 1, 2016. However, a task force couldn't agree on how to carry out the law and sent the issue back to the Capitol. The only bill on the topic failed, so the deadline looms with no answer in sight.

Finally, new regulations on medical marijuana contained in **Senate Bill 14** will be implemented. The effort will be watched closely to see whether the state can get a handle on the mostly unregulated caregiver community.

## Physician-Assisted Dying

Although the bill did not pass its first committee hearing, it got more public attention than any other health care issue in the 2015 session. Advocates are almost certain to bring back a bill in 2016, run it as a ballot issue, or both.

## Connect for Health Colorado

Conservative opposition to the state health insurance marketplace is unlikely to abate, so expect to see more bills to repeal it.

In addition, the State Auditor's Office now has authority to conduct a performance audit of Connect for Health Colorado under **Senate Bill 19**.

And the new chair of the legislative oversight committee, Republican Senator Ellen Roberts, has brought renewed vigor to the panel that watches over Connect for Health Colorado. She has planned monthly hearings throughout the summer and fall. The increased scrutiny of the marketplace comes while the organization is being led by interim CEO Kevin Patterson, its third leader in less than a year.

## Hospital Provider Fee and TABOR

The Hospital Provider Fee, initiated in 2009 to help expand Medicaid, became a hot topic this year because its revenue is helping to trigger TABOR refunds.

After the Senate rejected Hickenlooper's plan to remove the provider fee from TABOR calculations, the governor vowed to bring his idea back. Some economists say the move could end TABOR refunds for many years. The sheer size of the fee, and its potential to eliminate refunds, guarantee that this will remain at center stage.

Without a change, TABOR refunds could result in the legislature lacking the money to continue funding health initiatives the way it did in 2015.

## Innovation Waivers

Legislators from both parties showed interest in "innovation waivers," which allow states to decide how they will achieve key provisions of the ACA. There's a catch: Any changes must ensure that coverage and care is affordable, that a comparable number of people are insured, and that the changes don't cost more.

Not all parts of the ACA are on the table for modification, but expect to see continued interest in opportunities afforded by the waivers — which take effect in 2017 — from state lawmakers.



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

The Colorado Health Institute (CHI) is a nonpartisan health policy institute that provides relevant and accessible health policy data and analysis. It serves as a source of unbiased information for Colorado's legislators, their staffs and key leaders throughout the state.

CHI provides a suite of services to inform legislators, including one-on-one briefings, responses to information and research requests, publications on health policy topics, an annual Legislative Learning Series to foster discussion, presentations to constituent groups, a legislative blog, and the "Hot Issues in Health Care" symposium for lawmakers and influential health policy thinkers.

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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.

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