

HEALTH POLICY

Brief

- KEY POLICY THEMES
- 2012 STATE LEGISLATIVE SESSION
- STATE & NATIONAL POLITICS
- ACA UPDATE
- NATIONAL POLICY ISSUES
- PENDING LEGAL DECISIONS

By Matt Sundeen, Senior Program Officer for Health Policy, The Colorado Trust

This brief provides an assessment of key policy issues in 2012 likely to affect the health and well-being of Coloradans, and describes several big-picture policy themes that are influencing state and national policy debates. It also details key policy issues, including: the 2012 session of the Colorado General Assembly; state and national politics; ongoing efforts to both implement and repeal the Affordable Care Act (ACA); national policy issues; and several pending state and national legal decisions.

KEY POLICY THEMES

Much of the policy discussion nationally and in Colorado continues to be framed and influenced by the recession and economic concerns. According to the Colorado Legislature's chief economist, there are signs the economy has begun to stabilize. Initial unemployment claims, after peaking in 2009 and 2010, have begun to drop. Colorado farm income grew by 22% in 2010 and by 53% in the first nine months of 2011. Nonfarm employment also made small gains in 2010 and 2011, with job growth in professional and business services, leisure and hospitality services, and education and health care services. Consumer spending nationally and in Colorado is beginning to rise.

Recovery, however, is likely to be slow with concerns about sovereign debt, in the United States and Europe, a sluggish housing market, low levels of commercial and residential construction, and other global worries affecting economic growth. Improvements may come even more slowly for Colorado's general fund. Although state revenues are beginning to increase, demand for government services remains at historic highs. Over the last decade, Colorado's population grew by more than 15%, K-12 student enrollment increased by more than 16%, the state prison population grew by more than 34%, and enrollment in public colleges and universities rose by nearly 35%.

The greatest increase in demand on Colorado's government services has come through its public health insurance programs. As Colorado and the nation dipped into the recession, many Coloradans lost their jobs and source of health insurance. Correspondingly, the state experienced dramatic growth in enrollment in Medicaid and the Child Health Plan Plus (CHP+). According to Colorado's Department of Health Care Policy and Financing (HCPF), as of November 2011, it had more than 614,000 Medicaid clients, a historic high. HCPF's Medicaid caseload rose by more than 57% since January 2007, and has grown by nearly 428% since FY 2000-01. HCPF also reported that nearly 72,000 children and pregnant women are enrolled in CHP+; together Medicaid and CHP+ clients account for more than 13% of Colorado's population.

Together Medicaid and CHP+ clients account for more than 13% of Colorado's population.

The growth in demand for public health insurance

coverage, K-12 education, prisons and other government services has placed great strain on Colorado's finances that is not likely to be overcome by economic recovery. According to two studies published by the University of Denver in 2011, structural imbalances make Colorado's long-term fiscal system unsustainable. Absent significant policy changes, within 12 years just three programs – K-12 education, health care and corrections – will consume the state's entire General Fund budget, leaving no money for many core government programs. DU reports that by FY 2024-25, expenses for the three top General Fund programs alone will outpace state revenues by \$3.5 billion.

The pessimistic forecast for Colorado's long-term fiscal system, and immediate concerns brought on by the recession, have meant that lawmakers have continued to focus on the budget. Although no shortfalls are expected for fiscal year 2011-12, budget analysts in the legislature and the Governor's Office agree that lawmakers must address shortfalls for FY 2012-13. Estimates about the amount differ. The Governor's Office projected a gap totaling nearly \$700 million. Legislative Council has estimated the shortfall may be as much as \$300 million less than the governor's projection over the two-year period. The next state revenue forecast, scheduled for release March 20, will help finalize the amount used by the legislature's Joint Budget Committee to draft the state budget bill for introduction and consideration.

The fiscal strain on Colorado's budget is not unique. The recession affected federal finances and budgets in almost every state, and sparked intense national debate about government revenue, spending and debt. Two national protest movements that were active in Colorado, the Tea Party and the Occupy movement, developed messages that addressed the economy and government finances and helped shape much of Colorado's current policy discussion.

Given the national recession, the state's fiscal condition and the national discourse about government spending, five common themes have emerged that are framing and affecting Colorado's health policy.

1. In the Colorado Legislature, legislation that creates a new program or causes new government spending is unlikely to pass unless the program is paid for with gifts, grants and donations.
2. Budget debates increasingly are being framed by misleading choices that often pit vulnerable constituencies against each other. In Colorado, examples include:
 - Health (Medicaid) v. education (K-12 and higher education)
 - Seniors v. everyone else
 - Kids v. everyone else, including the elderly and disabled
 - Personal responsibility v. government support.
3. Public health insurance programs are a big target for spending cuts nationally and in Colorado.
4. Health care, specifically the ACA, continues to be a highly partisan issue.
5. Federal funding for state programs is a contentious issue, with deep partisan divisions over whether the states should accept federal funds.

It is unclear how each of these basic policy themes will be resolved. Subsequent sections of this brief provide further detail about how the issues are likely to affect the health policy discussion in 2012.

2012 STATE LEGISLATIVE SESSION

The second regular session of the 68th General Assembly of Colorado convened January 11. As of January 20, legislators had introduced more than 293 bills and resolutions. Roughly 19 of those measures relate to health care and approximately six to state fiscal issues. The Colorado Trust is tracking legislative developments, with roughly a dozen bills entered into its legislative tracking database so far.

Some common policy themes are evident in the proposed legislation. In opening day speeches, both the House Speaker and House Minority leader addressed Medicaid. Also on the first day of the session, Republican senators introduced bills seeking a federal Medicaid waiver (SB12-32) and urging repeal of Colorado's Health Benefits Exchange (SB12-53). Eight days later, on a party line vote, House Republicans passed a nonbinding resolution, HR12-1003, urging a Constitutional Convention to amend the U.S. Constitution to repeal the ACA and prevent similar laws.

Democrats also appear to be moving to address Medicaid during the 2012 session. Prior to the start of the session, House Democrats unveiled plans for a measure that would test a health-outcomes-based payment system for Medicaid to replace the current fee-for-service model. Although a bill had not been introduced as of January 20, the bill's sponsor, Representative Dave Young, is seeking support for the measure.

Other health-related bills appear to be less contentious. Several measures relate to the health care workforce, including a bill endorsed by many members of the Colorado Health Professions Workforce Policy Collaborative to collect data about health care professionals (HB12-1052). Another workforce measure is intended to protect health care workers from legal harm (SB12-54).

Bills also have been introduced that relate to the state's fiscal system. Most notable to date is HB12-1075, which would revive the so called "Arvescghough-Bird" law by capping growth in state general fund appropriations. The original Arvescough-Bird law, in combination with the state's TABOR amendment, significantly restricted growth of the state's general fund, particularly after a recession. Its repeal in 2009 was a major victory for groups that advocated for statewide fiscal reform.

STATE AND NATIONAL POLITICS

Because 2012 is a national election year, with the battle for President and control of Congress at stake, it is probable that a sharp political climate will continue to affect national and state policy decisions. Colorado is considered a swing state, and is a likely target for an intense election-season media campaign. After redistricting, more of Colorado's Congressional districts are competitive, with current Republican Representatives Scott Tipton (CD-3) and Mike Coffman (CD-6) perhaps facing stiffer challenges than in previous elections.

Control of Colorado's General Assembly will be hotly contested in the November election. Republicans hold a 33-32 majority in the House, with Democrats controlling the Senate by a 20-15 margin. All House members face re-election, as do half of the Senate members. Several are term-limited, so this is their final session. Term-limited representatives include Jim Kerr (R), Tom Massey (R), Wes McKinley (D), Judy Solano (D) and John Soper (D). Term-limited senators include Bob Bacon (D), Betty Boyd (D), Shawn Mitchell (R), Nancy Spence (R) and Suzanne Williams (D). Representatives David Balmer, Larry Liston and Nancy Todd also are term-limited, but are running for Senate seats.

Reapportionment also will affect the political dynamic this session and the legislature's composition after 2012. Although a bi-partisan reapportionment commission was appointed to draw the new maps, after a lengthy process that included some legal action, maps were approved that many believe seem to favor the Democrats. After reapportionment, several lawmakers announced they would not seek re-election. Other members were drawn into the same district, and will compete with each other in the primary or next general election. So far, members who have announced that they will not return next year include Senators Keith King (R) and Joyce Foster (D), and Representatives Jon Becker (R), Don Beezley (R), Ed Casso (D), Keith Swerdfeger (R), Glen Vaad (R) and Roger Wilson (D).

Four current legislators also are running for Congress. They are Senate President Brandon Shaffer (CD-4) and Representatives Sal Pace (CD-3), Joe Miklosi (CD-6) and Kevin Lundberg (CD-2).

ACA UPDATE

Implementation of the ACA will continue to be a critical issue for Colorado this year. In 2011, the state made substantial progress toward fulfilling a key component of the federal health care reform law by establishing a state health benefit exchange. With support from business groups and the nonprofit advocacy community, the General Assembly passed a bi-partisan bill, SB 11-200, which created the Colorado Health Benefit Exchange (COHBE) and detailed many of the provisions for its operation. After a board was appointed to govern the exchange, COHBE created a new website, www.getcoveredco.org. In December 2011, the COHBE board hired an executive director, Patty Fontneau, and submitted an \$18 million grant proposal to the U.S. Department of Health and Human Services (DHHS) to help fund its operation and continued development. COHBE will open for business in 2013, so much work remains to be done in 2012 to meet this goal.

Implementation of the ACA will continue to be a critical issue for Colorado this year.

Several new federal ACA regulations will take effect in 2012. Six became effective January 1, including provisions governing accountable care organizations in Medicare, Medicare Advantage plan payments, Medicare independence-at-home demonstration projects, Medicare provider payment changes, new fraud and abuse prevention rules and new annual fees on the pharmaceutical industry. Another regulation will allow up to eight states to apply for funding to test bundled payment demonstration projects for Medicaid. Two other regulations, regarding Medicare value-based purchasing and reduced Medicare payments for hospital readmissions, will take effect in October.

More information about ACA implementation is available on the Kaiser Family Foundation website at <http://healthreform.kff.org/timeline.aspx>.

NATIONAL POLICY ISSUES

Federal lawmakers in 2012 will be focused primarily on budget issues. Key concerns will be the national debt limit, expiration of the Bush-era tax cuts and sequestration, all of which likely will affect many federal programs, including those related to health care. Because it is an election year, however, it seems unlikely any of the issues will be resolved before November.

Already there are signs of extreme partisanship on 2012 federal budget issues. On January 12, President Obama notified Congress of the need to raise the national debt limit by \$1.2 trillion. A week later, House Republicans voted to deny the request. Although the federal government is not yet in danger of a shutdown, lawmakers will need to act this year to ensure that the federal government will continue to meet its obligations.

Already there are signs of extreme partisanship on 2012 federal budget issues.

The debt limit debate is likely to be tied to the two other key federal budget issues: sequestration and the expiration of the Bush-era tax cuts.

Sequestration is the result of the compromise measure used to raise the federal debt limit last year, The Budget Control Act of 2011. It required Congress, in 2011, to agree to plans to reduce the federal deficit by \$1.5 trillion. If Congress failed to reach such agreement, the law triggered sequestration – across-the-board cuts, split evenly between defense and

domestic programs, which would reduce federal spending by nearly \$1 trillion from 2013 through 2021. Congress failed to agree to the required deficit reduction measures; absent any additional legislative action, the automatic spending cuts will begin in January 2013.

If it goes forward as anticipated, sequestration will affect some federally-funded health care programs and negatively affect federal spending in Colorado. Although Medicaid, CHP+ and several other domestic programs, including Social Security, veteran's benefits, unemployment insurance, the Temporary Assistance for Needy Families Program and food stamps, are protected from the automatic cuts, other key programs are not. Most notable are the subsidies needed to support the health benefit exchanges established by the ACA and Medicare, although cuts to Medicare are capped at 2%. The Colorado Fiscal Policy Institute estimates that sequestration would reduce federal spending in Colorado by \$133 million in 2013.

Another component of the debate is about the Bush-era tax cuts. The cuts, extended once under President Obama, are set to expire in December 2012. While federal health care spending will not be affected directly by the outcome of this debate, the issue has enormous implications for the federal budget. If the cuts expire for all income levels, experts estimate the federal government would take in nearly \$4 trillion in new revenue. If cuts are extended for the middle class and allowed to expire only for the top wage earners, the federal government still would add an estimated \$700 billion. Given the enormity of the amount, the tax cuts have become a politically charged issue likely to be tied to the debt limit and sequestration.

Beyond issues related to the budget, federal lawmakers in 2012 also are debating health care issues, notably the federal delivery of Medicaid funds to the states. In his fiscal year 2012 budget proposal, Republican House Budget Committee Chair Representative Paul Ryan proposed that Medicaid be changed to a block grant program to the states. That concept has been rejected several times in the past, but now is being discussed with renewed enthusiasm by some Republicans in Congress and by several Republican governors.

Outside Washington, much work related to federal health care reform is occurring in state legislatures. According to the National Conference of State Legislatures, in 2011 state lawmakers introduced approximately 870 bills and resolutions related to the ACA. As of January 6, 2012, approximately 600 bills related to the ACA were active in state legislatures, including new introductions and carryover bills.

According to the National Conference of State Legislatures, in 2011 state lawmakers introduced approximately 870 bills and resolutions related to the ACA.

PENDING LEGAL DECISIONS

Courts are expected to make decisions in three cases in 2012 that will have major implications for health care in Colorado. The highest profile case is the legal challenge to the ACA, *Florida v. The U.S. Department of Health and Human Services*. Filed in a Florida federal district court in March 2010, the case includes as parties 26 states, of which Colorado is one, the National Federation of Independent Businesses and several individuals. Following district court and appeals court decisions, in November, the U.S. Supreme Court announced it would consider the case this session, scheduling lengthy oral arguments in March. The court will consider four key arguments about the ACA: the constitutionality of the individual mandate; the severability of the individual mandate from the remainder of the law; the legality of the ACA's Medicaid expansions; and the applicability of the Anti-Injunction Act.

Given the complexity of the ACA and number of legal issues under debate, the court's opinion could provide a variety of outcomes. It could invalidate the entire Act, leaving the future of state health insurance exchanges and other health care reforms in doubt. It could eliminate portions of the law, but leave other

provisions intact. Such a decision could expand health care coverage or insurance protections, but raise health care costs. Until a final opinion is released, however, it is difficult to predict its ultimate effects. The court's decision is expected in June 2012.

In October, the U.S. Supreme Court heard arguments for three consolidated California cases concerning the right to sue states regarding the adequacy of payments made to providers who accept Medicaid clients. To help solve budget shortfalls, many states have cut provider rates to lessen state Medicaid expenses. Medicaid requires that state provider payments be sufficient to ensure that Medicaid clients have the same access to health coverage as other community members, but under current practice only DHHS has determined whether state provider-fee rates are sufficient. In the three cases, a mixture of Medicaid clients and providers challenged that notion, arguing they had a right to sue. The Obama administration and 30 states joined California in opposing the lawsuit.

The court's opinion in the cases could have significant implications for Medicaid delivery. If the court rules that providers and Medicaid clients legally can challenge the adequacy of provider fee rates, it would open the door to multiple lawsuits in most states. Different federal courts could develop multiple interpretations of the adequacy standard, and many states could decide to withdraw entirely from Medicaid. If, however, the court decides in favor of the states and DHHS, it could lead to further provider rate cuts without adequate protection for providers and Medicaid clients. The court's opinion is expected this spring.

A third case that could be decided by the Colorado Supreme Court this year, *Lobato v. State of Colorado*, could have major consequences for every program supported by the state's General Fund. The case, which has been under consideration by Colorado courts for several years, challenges the adequacy of Colorado's funding for K-12 education. Late last year, a District Court judge ruled that the state had failed to provide for a thorough and uniform K-12 system as required by the Colorado Constitution. Although the decision was stayed pending appeal and provided little guidance for remedies, a final opinion could have immense implications. Already, K-12 education consumes approximately 40% of Colorado's General Fund budget. Under some scenarios, *Lobato* could force the entire General Fund budget to be spent solely for education.

RESOURCES FOR ADDITIONAL INFORMATION

The Colorado Trust's Health Policy Page

<http://www.coloradotrust.org/health-policy>

The Center for Colorado's Economic Future

<http://www.du.edu/economicfuture/>

Colorado Health Benefit Exchange

<http://www.getcoveredco.org/Index>

Colorado Office of State Planning and Budgeting

<http://www.colorado.gov/ospb>

Colorado Legislative Council's Economic Forecasts

<http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133919>

Kaiser Family Foundation ACA Implementation Timeline

<http://healthreform.kff.org/timeline.aspx>

National Conference of State Legislature's Federal Health Care Reform

<http://www.ncsl.org/issues-research/health.aspx?tabs=831,139,1156>

APPENDIX A: KEY LEGISLATION FROM COLORADO 2012 SESSION (As of January 20, 2012)

Health Legislation

Bill #	Primary Sponsor	Summary	Status
HB 1017	Rep. Keith Swerdfeger (R)	Extends a local access health care pilot program in Pueblo County.	Introduced 1/11/12
HB 1052	Rep. Ken Summers (R)	Requires the Department of Regulatory Agencies to collect certain data from health care professionals.	To House Health and Environment Committee 1/11/12
HB 1054	Rep. Rhonda Fields (D)	Simplifies the procurement process for health care providers who have been previously approved to participate in health care programs administered by HCPF.	To House Health and Environment Committee 1/11/12
HB 1065	Rep. Sanford Lee (D)	Concerns retaining prescriptive authority for certain advanced practice nurses.	To House Health and Environment Committee 1/11/12
HB 1140	Rep. Matt Jones (D)	Concerns the duties of CDPHE as the coordinator of suicide prevention programs throughout the state.	Introduced 1/20/12
HB 1141	Rep. Claire Levy (D)	Concerns the expansion of the scope of practice of additional trained health care professionals to include 5 point auricular acudetox (a form of acupuncture).	Introduced 1/20/12
HR 1003	Rep. David Balmer (R)	Urges a federal constitutional convention to amend the U.S. Constitution to repeal the Patient Protection and Affordable Care Act and prevent similar laws.	Passed House 1/19/12
HJR 1004	Rep. Tom Massey (R)	Concerns teen suicide prevention	Introduced 1/20/12
SB 18	Sen. Kevin Lundberg (R)	Creates an alternative medical assistance program for the elderly.	To Senate Health and Human Services Committee 1/11/12
SB 23	Sen. Betty Boyd (D)	Concerns access to the Provide All-inclusive Care for the Elderly Program (PACE). Addresses coordination with accountable care collaborative and similar Medicaid programs and removes PACE providers from licensing as a home care agency.	To Senate Health and Human Services Committee 1/11/12
SB 32	Sen. Greg Brophy (R)	Seeks a federal waiver for the administration of Medicaid.	To Senate Health and Human Services Committee 1/11/12
SB 53	Sen. Tim Neville (R)	Would repeal the Colorado health benefit exchange law if any part of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 is found to be unconstitutional.	To Senate Health and Human Services Committee 1/13/12
SB 54	Sen. Betty Boyd (D)	Prevents retaliation against health care employees who exercise their own judgment according to best practices.	To Senate Health and Human Services Committee 1/13/12

APPENDIX A: KEY LEGISLATION FROM COLORADO 2012 SESSION**(As of January 20, 2012)** *continued*

Bill #	Primary Sponsor	Summary	Status
SB 60	Sen. Ellen Roberts (R)	Concerns improvements in prosecution for Medicaid fraud.	To Senate Health and Human Services Committee 1/13/12
SB 90	Sen. Joyce Foster (D)	Restores coverage for circumcision of males under Medicaid.	To Senate Health and Human Services Committee 1/19/12
SB 93	Sen. Morgan Carroll (D)	Requires licensed hospitals to provide notice to patients of any services not provided by the hospital because of moral convictions or religious beliefs.	To Senate Health and Human Services Committee 1/19/12

Fiscal Legislation

HB 1075	Rep. Don Beezley (R)	Caps the growth in general fund appropriations at 6%.	To House Finance Committee 1/11/12
---------	----------------------	---	------------------------------------



**THE
COLORADO
TRUST**

1600 SHERMAN STREET
DENVER, CO 80203-1604
WWW.COLORADOTRUST.ORG

PHONE 303-837-1200
TOLL FREE 888-847-9140
FAX 303-839-9034