



## 2009 Colorado Legislative Session Summary May 6, 2009

The 2009 Colorado legislative session began on January 7 and concluded 120 days later on May 7. The economic downturn dominated the discussion and balancing the state's budget proved to be the most vexing problem facing the 100 members of the General Assembly. However, a wide variety of other topics garnered significant attention as well. This report provides an overview of the 2009 session for clients of Miles Consulting, Inc. with an emphasis on legislative actions related to health care, including oral health, mental health and public and environmental health.

### **Budget**

With estimated tax revenues from all sources down, the first task was to reduce the budget for Fiscal Year 2008-09 (July 1, 2008 – June 30, 2009). The legislature passed a series of "supplemental" bills in January to bring spending into balance with revised revenue projections. The Governor's Office had proposed cuts of approximately \$600M to the General Fund for FY08-09. When the federal fiscal stimulus package was finalized, the Joint Budget Committee (JBC) learned that there was a greater amount of federal funds for Colorado than their original assumptions, specifically increased Medicaid matching funds (FMAP). As a result, the Senate amended the supplemental bills, taking out a few notable budget cuts that had previously been included, as follows:

- \$15.6 million in Medicaid provider reimbursement: pharmacy, physician services, hospital inpatient and outpatient, behavioral health organizations, home and community based services, dental, hospice, labs and x-ray, single entry points, private duty nursing, non-emergency and emergency transportation.
- \$4.0 million in total funds for the Children's Hospital Medicaid reimbursement
- \$3.0 million in total funds for services for those with developmental disabilities

For Fiscal Year 2009-10, revenue projections required the JBC to find \$786M in General Fund (GF) revenue or spending cuts. Plan A was to use some of the significant reserves accrued by Pinnacle Assurance, the state's workers' compensation insurer of last resort, covering about 60% of all workers comp policies in Colorado. When this plan was scrapped due to opposition and a potential lawsuit regarding the legality of using these funds, Plan B was to cut higher education by \$300M. This plan also fell through as it became clear that Colorado would lose significant federal fiscal stimulus funds if our higher education funding dropped below 2005 levels. In the end, a package of policy changes to raise revenue, use cash or other dedicated funds, and budget cuts were cobbled together to achieve a balanced budget. Significant health care budget cuts in the final FY09-10 budget included the following:

1. Transfer of all interest earnings from Amendment 35 (tobacco tax) into the GF (SB270)
2. Declaration of a fiscal emergency by a 2/3 majority of both Houses as required to use Amendment 35 funds for other health care expenses (SJR35).
3. Use of Amendment 35 revenues dedicated to Tobacco Education and Cessation (\$8M), Cancer Cardiovascular and Pulmonary Disease (\$12M) and primary health care services through Community Health Centers and other safety net clinics (\$7.4M) to pay for the costs of an increased Medicaid caseload instead (SB271).
4. Transfer of recently received tobacco settlement payments that had been disputed into the GF rather than add these funds to those provided through tobacco settlement programs (\$6.9M) (SB269)
5. Cap FY09-10 tobacco settlement funds for programs at \$100M and transfer additional funds to the General Fund. This resulted in a small percentage cut to tobacco settlement programs (SB269).
6. Cut funding for the Comprehensive Primary and Preventive Care (CPPC) grant program by \$2.4M, maintaining only \$600,000 in this fund for primary health care for the uninsured for FY09-10. This is only 2/3 of the already approved FY09-10 grants for this program.
7. Delay the scheduled 1% increase in tobacco settlement funds for the Nurse Home Visitor Program. Combined with the lower amount of tobacco settlement funds to be allocated, a net decrease to the program will be experienced.
8. Delay the last Medicaid payment of this fiscal year by one week, e.g. reimbursements expected to be received on June 30<sup>th</sup> will not be paid by the state until July 7<sup>th</sup>. Subsequent payments will be made one week late. Also, delay the June 2009 Medicaid managed care payments until July of 2009.
9. Base the budget for FY 2009-10 on an estimated Medicaid caseload of 471,718 with an average per capita cost of \$5,667.01. Caseload is currently growing by about 10% per month, one of the highest growth rates in the country.
10. Beginning July of 2010, provide funding to implement the "Accountable Care Collaborative" for Medicaid. Through this program, the Department of Health Care Policy and Financing (HCPF) would pay a \$20.00 per month per client for care coordination for clients enrolling in the Department's Administrative Service Organization pilot program. This program is expected to generate cost savings as a result of care coordination.
11. A fluoride varnish benefit for Medicaid children up to the age of six was added. Studies show that over a 2 year period, children receiving fluoride varnish treatments showed a significantly lower cavity rate. This preventative treatment may result in future cost savings to the dental expenditures in the Medical Services Premiums line item.
12. Reduce selected physician reimbursement codes for Medicaid that are higher than 100% of the Medicare upper payment limit.
13. Reduction of \$1.4 million total fund by restricting Medicaid claim payment on a readmission 24 hours after discharge.
14. A 2% across the board cut for the following Medicaid providers: Physician services (all specialties) Transportation, Dental Services, Inpatient Hospitals, Outpatient Hospitals, Lab & X-Ray, Durable Medical Equipment, Home Health, Home and Community Based Services, Private Duty Nursing, Hospice and Single Entry Points effective July 1, 2009.

### **Fiscal Reform**

After careful negotiation between fiscal reform advocates, the Governor's Office, the business community and the transportation and construction industries, agreement was reached on SB228 to eliminate the "6% limit". As a result, proponents indicate that it will be easier for Colorado to recover

from the current and any future recessions. The following is an explanation of the complex formula approved in SB228:

Under current law, General Fund appropriations are limited to the lesser of a 6 percent increase from the previous year's appropriation level and 5 percent of Colorado personal income. SB 09-228 sets the limit equal to 5 percent of Colorado personal income. Transfers from the General Fund to transportation, capital construction, and the General Fund statutory reserve are required by the bill as follows: 2% of general fund appropriations to transportation, 0.5% to capital construction and 0.5% to the reserve beginning in FY12-13 and continuing for 5 years, however the capital construction transfer increases to 1% in the third, fourth and fifth years of the transfers. The five-year block of transfers is subject to a trigger on personal income growth. If personal income increases by less than 5 percent in 2012, the entire five-year block of transfers is postponed until the first fiscal year in which personal income increases by at least 5 percent during the calendar year. If personal income growth were to fall below 5 percent during the five-year period, the transfers would continue to occur without pause. Each individual transfer is subject to a trigger based on the size of future TABOR refunds. If a TABOR refund equal to between 1 percent and 3 percent of General Fund revenue is expected to occur, transfers will be reduced by 50 percent. If the TABOR refund is equal to more than 3 percent of General Fund revenue, the transfer will not occur. Once the five-year period of transfers is complete, the General Fund statutory reserve will equal 6.5 percent of General Fund appropriations.

#### **Medicaid and Child Health Plan (CHP+) Policy Changes**

The 2009 session included several changes to Medicaid and CHP+ as follows:

SB211 by Sen. Keller and Rep. Ferrandino **delayed a scheduled expansion of CHP+** from 205% of the Federal Poverty Level (FPL) to 225% for kids and pregnant women. Passed as part of SB08-160, the expansion was scheduled to begin on March 1, 2009, but the economic downturn and resulting budget cuts made it impossible.

HB1293 sponsored by Reps. Ferrandino and Riesberg and Senators Keller and Boyd – This hospital provider fee bill was renamed the “Colorado Healthcare Affordability Act.” It will assess a fee of approximately \$600M on hospitals that will be matched by federal funds. The resulting total funds will be used to **reimburse hospitals more** for Medicaid the Colorado Indigent Care Program (CICP) and to **provide health insurance coverage through Medicaid and CHP+ to over 100,000 currently uninsured** Coloradans through the following expansions:

- Expand CHP+ eligibility from 205% to 250% of FPL for kids and pregnant women, effective Spring of 2010
- Expand Medicaid eligibility for parents of kids eligible for Medicaid from 60% to 100% FPL, effective Spring of 2010
- Develop a Medicaid buy-in program for people with disabilities up to 450% of FPL, effective Summer of 2011
- Add a new Medicaid eligibility category for “childless adults” and covering them up to 100% of FPL, effective Winter of 2012
- Provide 12 months of continuous eligibility for children in Medicaid, effective Spring of 2012

HB1020 sponsored by Rep. Acree and Sen. Spence requires HCPF to establish a process allowing **reenrollment in Medicaid and CHP+** over the phone and the internet.

HB1353 sponsored by Rep. Miklosi and Sen. Foster authorizes HCPF to provide benefits under **Medicaid and CHP+ to pregnant women and children who are legal immigrants** prior to the 5-year waiting period following their date of entry into the United States. Due to Congress' passage of the Children's Health Insurance Plan Reauthorization Act, (CHIPRA), federal matching funds are now available for this population. To implement this expansion, funds will need to be appropriated in the future.

HB1164 sponsored by Rep. Primavera and Sen. Kester raises funds to provide **breast and cervical cancer treatment** to low-income women who are otherwise eligible for such treatment through Medicaid, except they were screened at the wrong site. The bill raises funds for the state match portion through new and additional fees for the Breast Cancer Awareness License plate. HB1164 also authorizes gifts, grants, and donations for the state share. The federal government provides \$1.86 for each \$1 of state funds for this program.

HB1103 sponsored by Rep. Riesberg and Sen. Newell authorizes HCPF to implement Medicaid **presumptive eligibility** for those in need of **long term care**.

As mentioned in the budget section above, a 2% Medicaid provider reimbursement cut for most types of providers will begin on July 1, 2009. In addition, provider payments will be delayed one week and managed care payments delayed one month. Finally, a fluoride varnish benefit for Medicaid children up to the age of six. Both dentists and physicians will be able to bill for these services.

Finally, SB9 sponsored by Sen. Boyd and Rep. Massey failed to pass due to budget constraints. This bill would have added **dental benefits for all adults covered by Medicaid and pregnant women covered by CHP+**. The bill had broad based support and was expected to be part of the Governor's budget proposal until the state revenues began to decline. It was reportedly one of the last items withdrawn from the Governor's budget proposal.

#### **Safety Net Providers and Access to Health Care**

As mentioned in the budget section, the Primary Care Fund from Amendment 35 was cut by \$7.4M and the Comprehensive Primary and Preventive Care (CPPC) grant program was cut by \$2.4M. Both of these budget cuts will negatively impact the ability of Community Health Centers and other safety net clinics to provide health care services to low-income, uninsured Coloradans.

On a positive note, HB1111 will augment Colorado's ability to take advantage of federal resources for **medically underserved areas** in Colorado. It will allow the Primary Care Office to more proactively seek federal shortage designations for geographic locations that qualify, to more actively utilize the Conrad 30 **J-1 Visa program** to place foreign-born, US trained physicians in communities, and administer the **student loan repayment program for health care providers** practicing in medically underserved areas. This bill was sponsored by Rep. Massey and Sens. Boyd and Schwartz.

SB2 sponsored by Sen. Morse and Rep. Peniston increases motor vehicle registration fee for emergency services from \$1.00 to \$2.00 to fund **emergency medical services**. Rural areas were very supportive based on their need to augment trauma services and update equipment.

#### **Public and Environmental Health Issues**

In the 2003 economic downturn, general funds for local public health departments were eliminated through a Governor's veto. It has taken years to get the funding restored. So far during this economic downturn, **local public health agency funding** has been relatively unscathed. For FY08-09, a cut of

\$140,000 was spread across all agencies in the final three months of the year. For FY09-10, funding will decrease slightly due to the smaller amount of tobacco settlement funds that will be allocated. Local public health receives a percentage of total tobacco settlement funds allocated to programs.

SB223 sponsored by Sen. Boyd and Reps. A. Kerr and B. Gardner increases the annual licensure fees for **restaurants and other food establishments** effective July 1, 2009. The increased revenue will be used to offset the costs of local and state health department **food safety** programs, thus assuring more regular inspection of restaurants, follow-up on consumer complaints, and inspection of new restaurants prior to opening. The bill also requires uniformity of food safety regulations statewide and adds a grievance process for food establishments to file a complaint against a local public health agency.

HB1342 eliminated the Colorado sales **tax exemption on cigarettes** that had been in place since 1959. Estimated to raise sales tax revenue by \$31M annually, it will raise the price of a pack of cigarettes by about 15 cents.

SB179 requires **HIV testing** for all pregnant women before or during childbirth to prevent HIV transmission to as many infants as possible. An opportunity to opt out of the test shall be provided to all pregnant women. The bill also added a legal due process procedure for persons issued an isolation order for **tuberculosis**.

A late bill (SB296) to make Colorado's **seat belt** law a primary law where a person can be pulled over simply for not wearing a seat belt did not pass. Colorado lost millions in federal funds and an opportunity to decrease traffic injuries and fatalities by failing to pass this bill.

Two bills aimed at **decreasing childhood obesity through school health policy changes** failed to pass. SB46 proposed minimum nutritional standards for food in school vending machines and SB131 proposed a minimum requirement for physical activity in schools. Despite attempts to amend the bills to make them more palatable to school districts and school officials, it seemed that the time for these ideas had not yet come in Colorado.

A **bicycle safety** bill (SB148) places greater requirements on drivers related to bicyclists' safety and places additional requirements on bicyclists as well. Creates new misdemeanors for harassment of bicyclists and driving unnecessarily close or in a threatening or dangerous manner.

HB1292 upheld the Oil and Gas Commission's rules designed to protect the public's health and the environment from damages from the **oil and gas** industry. The bill passed despite a concerted effort to overturn the rules.

SB3 expanded the enhanced emissions program to parts of Larimer and Weld counties to improve **air quality** in those communities and statewide.

SB165 transfers up to \$10 million per year to the newly created small communities water and wastewater grant fund. Grants from the fund will be made to governmental and not-for-profit public water systems and counties representing unincorporated areas that serve a population of not more than 5,000 people for the planning, design, and construction of **drinking water or water treatment** systems.

HB1056 authorizes the Department of Public Health and Environment (CDPHE) to assess an administrative penalty against a **solid waste disposal** site, facility, or person for violations of solid waste

disposal requirements. Allows the department to issue an order assessing an administrative penalty, as well as requiring compliance with solid waste disposal requirements, without first conducting a hearing but allows the person subject to the penalty to request a hearing.

As noted above, Amendment 35 cuts of \$8M for **tobacco prevention and cessation** and \$12M for **cancer, cardiovascular and pulmonary disease prevention, screening and treatment** were passed as to balance the budget.

### **Health Care Providers**

SB129 makes changes to the practice of **dental hygienists**. It allows dental hygienists to perform a "dental hygiene diagnosis", which is defined as the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat. The bill also adds the following to the practice of supervised and unsupervised dental hygiene: administration of fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing and adds the following to the practice of unsupervised dental hygiene: root planing; preparation of study casts; radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions and identifying dental abnormalities for immediate referral to a dentist. SB129 allows a supervised dental hygienist to administer local anesthetic under the indirect supervision of a licensed dentist (rather than direct supervision). Finally, it requires a practicing dental hygienists to have professional liability insurance of not less than \$50,000/claim and not less than \$300,000 as aggregate limit for all claims during a calendar year.

SB239 updates the **Nurse Practice Act**, which was scheduled to sunset on July 1, 2009. The bill includes a variety of changes. Those related to Advanced Practice Nurses (APNs) are noted here:

- Beginning July 1, 2010, the bill requires all new applicants for placement on the advanced practice registry to have national certification.
- Eliminates restrictions on types of medications that an advanced practice nurse can prescribe, but requires that medications be within the scope, experience and training of the APN.
- Requires advanced practice nurses engaged in independent practice to obtain professional liability insurance.
- Continues requirement that new APNs complete 1,800 hours of a precepted experience with a physician or physician and APN before obtaining prescriptive authority.
- Within a five year period, requires the APN to gain an additional 1,800 hours of experience in a mutually structured mentorship with a physician or a physician and an APN.
- Upon completion of the preceptor and mentor program the APN will be granted prescriptive authority.
- Those APNs who have been in practice with prescriptive authority since July 1, 2008 and those with new prescriptive authority who have completed the 3,600 hours described above will be required to develop an "articulated plan" – a written document outlining how the APN intends to maintain ongoing collaboration with physicians and other health care professionals in regard to prescribing medication and to assure safe prescribing.
- Defines "Advance Practice Nursing" as an expanded scope of "professional nursing", (which includes "delegated medical functions), in a role and population focus approved by the board.
- Creates a 12 member "Nurse Physician Advisory Task Force for Colorado Health Care" (NPATCH) whose purpose is to promote safety and improve health care in Colorado by supporting collaboration and communications between the practices of medicine and nursing.

- By amendment, prohibits APNs from involuntarily committing patients for drug or alcohol abuse. The ability of properly trained APNs (psychiatric nurse practitioners) had been added through a 2008 bill, but was removed for the time being through SB239.

SB166 to raise caps on **medical malpractice** damages failed to pass again this year. It was opposed by physicians and other health care providers and was supported by trial lawyers.

### **Mental Health Providers**

HB1086 requires licensed **clinical social workers, licensed social workers, licensed marriage and family therapists, licensed professional counselors, licensed addiction counselors, and level II or level III certified addiction counselors** to maintain continuing professional competency in order to obtain renewal or reinstatement of a license or certificate to practice their respective professions in Colorado. Authorizes the governing body that regulates the respective professions to develop, by rule, a continuing professional competency program for the applicable profession that assesses the licensee's or certificate holder's ongoing ability to learn, integrate, and apply the knowledge, skill, and judgment necessary to practice the profession according to generally accepted industry standards and professional ethical standards in the role and setting in which the licensee or certificate holder is engaged in the practice of the profession. This law is effective January 1, 2011.

### **Health Insurance Reform**

HB1293 (above) is intended to **reduce cost shifting** to private health insurance that occurs when hospitals provide care to uninsured patients with little or no compensation. It will also **provide health insurance coverage** for over 100,000 currently uninsured Coloradans through Medicaid and CHP+. HB1273 sponsored by Rep. Kefalas and Sen. Foster proposed a **single payer health care system** for Colorado. It was two votes short of passing in the House, though never had a recorded vote.

A variety of minimal reforms to health insurance laws passed, including the following:

- HB1012 allows health insurance companies to offer incentive for participation in wellness and prevention programs
- HB1143 allows a pilot program for HMOs in rural areas to offer limited benefit plans with significant consumer protections and warnings.
- HB1204 requires health insurance plans to cover certain preventive health care services with limited copayment and coinsurance amounts. Covered services include: alcohol misuse screening and intervention by an outpatient primary care provider; cervical cancer screening; cholesterol screening; childhood immunizations; influenza vaccinations; pneumococcal vaccinations; and tobacco use screening and intervention by an outpatient primary care provider.
- SB244 requires health insurance plans to cover services and treatments for children diagnosed with autism.
- HB1224 requires the Health Care Task Force to study gender discrimination in setting rates for individual health insurance plans.
- HB1102 requires the Health Care Task Force to study the portability of health insurance.
- HB1252 expands the "Local Access to Health Care Pilot Program Act" to allow the creation of a pilot program in the San Luis Valley. The pilot program will provide access to health care services to individuals employed by San Luis Valley employers.

### **Interim Activities**

In addition to the items mentioned above for the **Health Care Task Force**, this standing interim committee usually tackles additional health care issues through their four required meetings. Interim Committees on **fiscal reform, reducing poverty, and hospice and palliative care** were also developed.

### **Departures and New Leadership**

The 2009 session resulted in the mid-session resignation of Rep. Anne McGihon (D-Denver) who was replaced by the vacancy committee choice of Daniel Kagan. Three other legislators announced their resignations effective at the end of the session: Senate President Peter Groff (D-Denver), Senator Jennifer Veiga (D-Denver) and Rep. Gwyn Green (D-Golden). All will be replaced by Democrats appointed by vacancy committees that will meet over the next month. The departure of Senate President Groff resulted in the need to fill that position. Senator Brandon Shaffer (D-Longmont) was unanimously chosen by his Democratic colleagues who then chose Senator John Morse (D-Colorado Springs) to fill the position of Senate Majority Leader.