

HEALTH CARE

Health Care Reform

HB 09-1273 (Lost)
Health Care for Colorado

HB 09-1293 (Signed into Law)
Medicaid Hospital Provider Fee

HB 09-1358 (Postponed Indefinitely)
Create Health Care System for Colorado

SB 09-217 (Signed into Law)
Limited Gaming Fund Money Transfer
Reduction

Budget Balancing Bills

SB 09-207 (Signed into Law)
Delay Child Welfare Mental Health Pilot

SB 09-211 (Signed into Law)
Delay CHP+ Eligibility Expansion

Health Care Professionals

HB 09-1004 (Signed into Law)
PACE Organizations Employ
Physicians

HB 09-1086 (Signed into Law)
Continuing Competency Mental
Health Professionals

HB 09-1128 (Signed into Law)
Academic License Dentists

HB 09-1175 (Postponed Indefinitely)
Regulate Naturopathic Doctors

HB 09-1188 (Signed into Law)
Modify Michael Skolnik Medical
Transparency

HB 09-1275 (Signed into Law)
Emergency Medical Technician
Provisional Certification

HB 09-1339 (Signed into Law)
Clinical Social Work Practice Defined

HB 09-1341 (Signed into Law)
License Psychiatric Technicians

SB 09-007 (Postponed Indefinitely)
Involuntary Commitment Medical
Professionals

SB 09-012 (Postponed Indefinitely)
Peer Review Health Care Providers

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Licensed Doctor Review Insurance
Claims Denial

SB 09-120 (Postponed Indefinitely)
Sunset Psychiatric Technicians
Licensing

SB 09-129 (Signed into Law)
Duties Performed by Dental Hygienists

SB 09-138 (Signed into Law)
Sunset Certified Nurse Aides

SB 09-167 (Signed into Law)
Sunset Board Chiropractic Examiners

SB 09-169 (Signed into Law)
Sunset Nursing Home Administrators
Board

SB 09-239 (Signed into Law)
Sunset State Board Nursing

SB 09-251 (Signed into Law)
Optometrists Fee for Ophthalmic
Devices

Medicaid

HB 09-1020 (Signed into Law)
Expedite Medical Program
Reenrollment

HB 09-1047 (Signed into Law)
Alternative Therapies for Medicaid

HB 09-1073 (Signed into Law)
Electronic Prescriptions in Medicaid

HB 09-1084 (Postponed Indefinitely)
Review of Medicaid Providers

HB 09-1353 (Signed into Law)
Medical Benefits for Legal Immigrants

SB 09-009 (Postponed Indefinitely)
Add Adult Dental to Medicaid and CHP+

SB 09-252 (Signed into Law)
Medicaid Mail Order Prescriptions

Health Care for Older Persons

HB 09-1097 (Postponed Indefinitely)
Alternative Medicaid Program for
Elderly

HB 09-1103 (Signed into Law)
Presumptive Eligibility Long-term Care

HB 09-1196 (Signed into Law)
Nursing Home Penalty Benefit
Residents

HJR 09-1017 (Adopted)
Hospice Palliative Care Interim Study

SB 09-056 (Signed into Law)
Trinidad State Nursing Home

Reproductive Health

SB 09-225 (Signed into Law)
Birth Control Protection Act

The General Assembly considered a variety of health care-related legislation during the 2009 session. Major topics addressed include health care reform efforts, health care professionals, Medicaid, health care for older persons, and reproductive health. The General Assembly also considered legislation in response to the state's budget shortfall.

Health Care Reform Efforts

During the 2009 legislative session, the General Assembly adopted a bill that, in conjunction with federal approval, will expand eligibility and services for individuals in public health programs. The General Assembly also considered two bills that would have changed the delivery of health care in Colorado. The House and Senate Health and Human Services committees received the final report on Senate Bill 08-217, Centennial Care Choices, which asked several stakeholders, including health insurance carriers and the state Division of Insurance, to evaluate through a request for information, whether health insurance carriers could provide comprehensive and affordable health insurance to Colorado residents.

Hospital provider fee. **House Bill 09-1293**, the Health Care Affordability Act, directs the Department of Health Care Policy and Financing (DHCPF) to seek a federal waiver from the federal Centers for Medicare and Medicaid Services to allow hospitals to collect a provider fee from patients. The fee will be matched with federal money and will be used to reimburse hospitals for uncompensated care costs and to expand Medicaid benefits and populations served under the Medicaid program. The bill authorizes the department to expand the Medicaid and Children's Basic Health Plan (CHP+) as follows:

- increase the income eligibility limit for the CHP+ from 205 up to 250 percent of the federal poverty level (FPL) for both children and pregnant women;
- increase the income eligibility limit for Medicaid for parents from 60 up to 100 percent of the FPL;
- provide 12-month continuous eligibility for children in Medicaid;
- create a new Medicaid buy-in program for disabled adults and children with income up to 450 percent of the FPL; and
- create a new medical assistance program for childless adults with incomes up to 100 percent of the FPL.

The bill specifies that the provider fee may not exceed the federal limit on such fees and that certain hospitals such as psychiatric hospitals, long-term care hospitals, and hospitals located in rural communities are exempt from paying the provider fee. The bill also establishes a 13-member Hospital Provider Fee Oversight and Advisory Board which will provide recommendations to the DHCPF and the state Medical Services Board regarding the implementation of the fee and the expansion programs. The advisory board is required to report to the General Assembly the formula created to calculate the provider fee, the process by which the provider fee is assessed and collected, an itemization of the total amount of the provider fee paid by each hospital and any projected revenue that each hospital is expected to receive, and an itemization of the costs incurred by the DHCPF in implementing and administering the hospital provider fee.

Health care reform. Two bills sought to significantly reform the health care system in Colorado. **House Bill 09-1273** would have established the Colorado Health Care Authority, charged with creating and designing a health care system for Colorado residents. The bill specified that the

authority would have been the administrator of all health benefit plans in the state, as well as the payor of claims. The bill specified that the financing of the health care system would come from federal and state dollars. Without approval from the federal government, the new health care authority would not have been implemented. The bill was lost in the House of Representatives. **House Bill 09-1358** would have established the Comprehensive Health Care Reform Act and an authority similar to the one created by House Bill 09-1273. The authority was charged to recommend the implementation of a health care system where the authority was the administrator of benefit plans and the payor of claims for eligible participants. The bill structured the delivery and coverage of the health care system as a three tier, individual-based, public and private system that included an individual mandate to purchase health insurance. Each tier provided a different level of coverage, such as preventative care or catastrophic care. The bill was postponed indefinitely.

Findings of the final report on Senate Bill 08-217 — Centennial Care Choices. In the 2006 legislative session, Senate Bill 06-208 established the Blue Ribbon Commission on Health Care Reform with specific requirements to review and provide recommendations to improve the health care delivery system in Colorado. One of the recommendations from the commission was to create an affordable health insurance product. As a result of the recommendation, Senate Bill 08-217 was introduced in 2008. The bill required the DHCPF, in coordination with the Division of Insurance and a panel of experts, to prepare a request for information (RFI) from health insurance companies and other interested parties, including the state of Colorado, to design a new health insurance product known as a value benefit plan (VBP). The act required that the VBPs be affordable, offer specific benefits such as preventative care, and be offered statewide to any Colorado resident.

In March 2009, the Colorado Insurance Commissioner and the Executive Director of the DHCPF submitted a report with their findings from the RFIs to the General Assembly. During their presentation, they stated that several health insurance carriers participated in the process and both departments were encouraged to see the high number of health insurance carriers that submitted an RFI. The Executive Director and Insurance Commissioner stated that while the VBPs submitted were substantial and offered a wide variety of benefits, that the plans would not be affordable for most uninsured residents without some type of state subsidy. Additionally, the report stated that these plans would be more sustainable and successful with an individual mandate or guarantee issue. Further, the report stated that given the current economic crisis and the budgetary conditions in the state, it was unlikely that funding would be available for a state subsidy. Copies of the RFIs and final report can be found on the DHCPF's website.

Budget Balancing Bills

Due to the state's budget shortfall, the General Assembly reduced funding for several programs. Several bills were enacted during the 2009 session that either repealed previous bills that increased funding for health care, or delayed implementation of specific programs. Senate Bill 08-160 expanded the eligibility for children and pregnant women for the CHP+ from 205 percent to 225 percent of the FPL and authorized the DHCPF to increase eligibility for the CHP+ up to 250 percent of FPL for both children and pregnant women, subject to available appropriations, beginning in March 2009. **Senate Bill 09-211** eliminates the CHP+ eligibility expansion. While House Bill 09-1293, the Health Care Affordability Act, increases the CHP+ eligibility, it is estimated that it will take approximately one year for the increase to be approved and implemented.

House Bill 08-1391 created the Child Welfare and Mental Health Services Pilot Program. It required the Department of Human Services to issue a request for proposals (RFP) to develop and implement a program to provide mental health screening, evaluations, and services for any child ages 4 through 10 who is the subject of a substantiated case of abuse or neglect, and to his or her siblings. The pilot program was to be implemented in a minimum of three Colorado counties on or before July 1, 2009, and was to be repealed July 1, 2012. **Senate Bill 09-207** delays the implementation of the Child Welfare and Mental Health Services Pilot Program for seven years, until July 1, 2016. As a result of the passage of the bill, approximately \$2.1 million reverted back to the General Fund.

Health Care Professionals

In 2009, the General Assembly considered a variety of bills regarding the regulation of health care professionals. In particular, the legislature considered the recommendations contained in the Department of Regulatory Agencies' (DORA) sunset review of several health care licensing boards and practice acts, including the Nurse Practice Act.

Nurses and nurse aides. **Senate Bill 09-239** implements recommendations made by DORA in its sunset review of the Nurse Practice Act. Specifically, the bill continues the regulation of nurses in the state until July 1, 2020. In addition, the bill:

- makes changes to the membership requirements of the State Board of Nursing, including increasing the terms of the members from three to four years, requiring the Governor to strive to achieve geographic representation on the board, and eliminating the requirement that the Senate confirm members of the board;
- permits fines from \$250 to \$1,000 to be assessed against nurses who violate provisions of the Nurse Practice Act;
- adds failing to report a conviction for a crime to the State Board of Nursing as grounds for discipline of a nurse; and
- defines "advance practice nursing" for purposes of the Nurse Practice Act.

The bill delineates a process by which an advance practice nurse may seek the authority to prescribe medications. Beginning July 1, 2010, in order to receive provisional prescriptive authority, an advance practice nurse must:

- have a graduate degree in a nursing speciality;
- complete a structured post-graduate mentorship of at least 1,800 hours;
- be nationally certified; and
- obtain professional liability insurance.

In order to receive full prescriptive authority, an advance practice nurse must:

- obtain an additional 1,800 hours of mentoring; and
- develop an articulated plan for safe prescribing of medications.

The bill makes accommodations for advance practice nurses who have been granted prescriptive authority prior to July 1, 2010, or who have prescriptive authority from another state. To obtain the necessary hours of mentorship and to create articulated plans, advance practice nurses must establish collaborative agreements with physicians.

Finally, the bill creates the Nurse-Physician Advisory Task Force for Colorado Health Care (NPATCH). The purpose of the NPATCH is to promote public safety and to improve health care in Colorado by supporting collaboration and communication between nurses and physicians. The 12-member NPATCH must make recommendations to the State Board of Nursing and the State Board of Medical Examiners regarding articulated plans for advanced practice nurses who prescribe medications.

During the 2008 legislative session, the General Assembly passed House Bill 08-1061, which, among other things, allowed an advanced practice nurse to authorize involuntary commitments for treatment of drug and alcohol abuse, beginning July 1, 2009. **Senate Bill 09-007** would have repealed this authority. The bill was postponed indefinitely.

Senate Bill 09-138 implements the recommendations of DORA in its review of the certification program for nurse aides. The bill continues regulation of nurse aides until September 1, 2020. It changes requirements for membership on the Nurse Aide Advisory Committee, and allows members of the committee to receive a per diem for attendance at meetings. The bill adds failing to report a conviction for a crime to the State Board of Nursing as grounds for discipline of a nurse aide. Finally, the bill repeals the Medication Administration Advisory Committee and statutory provisions regarding the administration of medications by nurse aides, and permits the State Board of Nursing to promulgate rules establishing a procedure by which nurse aides may be authorized to administer medications.

Physicians. In 2007, the General Assembly adopted the "Michael Skolnik Medical Transparency Act." The act requires physicians to submit specific information to the State Board of Medical Examiners when they renew their license. **House Bill 09-1188** clarifies that after January 1, 2008, physicians must disclose:

- ownership interest and employment contracts that are health care-related within one year after the information changes;
- involuntary limitations or reductions in medical staff membership or privileges at a health facility that occurred after January 1, 1988; and
- criminal convictions or plea bargains that occurred after a practitioner received a license to practice medicine in any state or country.

The bill further clarifies that physicians are not required to report:

- precautionary or administrative suspensions of medical staff membership or clinical privileges at a health facility; and
- medical malpractice judgments that occurred prior to January 1, 1988.

House Bill 09-1004 allows Programs of All Inclusive Care for the Elderly (PACE programs) to employ physicians. PACE programs are Medicaid managed care programs that provide long-term care services. Previously, such programs could contract for physician services, but could not employ physicians. A PACE program must annually report the number of physicians employed to the Department of Public Health and Environment.

Emergency medical technicians. In order to facilitate the licensing process for emergency medical technicians (EMTs) who are moving to Colorado from other states, **House Bill 09-1275** allows the Department of Public Health and Environment to issue provisional certifications to EMTs.

Provisional certifications may be issued to EMTs who are in the process of completing fingerprint-based criminal history records check and are valid for 90 days. The provisional certifications may be revoked if the EMT violates rules promulgated by the Department of Public Health and Environment.

Social workers and counselors. Under current law, "clinical social work practice" is defined to explicitly include the practice of psychotherapy. **House Bill 09-1339** changes the definition of "clinical social work practice" to have the same meaning as "social work practice," thereby striking the explicit requirement of practicing psychotherapy.

House Bill 09-1086 requires certain professional licensing boards to promulgate rules creating a process by which social workers, marriage and family therapists, professional counselors, and addiction counselors may demonstrate their continuing competency. Beginning January 1, 2011, such professionals must demonstrate continuing competency in order to renew or reinstate a license.

Dentists and dental hygienists. **Senate Bill 09-129** adds language to the definition of what constitutes the practice of unsupervised and supervised dental hygiene and makes clarifications concerning the authorized tasks of dental assistants and hygienists. The bill also defines the term "dental hygiene diagnosis."

House Bill 09-1128 creates an academic license for dentists who are employed by a college of dentistry but who are not otherwise licensed to practice dentistry in Colorado. Dentists holding an academic license are permitted to practice dentistry only while teaching within the college.

Chiropractors. **Senate Bill 09-167** implements the recommendations of DORA in its sunset review of the State Board for Chiropractic Examiners. The bill continues the regulation of chiropractors until July 1, 2020. The bill allows a chiropractor who is licensed to practice in another state to treat members, coaches, and staff of a visiting sports team while in Colorado, without having a Colorado-issued license. In addition, the bill establishes a process through which a chiropractor can register with the board to practice chiropractic techniques on dogs and horses. The bill defines the scope of practice, educational requirements, and continuing education requirements for a chiropractor performs animal chiropractic and requires that a chiropractor receive clearance from a veterinarian to perform unsupervised chiropractic on animals.

Psychiatric technicians. Psychiatric technicians work with individuals with developmental disabilities or mentally ill individuals. Psychiatric technicians have been regulated in Colorado since 1967. In its 2008 sunset review of psychiatric technicians' licensing, DORA recommended that the regulation of psychiatric technicians continue until 2014, and then be permitted to repeal. **Senate Bill 09-120**, which was postponed indefinitely, would have implemented DORA's recommendation. Another bill, **House Bill 09-1341**, continues the licensing of psychiatric technicians until July 1, 2019.

Nursing home administrators. Individuals who are administrators of nursing homes are required by federal law to be licensed. **Senate Bill 09-169** implements the recommendations of DORA in its sunset review of Board of Examiners of Nursing Home Administrators. Specifically, the bill continues the regulation of nursing home administrators until July 1, 2018, and makes the following changes to the regulation of nursing home administrators:

- changes the size and composition of the board;
- allows the board to initiate investigations;
- eliminates the requirement that the board submit an annual report to the Governor; and
- changes the qualifications required to take the licensing examination.

Optometrists. Under current law, optometrists may only dispense "devices" and may not dispense "drugs." Certain lenses are classified by the federal Food and Drug Administration as a "drug." **Senate Bill 09-251** allows optometrists to dispense, for a fee, drug-dispensing contact lenses.

Alternative health care providers. **House Bill 09-1175** would have allowed naturopathic doctors who had completed approved training programs and passed a competency test to register with DORA. Registered naturopathic doctors would have been given title protection. Practicing naturopathic medicine without registering would have been a class 2 misdemeanor for the first offense and a class 6 felony for second and subsequent offenses.

The bill defined naturopathic methods and remedies and specified the scope of practice and prohibited activities of naturopathic doctors. Naturopathic doctors would have been prohibited from prescribing drugs, performing surgery, treating cancer, performing obstetrics, and other activities. Naturopathic doctors were required to disclose to patients details concerning the nature of services, their credentials to practice, and regulatory limitations and remedies. The bill was postponed indefinitely.

Health care providers generally. Hospitals in Colorado are required to maintain a quality management program which is responsible for quality assurance, risk management, and peer review of health care professionals. As introduced, **Senate Bill 09-012** would have allowed health care professionals not covered by a hospital-based quality management program to establish peer review programs to review and investigate the quality and appropriateness of patient care. Health care professionals permitted to participate in peer review activities included: podiatrists, chiropractors, dentists, dental hygienists, midwives, nurses, nursing home administrators, optometrists, occupational therapists, physical therapists, respiratory therapists, emergency medical technicians, social workers, physician assistants, nurse aides, psychiatric technicians, and psychologists. The bill also authorized professional review committees to be formed by organizations and entities including the medical staff of corporations, community clinics, rehabilitation centers, or community mental health centers. Associations of health care providers and individual practice associations or preferred provider organizations composed of at least 25 health care providers were also permitted to form professional review committees. The bill made confidential the proceedings and records of a professional review committee and ensured that participants in the professional review process were immune from liability if acting in good faith. The bill was postponed indefinitely.

Senate Bill 09-061 would have required any internal review of claims or independent medical examination for property and casualty, workers' compensation, and health insurance benefits to be conducted by a Colorado-licensed health care professional. The bill required the health care professional conducting the reviews to be in good standing and to have appropriate expertise in the same or similar specialty as would typically manage the case being reviewed. In addition, written denials of benefits would have been required to identify the health care professional on whose opinion the denial was based. The bill was lost in the House of Representatives.

Medicaid

In addition to House Bill 09-1293, the Health Care Affordability Act, several other bills were proposed which affect the state's Medicaid program.

House Bill 09-1047 allows the DHCPF to request a federal waiver which will establish a pilot program allowing Medicaid clients with spinal cord injuries who are eligible for home- and community-based services to receive complementary or alternative therapies. Alternative therapies are limited to chiropractic care, massage, and acupuncture performed by licensed or certified providers.

Recent changes to federal law give states the option to allow certain immigrants to enroll in Medicaid and CHP+ without a waiting period. Aligning with federal regulation, **House Bill 09-1353** authorizes the DHCPF to provide medical benefits under Medicaid and CHP+ to pregnant women and children who are legal immigrants without a waiting period, as long as other eligibility criteria are met.

Under current law, comprehensive dental benefits are provided only to children in Medicaid and CHP+ and to Medicaid clients enrolled in HCBS waivers for persons with developmental disabilities. Emergency dental benefits, such as tooth extractions, are provided to clients who do not qualify for comprehensive services, but these are very limited. **Senate Bill 09-009** would have added dental services as covered benefits for all eligible Medicaid and CHP+ participants. The bill was postponed indefinitely.

House Bill 09-1020 codifies a project currently in process in the DHCPF which allows for reenrollment of Medicaid and the CHP+ either over the telephone or through the internet. The bill authorizes the department to solicit gifts, grants, and donations for the implementation of the project.

House Bill 09-1073 requires the DHCPF to contract with a nonprofit organization to study the feasibility and advisability of the use of electronic prescriptions in Medicaid. The department must submit its report to the Health and Human Services committees of the General Assembly by June 30, 2010.

Senate Bill 08-090 authorized the use of mail-order pharmacies for Medicaid clients if they require maintenance medications and suffer from a physical hardship or have third-party insurance that requires maintenance medications be obtained through a mail-order pharmacy. **Senate Bill 09-252** authorizes a Medicaid client to receive prescription drugs through mail-order pharmacies if the client has third-party insurance that allows maintenance medications to be obtained through mail-order.

Currently, there is no time limit on Medicaid audits or recoveries under state and federal regulation. **House Bill 09-1084** would have:

- limited a review or audit to no more than three calendar years before the date the audit began; and
- limited record requests to 15 days for each calendar year of the audit, but allowed additional record requests if the audit revealed that 50 percent or more of the initial records require repayment.

The bill would also have required the DHCPF to report information about audit costs, including costs to providers, to the General Assembly. The bill was postponed indefinitely.

Health Care for Older Persons

During the 2009 session, the General Assembly considered legislation relating to programs and services for elderly persons.

House Bill 09-1103 authorizes the DHCPF to seek federal approval to allow people who are in need of long-term care to be presumptively eligible for Medicaid, including home- and community-based services. The bill states that if an application for Medicaid long-term care indicates that the person is eligible, services will be provided and paid for through Medicaid.

Currently, distributions from the Nursing Home Penalty Cash Fund may be made to relocate residents, to maintain the operation of nursing facilities, to close a facility, or to reimburse residents for lost personal funds. The fund consists of civil penalties imposed upon and collected from nursing facilities for violations of federal regulations. **House Bill 09-1196** allows the use of up to 25 percent of the moneys in the fund for measures that improve the quality of life for residents in nursing facilities, such as implementing 'culture change' at a nursing home. The bill also creates a 10-member Nursing Facility Culture Change Accountability Board which is charged to review and make recommendations regarding the use of moneys. The bill specifies that the fund must maintain at least a \$1 million balance, and that 10 percent of the money directed toward quality of life measures may be used to administer the accountability board.

The Division of State and Veterans Nursing Homes within the Department of Human Services (DHS) oversees six state-owned facilities that provide skilled nursing care primarily to honorably discharged veterans and their spouses or widows. In general, these homes are funded through patient, pension, Medicaid, and U.S. Veteran's Administration payments for care. **Senate Bill 09-056** authorizes the executive director of the DHS to divest the Trinidad State Nursing Home. The DHS is required to work with the Board of County Commissioners for Las Animas County and to encourage bids that assure continuity of care for residents and employee retention.

Similar to a bill proposed in previous legislative sessions, **House Bill 09-1097** would have created the Alternative Medical Assistance Program for the Elderly. The program would have allowed a Medicaid-eligible person, age 55 or older, to accept 70 percent of the medical assistance benefits the person would have received under the regular Medicaid program. In return, the state would agree to waive all estate recovery requirements. Participation in the program would have been voluntary. The bill was postponed indefinitely.

House Joint Resolution 09-1017 establishes a 10-member legislative interim committee to study hospice and palliative care. The resolution specifies membership on the committee and requires that the committee meet six times during the 2009 interim. The committee is to consider issues related to hospice and palliative care such as the following:

- barriers to accessing and utilizing care;
- economics and costs savings, including cost savings for Medicaid;
- coverage of care in private health insurance plans and public medical programs;
- program oversight;

- factors contributing to ethical dilemmas at the end of life and methods to reduce those factors; and
- factors limiting the efficacy of hospice care.

Reproductive Health

Senate Bill 09-225 codifies the definition of contraception in state statute. The bill defines contraception as a medically acceptable drug, device, or procedure used to prevent pregnancy. The bill also clarifies that the definition of contraception does not alter the meaning or current statutory definition of emergency contraception.