

Health Care

Health Care Professionals and Facilities

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Sunset Review Board of Medical Examiners

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HB 10-1122 (Enacted)
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Medicaid Hospice Room and Board Charges

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Authentication of Verbal Medical Orders

HB10-1283 (Postponed Indefinitely)
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Report Identify Injectable Drug Diversion

HB 10-1415 (Enacted)
Sunrise Surgical Technologist Registration

Increase Efficiencies in the Delivery of Health Care

HB 10-1216 (Enacted)
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SB 10-073 (Enacted)
Nurse Home Visitor Program

SB 10-115 (Enacted)
Facilities May Donate Unused Medications

Federal Health Care Reform

HJR 10-1009 (Postponed Indefinitely)
10th Amendment Opt-out Federal Health Care Legislation

SJR 10-045 (Postponed Indefinitely)
10th Amendment Opt-out Health Care Law

The General Assembly considered a variety of health care-related legislation during the 2010 session. Major topics addressed include regulation of health care professionals and facilities, Medicaid, hospice and palliative care, patient safety concerns, and increasing efficiencies in the delivery of health care services.

Health Care Professionals and Facilities

In 2010, the General Assembly considered several bills regarding the regulation of health care professionals. In 2007, the General Assembly adopted the "Michael Skolnik Medical Transparency Act." The act requires physicians to submit specific information to the Colorado Medical Board when they renew their license. **Senate Bill 10-124** modifies the transparency act to require the following professions to comply with the disclosure and reporting requirements:

- ▶ audiologists;
- ▶ acupuncturists;
- ▶ podiatrists;
- ▶ chiropractors;
- ▶ dentists and dental hygienists;
- ▶ physician assistants;
- ▶ midwives;
- ▶ nurses;
- ▶ optometrists;
- ▶ physical therapists; and
- ▶ all mental health therapists and counselors.

The regulated professions must report the physical location of their practice, information about past education and licenses or certifications, and information about disciplinary actions. A medical professional is also permitted to report relevant awards and recognitions he or she has received.

Physicians. The legislature considered the recommendations contained in the Department of Regulatory Agencies' (DORA) sunset review of State Board of Medical Examiners, which regulates physicians. The legislature adopted **House Bill 10-1260**, which implements these recommendations. Renamed the Colorado Medical Board, the act continues the board through July 1, 2019. The act makes the following changes to the Colorado Medical Board:

- ▶ expands the size of the board by three members;
- ▶ eliminates the five-year residency requirement for prospective members of the medical board;
- ▶ repeals the statutory requirement that the Governor, when making appointments to the medical board, consult with professional associations for physicians and osteopathic physicians;
- ▶ adds a licensed physician assistant to the medical board; and

- ▶ allows the board to impose fines and adjust fees annually for licenses and the peer health assistance program, and vary those fees based on utilization rates among practice types;
- ▶ creates a new three-member licensing panel within the Colorado Medical Board;
- ▶ adds a licensed physician assistant to the board;

Concerning physicians' practice and licensing, the act updates and makes the following changes:

- ▶ allows a physician to supervise up to four physician assistants rather than two;
- ▶ repeals the existing limited license that is available only to physicians providing pro bono services to pediatric patients of Shriners hospital and replace the limited license with a broader pro bono license that will allow physicians, who are either licensed in Colorado but ceasing their regular practice or are licensed in another jurisdiction, to provide medical services in this state free of charge;
- ▶ creates a new type of license, referred to as a "reentry license," for physicians and physician assistants who have not actively engaged in their respective practices for two years or have not maintained continued competency during that period;
- ▶ requires a licensee with a physical or mental illness to inform the board of their condition, and provides an option to enter into a confidential agreement with the board that outlines any limitations on the licensee's practice;
- ▶ imposes a two-year waiting period to apply for a license to practice medicine for a physician assistant or other health care professional whose license has been revoked, or whose license has been surrendered to avoid discipline;
- ▶ clarifies the conditions under which a physician licensed in another state may engage in the occasional practice of medicine in Colorado without first obtaining a Colorado license;
- ▶ allows a physician or physician assistant who suffers from a physical or mental illness or disability that limits his or her ability to practice to enter into a confidential agreement with the medical board whereby the licensee agrees to limit his or her practice in a manner consistent with the limitations of the disability;
- ▶ allows a physician lawfully practicing in another state or territory to provide medical services to athletes of team personnel registered to train at, or at an event sanctioned by, the United States Olympic training center without having to obtain a Colorado license;

- ▶ requires a licensee to report to the medical board any adverse action taken against him or her within 30 days of the action, and makes failure to report unprofessional conduct subject to discipline. Additionally, the time period for which physicians must report their licensing histories is limited to the prior 10 years; and
- ▶ allows physician assistants to be shareholders in a professional service corporation formed by licensed physicians for the practice of medicine.

The act transfers regulatory authority of emergency medical technicians from the Colorado Medical Board to a newly created 11-member advisory council called the Emergency Medical Practice Advisory Council. Emergency technicians will be regulated by the Colorado Department of Public Health and Environment.

Podiatrists. **House Bill 10-1224** implements the recommendations of the DORA in its sunset review of the Colorado Podiatry Board and continues the board's functions until July 1, 2019. Specifically, the act:

- ▶ allows a licensed podiatrist to perform additional types of surgery, such as ankle surgery;
- ▶ increases the minimum levels of liability insurance for podiatrists who perform surgical procedures from \$500,000 per claim to \$1 million per claim and from \$1.5 million per year for all claims to \$3 million per year for all claims;
- ▶ creates a training license for persons in residency programs;
- ▶ requires an applicant for initial licensure to demonstrate that, during the two years immediately preceding the date the application is received by the board, he or she was enrolled in a medical school or residency program, passed the national examination, was engaged in the active practice of podiatry, or can otherwise demonstrate competency;
- ▶ creates a voluntary license for retired podiatrists; and
- ▶ allows the board to impose a fine for violations of the practice act in lieu of suspending a license.

Finally, the bill requires that the board implement a professional development program for podiatrists. The program must be developed in conjunction with statewide professional associations that represent podiatrists and may include a requirement of at least 14 hours of continuing education. Podiatrists must comply with the program beginning with the 2013 license renewal cycle.

Chiropractors. Chiropractors may not prescribe, compound, or administer drugs or anesthetics. **House Bill 10-1416** would have permitted chiropractors, who had the appropriate training, to administer specific drugs for the treatment of neuromusculoskeletal ailments. The bill stipulated that the State Board of Chiropractic Examiners would have determined the formulary of drugs that could be administered and the appropriate training of chiropractors. The bill was postponed indefinitely.

Health care facilities. **Senate Bill 10-170** would have required limited service clinics, such as Take Care Clinics, to set uniform standards. The standards related to the type of services that a clinic may offer to patients and procedures that must be followed before administering vaccinations. The bill would have required the clinics to develop a procedure for referring a patient to a primary care physician, including maintaining a roster of physicians accepting referrals. The bill was postponed indefinitely.

Medicaid

Several bills passed during the 2010 legislative session that modify the state's Medicaid program. The Colorado Department of Health Care Policy and Financing (DHCPF), which administers the state's Medicaid plan, began the Colorado Eligibility Modernization Project in 2008. The project aims to:

- ▶ increase enrollment and retention in the state's Medicaid and Children's Basic Health Plan (CHP+) programs;
- ▶ implement an easier application process for health care programs;
- ▶ reduce application processing times;
- ▶ increase administrative efficiencies and reduce administrative costs; and
- ▶ ease workload burden on eligibility workers.

Through the implementation of the project, the department has established a single online application for the CHP+ program and Medicaid programs that serve children and families. Home- and Community-based Services (HCBS) waivers for children are also administered through the DHCPF. **House Bill 10-1041** authorizes the department to create a universal application or single point of entry for HCBS waivers for children as part of the Colorado Eligibility Modernization Project.

Medicaid currently provides preventative and emergency dental services to eligible children, and emergency dental services to eligible adults. **House Bill 10-1031** have required the DHCPF to contract with a single entity to administer dental services under Medicaid. The bill was postponed indefinitely.

House Bill 10-1033 adds screening, brief intervention, and referral for treatment (SBIRT) for substance abuse to the list of optional services covered by Medicaid. The SBIRT initiative teaches health care providers to conduct screenings for substance and tobacco use; provide brief interventions to persons with positive screening results; and make referrals for more extensive treatment where appropriate.

Under current law, pharmacists are reimbursed by the state Medicaid program only for medications prescribed by a licensed physician or other practitioner with the authority to prescribe drugs. **Senate Bill 10-117** adds over-the-counter (OTC) medications to the list of services provided under Medicaid, and allows pharmacists to prescribe and be reimbursed for such medication. OTC

medications must be approved by the Drug Utilization Review Board to be eligible for reimbursement. The DHCPF is required to seek approval through the annual budget process to implement pharmacist-prescribed OTC medications and demonstrate that such prescriptions result in cost savings to the state.

Senate Bill 10-167 creates the Colorado Medicaid False Claims Act. The act states that anyone who knowingly submits a false claim or intends to defraud the state or a political subdivision is liable for up to three times the amount of damages, the costs of civil action, and a civil penalty of between \$5,000 and \$10,000. The act requires the DHCPF to:

- ▶ appoint an internal auditor for purposes of conducting internal audits of DHCPF to ensure effective and efficient operation and administration of state programs;
- ▶ ensure that persons who receive public benefits from Colorado are not also receiving them from other states; and
- ▶ implement and maintain a system for reducing medical services coding errors through the use of automatic, prepayment review of medical assistance claims.

Additionally, the act states that individuals who are not eligible to receive state funds, but who provide information to the Attorney General within 30 days of receiving such funds, may be liable for two times the amount of damages and no civil penalty, provided certain conditions are met. The act specifies certain investigative, notification, and court procedures for false claims.

Hospice and Palliative Care

The 2009 Interim Committee to Study Hospice and Palliative Care recommended several bills for introduction during the 2010 legislative session. The committee focused on issues concerning barriers and disincentives that prohibit or prevent patients from receiving hospice and palliative care during chronic and life-threatening illnesses. **House Bill 10-1025** repeals and reenacts the "Colorado Medical Treatment Decision Act" which affirms the right of each patient to accept or reject medical treatment and creates a procedure to make such decisions in advance through a written declaration. The act maintains much of the language previously in law and makes the following changes:

- ▶ the term "lacking decisional capacity" replaces "incompetent," and a new term, "persistent vegetative state," is added to clarify different medical conditions under which the act must be applied;
- ▶ removes from statute the legal form for declarations related to medical or surgical treatment; and
- ▶ allows for existing declarations and declarations made in other states as long as they do not violate Colorado law upon passage of the bill.

During the 2008 legislative session, House Bill 08-1061 authorized advanced practice nurses (APNs) to sign certain documents, like disabled parking permits. The bill also authorized APNs to certify a terminal illness of a patient. **House Bill 10-1024** reverts statutory language back to its original language prior to the passage of House Bill 08-1061 with regard to APNs' ability to certify a terminal illness. The ability to declare a patient terminally ill for purposes of triggering end-of-life decisions is left to the sole discretion of a physician.

Under current law, in order for a hospice care provider to be reimbursed under the state's Medicaid program, a hospice patient must be certified by a physician to have a medical prognosis of six months or less of life expectancy. **House Bill 10-1027** changes the time requirement from six months to nine months, contingent upon the DHCPF receiving federal approval to make such a change.

House Bill 10-1053 requires that two studies be conducted, if sufficient gifts, grants, and donations are received. Specifically, the act requires that:

- ▶ the DHCPF contract for a study of persons with chronic incapacitating conditions who might benefit from receiving services through an alternative care facility under the HCBS waivers; and
- ▶ the Department of Human Services (DHS) contract for a study to evaluate whether the Older Coloradans program would realize a cost savings if additional funding is made available to program participants.

The act specifies the information that the studies must provide, sets the time frames for completing the studies, and establishes reporting requirements. If the study for persons with chronic incapacitating conditions concludes that there are potential cost savings available through the use of alternative care facilities and other changes under HCBS waivers, the act permits the DHCPF to seek any required federal authorization to implement program changes, and seek funding through the annual budget process. If the study of the Older Coloradans Program concludes that changes to community-based services will achieve cost savings, the DHS is required to develop a strategic implementation plan and request funding through the annual budget process.

House Bill 10-1050 authorizes an entity that facilitates the exchange of health information to promote the confidential exchange of forms containing an individual's advanced directives for medical treatment. The Department of Public Health and Environment (DPHE) is required to maintain a link on the department's web site with a copy of any relevant forms

House Bill 10-1122 specifies the requirements and procedures for adults who wish to make advance medical directives concerning the scope of their care and treatment. It sets forth a medical orders for scope of treatment (MOST) form and specifies what the form must include. It also sets forth the requirements for executing the MOST form and related forms, and establishes the requirements that health care providers must follow when treating patients with such forms.

Under current law, room and board expenses are only paid for patients receiving hospice care in a nursing facility. Hospice providers submit claims for these room and board expenses and then reimburse the nursing facilities. **Senate Bill 10-061** requires the state Medicaid program to pay class 1 nursing facilities directly for the room and board costs of a person who is receiving hospice care while in a nursing facility and pay the room and board costs of a hospice patient in a licensed hospice inpatient facility. This change is conditioned upon the receipt of sufficient gifts, grants, and donations to seek federal approval, and the federal government approving room and board payments for patients served in hospice facilities.

Patient Safety

Several bills introduced during the 2010 legislative session aimed at increasing patient safety. **House Bill 10-1283** would have created the Patient Safety Act, which would have required that health care providers make reasonable efforts to verify the employment history and references of all applicants for any job that involved access to patients. The act would have required health care providers and other employers to share known information regarding a health care applicant's work impairment, drug diversion, or patient abuse. The act also would have required that medical doctors engage in ongoing professional development and attest to that when obtaining or renewing a license from the Colorado Medical Board. The bill was postponed indefinitely.

Two bills were introduced in order to increase patient safety after an incident occurred at a hospital in Colorado in which a surgical technician diverted syringes filled with pain medication and replaced them with infected syringes filled with saline solution. Under current law, health care facilities are required to report any instance of drugs being diverted from the intended patient and used by other persons. **House Bill 10-1414** requires that for injectable drugs, the full name and date of birth of the person who diverted the drug must be reported, if known. **House Bill 10-1415** creates a registration program for surgical technicians in the Division of Registrations in the Department of Regulatory Agencies. Beginning April 1, 2011, only persons registered with the division may work as a surgical assistant or surgical technologist.

Prior to passage of the **House Bill 10-1229**, verbal medical orders were required to be authenticated within a 48-hour time period. The act specifies that orders verified through a read-back process be authenticated within 30 days. The act does not change the requirement that all verbal medical orders in hospitals to be authenticated by a physician or another individual who has authority within 48 hours, unless they have been verified through a read-back process.

Increase Efficiencies in the Delivery of Health Care

Several bills passed during the 2010 legislative session that aim to increase efficiencies in the delivery of the various health care services. In 2009, a flu pandemic called the H1N1 flu, infected several individuals around the globe. Prior to the passage of **House Bill 10-1216**, Colorado state law prohibited pharmacist from taking vaccinations off the premise for administration. In response to the pandemic flu outbreak and the desire to serve various populations outside of a pharmacy setting, the act permits a prescription drug outlet to allow a pharmacist to take immunizations and vaccines off the premises for administration to a patient.

After the earthquake in Haiti, several health care facilities and individuals expressed desire to donate their unused medications to individuals in need. Colorado law only allowed unused medications to be redispensed within a health care facility. **Senate Bill 10-115** allows a licensed health care facility to return unused medication, medical devices, or medical supplies to a pharmacist in the facility or a prescription drug outlet upon receiving permission from a patient or their relative. Any items returned may be redispensed to another patient or donated to a practitioner with prescription authority or non-profit entity serving disaster victims. Donations made to a non-profit entity are to be reviewed by a licensed pharmacist and may not include certain medications, including controlled substances and those that require special handling.

The Nurse Home Visitor Program was created in 2000 by the General Assembly to provide in-home nursing services to low-income, first-time mothers. The program is administered by the DPHE and three contractors including Anschutz Medical Campus. **Senate Bill 10-073** modifies the duties for the DPHE and the Anschutz Medical Campus concerning the operation of the Nurse Home Visitor Program. The Anschutz Medical Campus is responsible for the following:

- ▶ providing programmatic and clinical support;
- ▶ cooperating with DPHE on the financial administration of the program; and
- ▶ working with the state auditor's office.

The DPHE is responsible for the financial administration of the program. The act specifies the amount of funding that may go to the administration of the program.

Federal Health Care Reform

The General Assembly considered a two joint resolutions concerning federal health care reform. Both **Senate Joint Resolution 10-045** and **House Joint Resolution 10-1009** required Colorado to "opt out" of federal health care reforms based on the Tenth Amendment of the United States Constitution. The Tenth Amendment to the United States Constitution specifies that powers not specifically given to the federal government are reserved to the states, or to the people. Both joint resolutions were postponed indefinitely.