

HEALTH CARE

Health Care Professionals

SB 13-026 (*Enacted*)

Update Michael Skolnik Medical
Transparency Act

SB 13-039 (*Enacted*)

Regulate Audiology Practice

SB 13-207 (*Enacted*)

Auricular Acudetox Mental Health
Professionals

SB 13-215 (*Enacted*)

Alternative Health Care Consumer
Protections

HB 13-1063 (*Enacted*)

Emergency Service Providers Critical
Care Endorsement

HB 13-1065 (*Enacted*)

Federal Professionals Mental Health
Authority

HB 13-1104 (*Enacted*)

Mental Health Professional Oral
Disclosure Peer Assistance

HB 13-1111 (*Enacted*)

Regulate Naturopathic Doctors

Medicaid and the Children's Basic Health Plan

SB 13-008 (*Enacted*)

Eliminate Waiting Period Under CHP+

SB 13-137 (*Enacted*)

Improving Medicaid Fraud Detection

SB 13-200 (*Enacted*)

Expand Medicaid Eligibility

SB 13-209 (*Postponed Indefinitely*)

Personal Needs Allowance Nursing
Care Facilities

SB 13-242 (*Enacted*)

Adult Dental Medicaid Benefit

HB 13-1068 (*Enacted*)

On-site Inspections of Medicaid
Providers

HB 13-1175 (*Postponed Indefinitely*)

Higher Education Funding Before
Medicaid Expansion

HB 13-1196 (*Enacted*)

Report Waste-prevention Methods
Accountable Care

HB 13-1199 (*Enacted*)

Nursing Home Provider Fee Statute

HB 13-1202 (*Enacted*)

Counseling Relating to Scope of
Treatment Medicaid

Health Care Reform and Access

SCR 13-002 (*Deemed Lost*)

Colorado Health Care Cooperative

SJR 13-021 (*Postponed Indefinitely*)

Interim Committee Study Health Care

HB 13-1078 (*Postponed Indefinitely*)

Repeal Colorado Health Benefit
Exchange

HB 13-1115 (*Enacted*)

CoverColorado Repeal

HB 13-1245 (*Enacted*)

Funding Colorado Health Benefit
Exchange

HB 13-1266 (*Enacted*)

Health Insurance Alignment Federal
Law

Prescription Drugs

SB 13-014 (*Enacted*)

Immunity for Administration of
Emergency Drugs to Overdose
Victims

HB 13-1121 (*Postponed Indefinitely*)

Pharmacist Substitute Biosimilar
Products

Abortion

SB 13-056 (*Postponed Indefinitely*)

Ban Sex-selection Abortions

SB 13-066 (*Postponed Indefinitely*)

Taxpayer Abortion Separation Act

HB 13-1033 (*Postponed Indefinitely*)

Abortion Ban

HB 13-1131 (*Postponed Indefinitely*)

Ban Sex-selection Abortions

During the 2013 legislative session, the General Assembly considered a variety of health care-related bills. Specific topics that were addressed included the regulation of health care professionals, Medicaid and the Children's Basic Health Plan, health care reform and access, prescription drugs, and abortion.

Health Care Professionals

In 2013, the General Assembly considered a variety of bills related to health care professionals. **Senate Bill 13-026** modifies the Michael Skolnik Medical Transparency Act, which requires most regulated medical practitioners to disclose certain information to the Division of Professions and Occupations, Department of Regulatory Agencies (DORA), whenever they obtain or renew a license. The division gathers the specified information and makes it available to the public. This bill requires that, beginning July 1, 2014, the following regulated professions also comply with the disclosure and reporting requirements:

- athletic trainers;
- massage therapists;
- certified nurse aides;
- occupational therapists;
- respiratory therapists;
- pharmacists;
- psychiatric technicians; and
- surgical assistants and surgical technologists.

Audiologists. Audiology practice has been regulated by Colorado law since 1996. An audiologist is a medical practitioner who treats individuals with hearing loss, balance issues, and related disorders. Under current law, regulation and licensing of audiologists will end on July 1, 2013. **Senate Bill 13-039** reauthorizes the DORA to license audiologists, and implements recommendations from the 2011 sunset review of the audiology licensure program. The licensing program is repealed September 1, 2020, following a sunset review. Additionally, the bill separates in statute the regulation of audiologists and hearing aid providers, which had previously been included in the same article.

Mental health professionals. Auricular acudetox is defined as the subcutaneous insertion of sterile, disposable acupuncture needles on five specific locations of a person's ear. **Senate Bill 13-207** allows certain mental health professionals to perform auricular acudetox under their current scope of practice if they have completed specific training. These mental health professionals include psychologists, social workers, marriage and family therapists, licensed professional counselors, addiction counselors, and registered psychotherapists. Mental health professionals who perform auricular acudetox may not use the title "acupuncturist" or otherwise claim to be qualified to perform acupuncture beyond this specific procedure as allowed by the bill.

House Bill 13-1063 requires the Department of Public Health and Environment executive director to adopt rules establishing standards for a critical care endorsement for emergency medical service (EMS) providers. If the executive director is not a physician, the chief medical officer adopts the rules. A critical care endorsement allows EMS providers to perform certain tasks and procedures. The required rules must be adopted by August 1, 2014.

Current law requires that a mental health practitioner be licensed in Colorado in order to treat persons with mental illness. **House Bill 13-1065** allows persons licensed to practice and in good standing in another state to treat persons with a mental illness at facilities operated in

Colorado by certain federal agencies, including the armed forces, the U.S. Public Health Service, and the U.S. Department of Veterans Affairs.

House Bill 13-1104 makes modifications to the regulation of mental health professionals. It eliminates the requirement that certain mandatory disclosures be made orally, while retaining written disclosures.

The bill clarifies aspects of the mental health professionals' peer assistance program which concerns physical, emotional, or psychological conditions that may be detrimental to their ability to practice. Specifically, the bill requires the Division of Professions and Occupations director, DORA, to annually review the program fee, which is capped at \$25. Additionally, the board that regulates the professional is to reinstate the license, registration, or certification upon receipt of notice that a licensed professional has completed his or her treatment program. Finally, persons registered as a psychologist candidate, marriage and family therapist candidate, or licensed professional counselor candidate are:

- not permitted to testify without consent;
- required to report suspected child abuse or neglect;
- permitted access to certain records of child abuse or neglect; and
- required to provide access to records as requested by a coroner.

Naturopathic doctors and alternative health care providers. As in past years, the General Assembly considered legislation to regulate alternative health care providers and naturopathic doctors. **Senate Bill 13-215** places certain requirements and restrictions on practitioners of complementary and alternative health care services who are not otherwise licensed or regulated by the state as a health care professional. Specifically, the bill requires practitioners of complementary and alternative health care services to provide certain written disclosures to clients; outlines services and practices that may not be performed by practitioners of complementary and alternative health care services, as well as procedures that may be provided with certain training; and specifies which persons are not allowed to engage in complementary and alternative health care services. Failure to provide the required disclosure or performing prohibited services constitutes a deceptive trade practice under the Colorado Consumer Protection Act. The bill also specifically exempts complementary and alternative health care services from the definition of "practice of medicine" if the services are provided in compliance with the bill.

Currently, naturopathic doctors (ND) are not regulated by the state and are not required to obtain a license, certification, or registration to practice naturopathic medicine in Colorado. **House Bill 13-1111** requires naturopathic doctors to obtain a registration to practice in Colorado, creates a registration program for NDs in the Division of Professions and Occupations, DORA, and creates the Naturopathic Medicine Advisory Committee to advise the director of the division in the regulation of NDs.

Beginning June 1, 2014, only individuals properly registered by the DORA may use the title "naturopathic doctor" or otherwise represent themselves as such. In addition, the bill:

- defines NDs and the scope of their practice;
- specifies educational background, examination requirements, patient disclosure and record keeping requirements, and continuing professional competency of NDs;
- requires the division to adopt necessary rules, including application procedures;
- provides the division with the ability to set fees and schedule renewals;
- establishes the grounds for disciplinary proceedings;
- authorizes the division to take disciplinary actions, including assessing fines; and
- establishes a class 2 misdemeanor for practicing without an active ND registration.

The registration program is repealed September 1, 2017, following a sunset review.

Medicaid and the Children's Basic Health Plan

Medicaid and the Children's Basic Health Plan (CBHP) are health care programs that provide medical care to adults and children in families with low incomes. The state and federal government jointly administer and fund both programs. In 2013, the General Assembly considered a number of bills related to these programs. The legislature addressed eligibility levels for the programs, administration of the Medicaid program, and changes to benefits and services offered under the Medicaid program.

Medicaid and CBHP eligibility. The legislature considered several bills concerning eligibility criteria for Medicaid and CBHP.

Senate Bill 13-008 modifies eligibility for the CHBP by eliminating the waiting period for certain clients. Under current law, if a child is insured by a comparable health plan through an employer and the employer contributed at least 50 percent of the premiums, there is a three-month waiting period.

In 2010, the federal government adopted the Patient Protection and Affordable Care Act (ACA), which sets forth a number of requirements that affect Medicaid. Among its many provisions and beginning in 2014, the ACA allows states to increase the upper income limit or expand eligibility for Medicaid to 133 percent of the federal poverty level (FPL), or \$14,856 for an individual and \$30,657 for a family of four in 2013. **Senate Bill 13-200** expands Medicaid eligibility to 133 percent of the FPL for parents and caretaker relatives with dependent children and adults without dependent children (AWDC). It also allows the state's share of costs for these eligibility groups, up to 133 percent of the FPL, to be paid with Hospital Provider Fee Cash Fund moneys.

For the first three years, the federal government will pay the cost of expanding eligibility. Beginning in FY 2016-17, the federal government will reduce its share gradually until, in 2020, it covers 90 percent of expansion costs.

The bill also repeals provisions of current law that allow the state to reduce, by rule, eligibility or benefits for optional groups in the Medicaid or CBHP programs if there are insufficient Hospital Provider Fee Cash Fund monies and matching federal funds. Under current law, the state may reduce benefits for parents with incomes of between 61 percent and 100 percent of FPL, and the state may reduce or eliminate benefits for the AWDC group entirely.

House Bill 13-1175, which was postponed indefinitely by the House Public Health Care and Human Services Committee, would have prohibited the state from expanding eligibility for the Medicaid program under the ACA until the General Fund appropriation to the Department of Higher Education was at least \$747 million dollars.

Medicaid administration. In 2013, the General Assembly considered a number of bills related to Medicaid administration, including legislation related to investigation of fraud, provider inspections and fees, and cost containment.

Senate Bill 13-137 directs the Department of Health Care Policy and Financing (HCPF) to issue a request for information (ROI) regarding the use of predictive analytics technologies in the Medicaid program by September 30, 2013. The primary purpose of the ROI is to obtain information on proven strategies to identify and reduce fraud, waste, and abuse in Medicaid prior to the payment of claims. Based on the results of the ROI, the department is encouraged to develop requests for proposals to implement strategies that will:

- result in cost savings to the state;
- be integrated into existing operations without creating additional costs to the state; and
- not result in delays or the improper denial of legitimate claims by providers.

Under current state law, the state is required to provide a minimum of ten days advance notice of a pending review or audit before conducting an on-site inspection of a Medicaid provider. **House Bill 13-1068** aligns state law concerning the inspection of Medicaid providers with federal law by permitting unannounced, on-site inspections. Federal law requires that Medicaid providers allow the state to conduct on-site inspections, unannounced and without advance notice, for audit or review reasons or to otherwise ensure compliance with state and federal law.

House Bill 13-1196 requires HCPF to make an annual report to legislative committees of reference about efforts to reduce waste and duplication within the Accountable Care Collaborative program of Medicaid. The report is to include information about efforts and outcomes regarding cost-containment strategies, statutes or policies that prevent regional collaborative care organizations (RCCOs) from realizing efficiencies, efforts by RCCOs and the department to reduce waste, and the counties served by each RCCO.

House Bill 13-1199 modifies the definition of an assisted living residence and clarifies what types of continuing care retirement communities are exempt from paying the nursing home provider fee. It removes a requirement that HCPF collect provider fees no later than the end of the next succeeding calendar month. The bill also allows nursing facilities to submit reports on the number of care days provided to nonmedicare residents annually, rather than monthly.

Medicaid benefits and services. In 2013, the General Assembly considered several bills to expand benefits and services under Medicaid. The bills addressed the personal needs allowance for residents of nursing or immediate care facilities, adult dental benefits, and end-of-life planning.

Senate Bill 13-209, which was postponed indefinitely by the Senate Appropriations Committee, would have increased the personal needs allowance (PNA) for a resident of a nursing facility or an intermediate care facility for individuals with intellectual disabilities from \$50 to \$75. A PNA for residents of Medicaid nursing facilities was enacted by federal law in 1987. The PNA allows for the purchase of clothing and other goods and services that are not reimbursed by any state or federal program, and states have the option to set the PNA at a higher rate.

A number of national and state studies show that untreated dental conditions have led to increased use of hospital emergency departments, resulting in more costly care. **Senate Bill 13-242** adds dental services for adults to the list of optional services provided in Medicaid. It requires HCPF to design the dental benefit and implement services by April 1, 2014. The bill creates the Adult Dental Fund and transfers funds from the Unclaimed Property Trust Fund to pay for the benefit. Colorado currently provides a dental benefit to children 21 years of age and younger in the Early and Periodic Screening, Diagnosis, and Treatment program. For most adults, reimbursement is provided for emergency dental services only. Clients with certain concurrent medical conditions are also allowed access to dental services for conditions related to oral cavities, but not preventative or restorative services.

Medical orders for scope of treatment (MOST) is a process whereby medical providers help persons plan for and make end-of-life decisions. **House Bill 13-1202** adds counseling for MOST by Medicaid providers to the list of services that are eligible for reimbursement, provided federal cost sharing is available. Under current law, Medicaid providers are allowed to provide MOST, but are not eligible to be reimbursed for the service. Many persons receiving this type of service in other states are those:

- residing in long-term care facilities;
- receiving long-term care services;
- likely within the last year of life; or
- wishing to avoid some or all medical interventions related to illness or advanced age.

Health Care Access and Reform

Health care reform and access to health care continue to be topics of discussion. In 2013, the General Assembly considered several bills that concerned the Colorado Health Benefit Exchange (exchange), which is a non-profit organization to oversee the establishment and operation of a competitive insurance marketplace in Colorado. The exchange was established by Senate Bill 11-200 and is governed by a board of directors. No General Fund moneys may be used to implement the exchange, and all expenses of the exchange and the board are required to be paid with gifts, grants, and donations. The exchange is expected to be fully operational by January 2014.

Additionally, the General Assembly enacted a bill to align Colorado's health insurance laws with the requirements of federal health care legislation, but did not enact two resolutions to address health care access.

House Bill 13-1245 creates two funding mechanisms to support the operations of the exchange.

The first funding mechanism created is an insurance assessment. Through the bill, the exchange board of directors may assess a fee on health plans in the small group and individual markets, as well as on dental plans, during the period from January 1, 2014, through December 31, 2016. The fee is limited to \$1.80 per member for month for health insurance carriers and up to \$0.18 per member per month for dental plans. The Commissioner of Insurance is required to promulgate rules for the collection and assessment of the fee on carriers.

The second funding mechanism created by the bill is a tax credit against the premium tax owed by insurance carriers for donations to the exchange. The tax credit is capped at \$5.0 million per year statewide and may be claimed by a carrier against its quarterly premium tax payment beginning in the 2013 tax year. To claim the credit, a carrier must follow the rules promulgated by the Commissioner of Insurance and complete the specified process for becoming a qualified taxpayer.

Additionally, the bill specifies that any funds received from the reserves of CoverColorado under House Bill 13-1115 or from a transfer from the Unclaimed Property Trust Fund must be used to reduce the assessment charged to health plans. The bill also clarifies that the exchange board is required to submit an annual report of its operational and financial plans to the Legislative Health Benefit Exchange Implementation Review Committee and that the committee is required to meet at least two times per year. Also, the exchange board is authorized to create a separate program to offer ancillary products that shares resources and infrastructure with the exchange. Lastly, the exchange board is authorized to enter into an agreement with the Office of Administrative Courts, Department of Personnel and Administration, to use administrative law judges to hear matters resulting from the exchange.

Due to the passage of federal health care reform, Colorado residents who are termed "high risk" will have options other than CoverColorado from which to obtain health insurance as of January 1, 2014, when the exchange is operational. Because there is no reason to continue CoverColorado, **House Bill 13-1115** repeals CoverColorado as of March 31, 2015. Prior to the

repeal, the board of directors of CoverColorado is to develop an orderly plan for the cessation of the program.

As part of the repeal, insurance carriers will no longer be assessed to help fund CoverColorado and will no longer be able to claim \$5.0 million in tax credits that will instead go to the General Fund. Transfers from the Unclaimed Property Trust Fund will cease on May 1, 2013. On July 1, 2013, CoverColorado will return \$15 million to the Unclaimed Property Trust Fund. Individuals who lose health insurance coverage due the elimination of CoverColorado will be able to enroll in the exchange.

House Bill 13-1078, which was postponed indefinitely, would have repealed the Colorado Health Benefit Exchange Act.

House Bill 13-1266 aligns state health insurance laws with the requirements of the federal health care reform under the ACA and the Health Care and Education Reconciliation Act. Among other things, the bill:

- conforms Colorado's mandatory coverage provisions to those in federal law;
- enacts the terms of Colorado's essential health benefits package;
- requires all individual and small employer health insurance carriers selling health plans to issue and renew plans to all eligible individuals;
- requires health plans to cover dependents up to age 26;
- prohibits exclusions based on preexisting conditions;
- prohibits discrimination against licensed or certified health care providers in individual or group health benefit plans;
- aligns the process in Colorado law with that in federal law for the internal and external independent review of adverse determinations with respect to denial of benefits;
- conforms wellness and prevention program requirements with federal law;
- authorizes the Commissioner of Insurance to adopt rules necessary to comply with federal law; and
- makes various definitions consistent with federal law.

As the state moves forward with implementing federal health care reform, the discussion about creating a universal health care system continues. The following two resolutions would have provided avenues for the creation of a universal health care system. **Senate Concurrent Resolution 13-002**, which was deemed lost in the Senate, would have referred a constitutional amendment to the voters to create the Colorado Health Care Cooperative (the cooperative) to provide access to, and payments for, health care services for all residents of the state. The cooperative would have been required to contract with providers and accountable care organizations to deliver certain health care benefits. The resolution outlined the governance structure for the cooperative. Additionally, the resolution provided for funding sources for the cooperative, including payroll and income taxes, existing state and federal fund sources, and the ability of the cooperative's board of directors to seek federal waivers to allow federal funds to be used by the cooperative to pay for health care costs in Colorado.

Senate Joint Resolution 13-021, which was postponed indefinitely by the House Health, Insurance, and Environment Committee, would have created an interim legislative committee to study and analyze ways to create a statewide health care system to provide healthcare to all Coloradans. The committee would have been comprised of legislative members, and persons representing the public and private sector. The committee would have been required to submit a written report of its findings to specified legislative committees on or before December 15, 2013.

Prescription Drugs

An opioid antagonist blocks the effects of prescription and illicit opioids. **Senate Bill 13-014** provides immunity from criminal and civil liability for a person other than a health care provider or a health care facility who acts in good faith to administer an opiate antagonist to another person who is believed to be suffering an opiate-related overdose. The bill allows for the prescribing, dispensing, administering, or distribution of an opiate antagonist by a licensed health care practitioner, if he or she prescribed, dispensed, administered, or distributed the opiate antagonist in a good faith effort to assist:

- a person who is experiencing or likely to experience an opiate-related drug overdose event; or
- a family member, friend, or other person who is in a position to assist a person who is experiencing or likely to experience an opiate-related drug overdose event.

Biological products are used to prevent, treat, or cure diseases. These include vaccines, viruses, blood and blood components, gene therapy, and proteins. Biological products are generally made from human and/or animal materials as opposed to drugs made through chemical processes. The ACA allows for the licensure of biological products that are biosimilar to, or interchangeable with, already licensed biological products. **House Bill 13-1121**, which was postponed indefinitely by the Senate Health and Human Services Committee, would have allowed pharmacists to substitute a biosimilar product for a prescribed biological product if certain conditions were met. Additionally, pharmacists making such substitutions would have been subject to certain notification and record retention requirements. Finally, the Board of Pharmacy would have been required to maintain a link on its website to the Federal Drug Administration's website that identifies approved biosimilar products.

Abortion

Several bills during the 2013 legislative session addressed abortion and crimes against pregnant women. None of the bills specifically addressing abortion were enacted. For bills addressing crimes against pregnant women, please see the Summary of Major Criminal Justice Legislation.

House Bill 13-1033, which was postponed indefinitely by the House Health, Insurance, and Environment Committee, would have made knowingly terminating a pregnancy, by either procedural or pharmacological means, a class 3 felony. The bill included exemptions for licensed physicians who:

- perform a medical procedure designed to prevent the death of a pregnant mother, if the physician makes reasonable medical efforts to preserve both the life of the mother and the unborn child; and
- provide medical treatment to the mother that results in the accidental or unintentional injury or death to the unborn child.

The bill also specified that the pregnant woman upon whom an abortion is performed or attempted is not subject to a criminal penalty. Finally, the bill addressed when during a pregnancy contraceptives could be sold, used, prescribed, or administered, and included a convicted under the bill in the definition of "unprofessional conduct" for physicians.

Under current law, the Colorado Constitution prohibits public funds from being used to directly pay for an induced abortion or to reimburse anyone for an induced abortion. **Senate Bill 13-066**, which was postponed indefinitely by the Senate Judiciary Committee, would have prohibited public moneys from going to any individual, entity, or organization that performs an induced abortion, advocates for induced abortions, or provides referrals for induced abortions.

Senate Bill 13-056 and **House Bill 13-1131**, which were postponed indefinitely by the Senate Judiciary Committee and the House State, Veterans, and Military Affairs Committee, respectively, would have made performing a sex-selection abortion and other related actions a class 2 felony. The other related actions identified in the bill were coercion of a sex-selection abortion, solicitation or acceptance of funds for a sex-selection abortion, or transporting a woman into Colorado to obtain a sex-selection abortion. The bill provided for certain exceptions and included sentencing requirements.