

# HEALTH CARE

## Children's Health Care

**HB 08-1341** (Postponed Indefinitely)  
Alcohol Sales Tax Children Basic  
Health

**HB 08-1391** (Enacted)  
Mental Health Services Child Abuse  
Pilot

**SB 08-160** (Enacted)  
Children's Health Care

## Health Care for Older Persons

**HB 08-1114** (Enacted)  
Medicaid Nursing Facility  
Reimbursements

**HB 08-1124** (Postponed Indefinitely)  
Alternative Medicaid Program for  
Elderly

**HB 08-1242** (Postponed Indefinitely)  
Medicaid Home Care Service  
Providers

**HB 08-1374** (Enacted)  
Remove Cap on PACE Program  
Rate

**SB 08-058** (Enacted)  
Alzheimer's Coordinating Council Act

**SB 08-064** (Postponed Indefinitely)  
Increase for Supplemental Old Age  
Pension Fund

**SB 08-131** (Enacted)  
Increase for Supplemental Old Age  
Pension Fund

## Health Care Reform

**SB 08-217** (Enacted)  
Centennial Care Choices

## Health Care Professionals

**HB 08-1032** (Vetoed)  
Medicaid Pharmacy Payments

**HB 08-1060** (Enacted)  
Advanced Practice Nurse Network  
Provider

**HB 08-1061** (Enacted)  
Advanced Practice Nurse Affidavit  
Cert

**HB 08-1064** (Postponed Indefinitely)  
Regulate Naturopathic Doctors

**HB 08-1087** (Enacted)  
First-level Appeal Dentist Clinical  
Peer

**HB 08-1094** (Enacted)  
Advanced Practice Nurses  
Reimbursement

**HB 08-1134** (Enacted)  
Dental or Dental Hygiene Practice  
Owner

**HB 08-1158** (Postponed Indefinitely)  
Colorado Health Freedom Act

**HB 08-1262** (Postponed Indefinitely)  
Prevention of Epileptic Seizures

**HB 08-1383** (Enacted)  
Nursing License Inactive Status

**SB 08-090** (Enacted)  
Medicaid Mail-Order Prescription  
Drugs

**SB 08-138** (Enacted)  
Physician Designation Full  
Disclosure

**SB 08-185** (Postponed Indefinitely)  
Interchange Prescribed  
Immunosuppressant

**SB 08-188** (Enacted)  
Pilot Program for Direct Care Nurses

**SB 08-190** (Postponed Indefinitely)  
Pharmacist Redispense Unused  
Medications

**SB 08-196** (Enacted)  
Nursing Quality Measures Hospital  
Report

**SB 08-219** (Enacted)  
Licensure of Massage Therapists

**SB 08-220** (Enacted)  
Employ Physicians by Health Care  
Entity

## Medicaid

**HB 08-1072** (Enacted)  
*Medicaid Buy-in for Disabled Persons*

**HB 08-1150** (Vetoed)  
*Medicaid Alternative Therapies Program*

**HB 08-1409** (Enacted)  
*Medicaid Third Party Recoveries*

**SB 08-099** (Enacted)  
*Extend Medicaid Foster Care*

**SB 08-161** (Enacted)  
*Medicaid and CHP+ Enrollment*

**SB 08-214** (Enacted)  
*Local Government Medicaid Provider Fees*

**SB 08-230** (Enacted)  
*Hospitals Medicaid Units of Government*

## Reproductive Health

**SB 08-003** (Enacted)  
*Medicaid Family Planning*

**SB 08-095** (Postponed Indefinitely)  
*Abortion Informed Consent and Ultrasound*

The General Assembly considered a variety of health care-related legislation during the 2008 session. Major topics addressed include health care reform, Medicaid, children's health care, long-term care, reproductive health care, health care professionals, and health care for older persons.

## Children's Health Care

Several bills during the 2008 session increased funding or services for health care programs for children. Specifically, the legislature passed a bill that provides comprehensive mental health screening and treatment for children between the ages of four to ten.

**Senate Bill 08-160** makes the following changes to the Children's Basic Health Plan (CBHP):

- expands eligibility from 205 percent to 225 percent of federal poverty level (FPL) for both children (beginning March 2009) and pregnant women (beginning October 2009);
- allows eligibility to increase up to 250 percent of FPL subject to available appropriations;
- increases the mental health benefits to be as comprehensive as those provided in Medicaid; and
- allows money in the CBHP Trust to pay the state's portion of any computer system changes necessary to expand CHBP eligibility.

**House Bill 08-1391** creates the Child Welfare and Mental Health Services Pilot Program within the Department of Human Services (DHS). The act states that by July 1, 2008, the DHS must issue a request for proposals for the selection of a contractor to develop and implement the program to provide mental health screenings, evaluations, and mental health services for any child ages four through ten who is the subject of a substantiated case of abuse or neglect, and to his or her siblings. The act specifies that children receiving services through the pilot may continue to receive services after their tenth birthday. The act specifies that on or before July 1, 2009, the pilot program is to be implemented in a minimum of three Colorado counties. Participating counties are to be selected based upon applications submitted to the DHS. The DHS must submit a report of its evaluation of

the pilot program to the House and Senate Health and Human Services committees by January 30, 2012.

**House Bill 08-1341** would have referred a measure to the voters to authorize a 2 percent increase in the state sales and use tax on alcoholic beverages to fund the Children's Basic Health Plan. The bill was postponed indefinitely.

### **Health Care for Older Persons**

During the 2008 session, the General Assembly considered legislation relating to programs and services for elderly persons and reimbursement rates for long-term services and facilities through Medicaid.

***Programs and services.*** The Old Age Pension Health and Medical Program provides health care to elderly individuals with low incomes who do not qualify for Medicaid. Funding for the program is provided through a constitutionally-established fund that is capped at \$10 million annually, and a supplemental fund which currently receives \$750,000 annually. The General Assembly considered two bills to provide funding to increase rates for providers who participate in the program. Beginning with FY 2009-10, **Senate Bill 08-131** increases funding for the supplemental fund by \$2,100,000. Therefore, the total funding for the supplemental fund will increase from \$750,000 to \$2,850,000 annually. **Senate Bill 08-064**, which was postponed indefinitely, would have increased funding for the supplemental fund by \$1,250,000 annually.

Similar to a bill proposed in previous legislative sessions, **House Bill 08-1124** 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.

Designed to address the growing incidence of Alzheimer's disease in the state, **Senate Bill 08-058** creates the Colorado Alzheimer's Coordinating Council. The 22-member council is charged with assessing the current and future impact of Alzheimer's disease in Colorado, and formulating a state plan to address the impacts of the disease in the state. The council is to begin meeting no later than March 1, 2009, and must meet at least quarterly. The council must submit an initial report of its findings to the Governor, the General Assembly, and participating state departments within 18 months of the council's first meeting. Within six months of the submission of the initial report, the chairs of the House and Senate Committees on Health and Human Services are required to convene at least one joint meeting to review the report.

***Reimbursement of long-term care programs and facilities.*** The General Assembly considered a number of measures related to reimbursement of long-term care facilities by Medicaid. **House Bill 08-1114** creates a new method of reimbursing nursing facilities. Specifically, the bill requires the Department of Health Care Policy and Financing to reimburse a Medicaid-certified class I nursing facility provider a per diem rate for the direct and indirect cost of health care services and raw food. The reimbursement schedule is to be adjusted annually. Per diem rates are to be adjusted based upon certain factors including patient acuity, administrative costs, capital expenses,

and performance. The department is required to charge and collect a quality assurance fee from nursing facilities, with certain exceptions. Fees are intended to allow for increased payments to Medicaid nursing facilities based on the new reimbursement system. The new nursing facility rate method is conditional upon the federal approval of the fee.

The Program of All-inclusive Care for the Elderly (PACE) is a Medicare/Medicaid managed care program providing health care and support services to individuals 55 years of age and older who are at risk of institutional care. To address concerns that inadequate reimbursement payments may cause providers to leave the PACE program, **House Bill 08-1374** removes the cap on payment rates for PACE providers of 95 percent of the Medicaid fee-for-service costs of a similar population.

**House Bill 08-1242**, postponed indefinitely, would have made changes to reimbursement of home care services by Medicaid. Specifically, the bill:

- required the Department of Health Care Policy and Financing to establish differential pay rates for holidays, late evenings, and early mornings for certain Medicaid providers who provided services in the client's home;
- required reimbursement for mileage for home health providers in rural counties; and
- removed limits on the number of hours of care a family member could provide services for certain clients.

## **Health Care Reform**

In the 2006 legislative session, Senate Bill 06-208 established the Blue Ribbon Commission on Health Care Reform. Specific requirements of the commission were outlined in Senate Bill 06-208. The Blue Ribbon Commission on Health Care Reform presented its report to the House and Senate Health and Human Services committee in January of 2008. As a result of the recommendations from the commission, **Senate Bill 08-217** requires the Department of Health Care Policy and Financing, 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. The act states that the Governor will appoint the panel of experts which is to include persons experienced in implementing and managing health benefit plans, and persons experienced with disability and long-term care issues. If the Governor fails to appoint members of the panel by July 1, 2008, the Speaker of the House of Representatives and the President of the Senate will each appoint five members to the panel of experts by July 15, 2008. The RFI will begin July 1, 2008. The value benefit plans (VBPs), at a minimum, must:

- offer benefits that approximate 80 percent of the actuarial value of the preferred provider organization plan offered to state employees;
- include benefits for participation in wellness programs and incentives for participation in healthy behavior;
- provide the lowest-level of benefits that may be offered in the state's individual market;
- specify an adequate network of providers;
- encourage the use of health information technology, telemedicine, and internet-based health care education materials and tools;

- encourage the use of pay-for-performance systems for reimbursing health care providers;
- encourage the use of regional networks of hospitals, physicians, community health centers, and other safety net providers;
- limit rate setting characteristics to those based on age and geographic location of the policyholder with optional coverage choices for consumers;
- be offered statewide and issued to any Colorado resident eligible; and
- allow payment through a state-paid premium subsidy.

The act states that the department, in collaboration with the division and the panel of experts, must provide a progress report to the legislative committees by December 15, 2008, on the status of the RFI. On or before March 1, 2009, the department, in collaboration with the division and the panel of experts, must provide a final report on the RFI to the legislative committees. The final report must include actuarial projections, research on potential cost savings, and any legislative recommendations.

The act directs the House and Senate Health and Human Services committees to review the final report and determine whether to create the Centennial Care Choices Program, whether to create a premium subsidy program, and whether to create a permanent funding source for the program.

If the General Assembly enacts legislation to create the Colorado Centennial Care Choices Program, and if a funding source is identified and approved, the department may develop a request for proposals (RFPs) to be issued to interested insurance carriers for the purpose of developing plan designs for the VBP. Prior to issuing a RFP, the department, the division, and the panel of experts, must develop a benchmark price or affordability standard for VBPs to ensure eligible individuals can afford the product. The RFP must meet the parameters of the RFI or RFP. An insurance carrier does not need to have a certificate of authority to submit an RFI, but it is required to have a certificate of authority to offer an approved VBP.

## **Health Care Professionals**

Several bills introduced during the 2008 legislative session affected the regulation and licensure of health care professionals. Examples include the registration of massage therapists, expanding the responsibilities and duties of advanced practice nurses, and expanded regulation of pharmacies.

**Pharmacists.** Legislation was introduced in the 2008 session that affected pharmacists. Two bills were considered that prohibited pharmacists from substituting a drug product unless consent was obtained from both the prescribing medical practitioner and the patient. **House Bill 08-1262** would have prohibited a pharmacist from substituting an anti-epileptic drug without prior authorization, notification, and signed consent from the prescribing physician and patient. **Senate Bill 08-185** would have prohibited pharmacists from substituting an immunosuppressant drug unless consent was obtained from both the prescribing medical practitioner and the patient. Both bills were postponed indefinitely. Lastly, current law allows pharmacists to redispense unused medications. **Senate Bill 08-190** would have required pharmacist's to redispense unused medications to a patient in or a resident of a of a licensed facility if the medication was originally dispensed to another patient in or resident of the licenced facility. The bill was postponed indefinitely.

With the passage of the Federal Deficit Reduction Act of 2005, change were proposed as to how the federal upper payment was calculated. The federal upper payment is one of the methods used to calculate Medicaid prescription reimbursement to pharmacists. Due to a court injunction on the proposed recalculation, it is not known when the new method of calculating the federal upper payment amount will take effect. **House Bill 08-1032** allows the Department of Health Care Policy and Financing to implement a state maximum allowable cost program (State MAC) in Medicaid to adjust the amounts paid to pharmacies for prescription drugs. The bill's intent is to preemptively address a concern that the new federal upper payment limit will provide a reimbursement that is less than the acquisition cost of a drug, which may reduce access to pharmacy services for Medicaid clients once implemented. The bill also specifies that, should a State MAC be implemented, the department must maximize the federal financial participation amounts and notify the Joint Budget Committee of any anticipated fiscal impacts for the state and for local pharmacies.

**Senate Bill 08-090** allows Medicaid clients to use a mail-order pharmacy if they have third-party insurance and require maintenance medications; and authorizes a mail-order pharmacy to bill Medicaid for the difference between the Medicaid co-payment and a third-party insurer's co-payment or deductible.

*Nurses.* Three bills concerning advanced practice nurses (APNs) which expanded their duties and responsibilities passed. **House Bill 08-1060** requires insurance carriers that provide health benefit plans to use objective and reasonable criteria when evaluating an application for status as a participating provider submitted by an advanced practice nurse. **House Bill 08-1061** allows APNs to certify a patient's health status, authorize continuation of treatment, and give directives for end-of-life care within the scope of the nurse's expertise. The act also allows APNs to certify parking permits for persons with disabilities. **House Bill 08-1094** authorizes payment to APNs for services provided to Medicaid clients.

The General Assembly also adopted a bill creating an inactive licensure status for nurses. **House Bill 08-1383** creates an inactive licensure status for professional and practical nursing licenses to be administered by the Department of Regulatory Agencies, Division of Registrations. Nurses with inactive licensure status can maintain their nursing titles, but must not practice nursing until reactivating their licenses or are subject to disciplinary action.

**Senate Bill 08-188** establishes a 15-member committee to develop and implement a pilot program to model the effective participation of direct-care nurses in decision-making processes in hospitals. The act defines specific requirements that the committee must implement, for example, identify focus areas for program design, methodology, and evaluation, and develop best practices for implementation strategies.

**Senate Bill 08-196** adds nursing-sensitive quality measures to the hospital information system and report card created under House Bill 06-1278. The Colorado Health and Hospital Association (CHA) is responsible for reviewing and preparing the measures. The act directs the CHA to work with direct care nurses on whether to report the measures by a hospital as a whole or by each unit of a hospital. The act states that as soon as practicable, practice environment scale measures (which measures various nursing qualities such as staffing and resource adequacy or nurses participation in hospital affairs) and registered nurse education and certification measures should be made available. By November 30, 2010, the following information must be available:

- skill mix;
- nursing hours per patient day;
- voluntary turnover;
- patient falls prevalence rate; and
- patient falls with injury.

***Dentists.*** Two bills introduced during the 2008 legislative session addressed regulation of dentistry. Under current law, private dentistry practices must be owned by licensed dentists. **House Bill 08-1134** specifies that dental practices must be owned by dentists, that dental hygienist practices must be owned by either a dentist or a dental hygienist. The bill provides an exception to non-profit organizations who may own dental practices under certain requirements that they serve low-income people. These types of non-profit organizations would be community health centers, for example. Further, the bill allows a city, county, or municipality to own a dental practice under certain requirements, and permits an heir of a dentist or dental hygienist to continue to operate the practice for up to one year without being licensed. This time period may be extended under certain circumstances.

**House Bill 08-1087** requires a dentist rather than a physician to evaluate a first-level appeal of dental benefits denied under a health coverage plan.

***Licensure of health care professionals.*** Several bills were introduced during the 2008 legislative session that would have extended licensure to professionals who are currently not required to be licensed, for example, naturopathic doctors. A bill registering massage therapists passed and a bill concerning extending practice privileges to "alternative health care providers" was postponed indefinitely.

**Senate Bill 08-219** requires massage therapists, as defined in the act, to register with the Division of Registrations in the Department of Regulatory Agencies. The act provides definitions of massage therapist, massage parlour, and massage. The act prohibits massage therapists from practicing medicine and physical therapy, and from performing chiropractic techniques. The act specifies the scope of practice for massage therapists and requires such providers to carry liability insurance.

**House Bill 08-1064**, postponed indefinitely, would have required naturopathic doctors to be licensed through the Division of Registrations, Department of Regulatory Agencies. To be eligible for licensure, a practitioner would have had to successfully complete an approved naturopathic medical program, pass an approved competency exam, and meet the standards of character and experience as defined by the bill. Title protection would have been extended to naturopathic doctors under the bill and such providers would have been required to carry liability insurance.

**House Bill 08-1158**, postponed indefinitely, would have authorized the use of healthcare and healing arts therapies and methods by alternative health care providers. These are providers who are not licensed, certified, or registered as health care practitioners by the state. Under the bill, they would have been able to practice without being in violation of professional practice acts that govern health care practitioners. The bill prohibited specific acts such as performing surgery or administering X-rays.

**Physicians.** **Senate Bill 08-220** expands the types of health care facilities that may employ physicians to include community mental health centers, federally qualified health centers, and rural health clinics. **Senate Bill 08-138** creates the Physician Designation Disclosure Act establishing minimum requirements to be used by a health care entity when developing a designation (assessment of performance) for a physician. The act states that a designation presented without the disclaimer required by the bill constitutes a violation of the act. Upon request of the designated physician or the Commissioner of Insurance, a health care entity is required to disclose the process and data used in creating a designation. The act states that physicians have the right to appeal a designation, during which time any change or modification to the designation cannot be used, and allows a physician to take civil action against a health care entity for violating the act.

## **Medicaid**

During the 2008 legislative session, the General Assembly adopted bills that expanded eligibility for the Medicaid program. Bills that would have expanded services offered under the program and increase reimbursement to Medicaid home providers were defeated. A bill concerning improving the collection of payments from third party payers passed, and a bill that expanded the definition of a qualified provider which allows the state to increase federal matching funds passed.

**Senate Bill 08-161** requires the Department of Health Care Policy and Financing (DHCPF) to establish rules for Medicaid and the Children Basic Health Plan (CHP+) to verify income eligibility through records maintained by the Department of Labor and Employment (DOLE). The bill eliminates the need for Medicaid and CHP+ applicants to provide verification of their income; instead, the DHCPF is required to verify income through the DOLE. In addition, the bill directs the Advisory Committee on Covering All Children in Colorado to investigate the feasibility of combining Medicaid and CHP+.

Senate Bill 06-145 allowed local governments to impose a fee on non-government hospitals and home health care agencies (i.e. qualified providers) for the purpose of increasing federal financial participation in the state's Medicaid program. **Senate Bill 08-214** expands the definition of qualified providers to include all licensed hospitals and home health agencies instead of only non-government providers. The bill also specifies how local governments may collect the fee and how the fees may be distributed.

**Senate Bill 08-230** is a response to the federal Center for Medicare and Medicaid Services (CMS) rule that redefined "a unit of government" to include entities with taxing authorities. The CMS rule defines "public" to include hospitals supported by only "units of government" having "taxing authority;" or that have access to funding as an integral part of a unit of government with "taxing authority." These stipulations exclude many of Colorado's traditional safety net hospitals. If the rule goes into effect, public hospitals in Colorado could lose up to \$128.2 million dollars in federal funds and the state could lose \$13.8 million in federal funds that the state currently uses to offset General Fund appropriations. The bill allows public hospitals to meet two key provisions in the CMS rule by allowing public hospitals to establish specified taxing areas, and granting them taxing authority within those specified taxing areas to ask the voters to levy a sales tax. The bill brings public hospitals in Colorado into compliance with the new definition of "unit of government." Under the bill, public hospitals will meet the stipulations of the CMS rule and permit the state to continue to receive federal funding for public hospitals.

**House Bill 08-1409** improves the collection of payments from third party payers by authorizing the DHCPF to take all reasonable measures to determine the legal liability of third parties to pay for services provided to Medicaid clients and to pursue claims against liable parties.

Several bills introduced during the 2008 legislative session addressed expanding services or increased benefits under Medicaid. **House Bill 08-1072** creates the Medicaid Buy-in Program for people with disabilities who earn too much to qualify for Medicaid and for those whose medical condition improves while participating in the program. The bill specifies that the state must request any necessary waivers to expand eligibility. In addition, the bill requires qualifying individuals to pay a premium pursuant to a sliding payment schedule. If the individual's income is over \$75,000, he or she must pay 100 percent of the premium.

Senate Bill 07-002 expanded Medicaid eligibility to young adults who are under 21 years of age and who were in the foster care system immediately prior to their 18<sup>th</sup> birthday or emancipation. Under Senate Bill 07-002, foster care youth who did not meet the requirements for the federal Title IV-E program were inadvertently excluded from last year's bill. **Senate Bill 08-099** corrects that exclusion by expanding Medicaid eligibility to young adults, under age 21, for whom the state made subsidized adoption or foster care payments immediately prior to the client turning age 18 years of age.

**House Bill 08-1150** would have established a pilot program allowing certain Medicaid clients to receive complementary or alternative therapies. Alternative therapies were defined as chiropractic care, massage therapy, and acupuncture performed by licensed or certified providers. The bill was postponed indefinitely.

## **Reproductive Health**

Two bills were introduced during the 2008 session addressing reproductive health. **Senate Bill 08-003** recommended by the Health Care Task Force, specifies that the income eligibility limit, currently at 150 percent of the federal poverty level, for the Family Planning Pilot Program is to be established in the federal waiver for the program. The bill extends Medicaid eligibility for family planning services to individuals who are otherwise ineligible for Medicaid services. The bill does not specify what the limit should be, nor that the reason for not specifying the limit in the bill is to maximize federal matching funds for the program.

Lastly, **Senate Bill 08-095**, postponed indefinitely, would have specified that an abortion could not be performed without the written consent of the woman seeking an abortion. The bill also included a requirement that 24-hours prior to the abortion, the woman would have to be informed that she had the right to view an ultrasound image of the fetus. The bill would have also required the Department of Public Health and Environment (DPHE) to monitor and enforce the provisions of the bill at all facilities that provide abortion services. Lastly, the bill would have allowed for certain civil and criminal penalties for attempts to perform an abortion without complying with the informed consent requirements.