



## COLORADO CENTER on LAW & POLICY

Justice and Economic Security for *all* Coloradans

### Health Care: 2008 Legislative Session in Review May 2008

The 2008 Legislature began to lay a foundation for reform by making investments and improvements in health care infrastructure and took some steps to improve health care access and services. The Governor and the Legislature paid attention to low-income children, cost containment, increased oversight of the insurance industry; and increased services and improved access for some of Colorado's most vulnerable citizens. The bills described below represent those in which CCLP allocated resources either by providing technical assistance, lobbying, testimony and/or coalition building.

#### **Budget**

The Governor, through the Building Blocks for Health Care Reform, made important investments in improving the state's health care infrastructure. These investments, made through the budget process, and ranging from health information technology to provider rates increases, were aimed at increasing access to health care, reducing costs, and improving quality. The proposed FY2008-09 budget was a 5.7 percent or \$203 million increase in total funds over the FY2007-08 budget and included a 4.6 percent or nearly \$68 million increase in General Fund expenditures on health care and health care related programs and services.

Specific investments included an increase in spending for outreach to enroll children in CHP+ and \$3.3 million to expand the medical home program for children enrolled in Medicaid and CHP+. The medical home program helps coordinate care in order to improve health outcomes and reduce system costs through greater use of preventive care.

The legislature made substantial investments in access to care by increasing provider rates for oral care, primary care, and community based long term care. These increases will foster the retention and addition of providers in the Medicaid program resulting in improved access to care for enrollees. Improved reimbursement will also begin to reduce cost shifting; one of the principle problems created by low provider reimbursement rates in public programs. The legislature also took a small step towards reducing the years long Developmental Disability waiting list, allocating resources to serve an additional 600 persons (out of the 12,000 on the waiting list).

The budget also included money for the Department of Health Care Policy and Financing (HCPF) to examine and potentially centralize eligibility and enrollment for medical assistance programs. Centralization, if well implemented, may help reduce administrative barriers in the application and

redetermination process for programs like Medicaid and CHP+ by concentrating responsibility at the state level rather than with individual counties. HCPF will study the feasibility of this change in the coming year.

CCLP actively monitored the budget process this year and weighed in with members of the Joint Budget Committee and HCPF on particular areas of concern such as CBMS centralization.

## Legislation

**SJM005 (Keller/Buescher) CMS Medicaid Rules** is a Joint Budget Committee sponsored resolution that calls on Congress to pass moratoria on a series of seven regulations issued by the Centers for Medicare and Medicaid Services that will have an extremely adverse impact on federal Medicaid funding in Colorado. These regulations make nearly \$200 million in cuts to critical services for vulnerable populations like: hospitals providing health care services to indigent populations, graduate medical education, school based health services for children with disabilities, rehabilitative services, and targeted case management for children with disabilities and the mentally ill.

CCLP has been highly active on the federal Medicaid regulations lobbying Congress and played a key role by encouraging members of the Joint Budget Committee to craft and pass a memorial to Congress.

## Medicaid and CHP+

**SB 160 (Hagedorn/McGihon) Children's Health Care and SB 161 (Boyd/Merrifield) Medicaid and CHP+ Enrollment** were companion bills that emerged from the 2010 Cover all Kids Coalition, a group of over 40 groups who share the goal of achieving health insurance coverage for all of Colorado's children by 2010. **SB 160** increases the eligibility for CHP+ for children and pregnant women from 205% to 225% of the Federal Poverty Level (FPL)<sup>1</sup> with the possibility of an increase to 250% FPL pending available funds. The act also increases mental health benefits in CHP+ to equal those in Medicaid. As introduced, the bill also hoped to remove the Medicaid "stair-step," moving the eligibility level for all children under age 19 to 133% of the Federal Poverty Level (FPL) and to provide 12-month enrollment following eligibility under Medicaid and to assure continuous enrollment under CHP+. Both of these later provisions failed because of a lack of funds.

**SB 161** streamlines the application process for Medicaid and CHP+ and removes a substantial barrier to these programs by allowing HCPF to access the Department of Labor data base to administratively verify income rather than requiring applicants to produce paper pay stubs.

CCLP is an integral partner of the 2010 coalition and was involved in the research, lobbying, and testimony on this bill.

**SB 1072 (Soper/Williams) Medicaid Buy-in for Disabled Persons** establishes an actuarial study to develop a Medicaid Buy-in program for people with disabilities who wish to return to work or to increase their income beyond the Medicaid eligibility threshold. Individuals with disabilities and incomes between the Medicaid threshold and 450% of FPL will pay for Medicaid coverage on a sliding scale fee basis. Above 450%FPL individuals will be responsible for the full premium amount. Where employer sponsored insurance is available to such individuals, private insurance will be the first payer and Medicaid will provide any additional needed services. Colorado becomes the 39<sup>th</sup> state with a Medicaid Buy-in program.

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<sup>1</sup> 250% FPL is about \$50,000 annual income for a family of four.

CCLP had extensive involvement with this bill throughout the session. We worked with stakeholders to retain key portions of the bill, drafted and obtained amendments that were critical to the bill's success, and testified at the legislature.

**Trusts and Estates:** HCPF drafted and was working with a legislator to introduce legislation that would have substantially impacted trusts and estate recovery in the Medicaid program. The bills, as drafted, would have, among other things, harmed community spouses and prevented the establishment of certain trusts that provide critical supports to people with disabilities and older people. In addition, the bills, as drafted, reached far beyond the Medicaid program and attempted to change probate and real estate law in Colorado. CCLP, the Colorado Bar Association, and numerous other advocates were able to stop the introduction of these bills this year.

### Private Insurance

**SB 1389 (M.Carroll/Sandoval) Fair Accountable Insurance Rates (FAIR)** replaces Colorado's 'file and use' insurance system with a 'prior approval' system for health insurance. Under 'file and use' health insurers informed the Division of Insurance of any rate increases and were able to implement them immediately. The Division of Insurance could review rates if they were considered, "excessive, inadequate, or unfairly discriminatory," but the Division's powers here were limited. Under SB 1389 carriers must submit requested rate filing increases at least 60 days before such rates are to be implemented. Carriers seeking rate increases must submit documentation including actuarial opinions and expected benefits ratios to justify their increase. A summary of the carrier's rate filing will be posted on the Division's web site, but the methods and practices by which carriers determine rates will remain proprietary. The Commissioner upon review may request corrections and ultimately has the power to deny the request.

The Commissioner is presumed to look not only at the benefit ratio, but at a wide variety of financial data in making a determination of excessive or inadequate. While the bill does not require carriers to achieve a specific expected benefits ratio, it does suggest that particular targets may expedite the review process. These targets are 85% for large-group insurance, 80% for small group insurance, and 65% for small group insurance; different targets reflect the different administrative costs in the different markets.

CCLP provided technical assistance to the sponsor sponsors and lead community advocate, the Colorado Consumer Health Initiative.

**HB 1411 (Marshall/Sandoval) Colorado Health Care Anti-Kickback Act** was postponed indefinitely in the last days of the session. On its face this bill looked like a consumer-protection bill, prohibiting anyone from offering providers financial incentives to "deny, reduce, limit, or delay" any medically necessary care. But, it could have prematurely foreclosed options to develop cost and quality strategies such as evidence-based medicine, pay-for-performance, disease management and other clinical guidelines, or evidence-based drug formularies, just as discussions of the role of these types of programs in health care reform are getting underway. As amendments were negotiated it became clear that the bill was backed by a pharmaceutical company with the presumed purpose of eliminating the substitution of generic for brand-name drugs.

CCLP played an important part in this bill's demise. Most of the opposition was viewed as interested parties to the bill, so CCLP's disinterested stance brought real credibility to the opposition. Through our research,

CCLP was able to develop the key messages that were used to defeat the bill and testified and lobbied in opposition.

## Hospital Sales

**HB1203 (M. Carroll/Boyd) Material Change Hospital Transactions, HB1173 (McGihon/Schaeffer) Prudent Management of Institutional Funds, and SB182 (Boyd/McGihon) Hospitals Discontinue Essential Services** were three bills this year included provisions aimed at increasing transparency and improving oversight of hospital transactions. Of those three bills, only HB1203 made it through the process with relevant language still in tact. SB182 was postponed indefinitely and the hospital transaction language amendment in HB1173 was removed in the Senate. Currently, the attorney general, when reviewing the sale of a nonprofit hospital, must consider whether there will be a change in the use of the charitable assets as a result of the transaction. HB1203 (Carroll/Boyd) requires the attorney general, when reviewing the transaction, to consider whether there has been a material change in health care services to the community served by the hospital. Language in other bills would have: required hospital foundations to seek court approval to receive proceeds from the sale of interest in a hospital if the intent of the foundation were to change the use of the proceeds from the original purpose; grant a private right of action to hospital foundation donors if a change in the use of proceeds were proposed; and required the Department of Public Health and Environment's (CDPHE) oversight if a hospital proposed a change in essential health services. CDPHE provided some assurance that it already possesses the ability to oversee changes in essential health services without need for further legislation.

CCLP was responsible for crafting the language for the bills and bill amendments related to hospital transactions. CCLP also helped lead lobbying efforts on each of these bills and provided testimony in committee hearings.

## Looking Forward toward Reform

**SB 217 (Hagedorn/McGihon) Centennial Care Choices** creates a framework by which a Governor-appointed panel, working with the Department of Health Care Policy and Financing and Division of Insurance, will craft a Request for Information to be issued to private carriers, the state and other interested parties. The bill specifies requirements and assumptions for the RFI. The RFI will solicit information as to the kinds of minimum benefits plans or Value Benefits Plans (VBPs) a carrier would propose to provide to Coloradans in the individual insurance market place. The bill makes some key assumptions about changes in coverage that are critical to the design of the VBPs including that: (1) Colorado will move to an individual mandate for health insurance coverage;<sup>2</sup> (2) the VBPs would reflect the minimum benefits package available in the state, (3) Medicaid would be available to all Coloradans under 100% FPL, and (4) individual insurance products would be guarantee issue and subject to modified community rating (in other words, carriers would be required to sell to anyone who asked to purchase, and would not be able to charge people more or less based on their health status).

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<sup>2</sup> Note, thanks to an amendment introduced by Sen. Mitchell, the analysis will include two sets of assumptions (1) that Colorado has an individual mandate and (2) that it does not. This dual data set ought to allow the State to compare the difference in costs with and without a mandate. The Lewin Group analysis provided for the Blue Ribbon Commission has already made it clear that the state would achieve significantly greater reduction in the number of uninsured with an individual mandate.

The information will be collected by the panel, Department and Division and reported to the General Assembly. There is a December 15, 2008 report date, and the final report is due on March 1, 2009. If the General Assembly decides to move forward with Centennial Care Choices, it will have to assess financing options and determine whether to refer a measure to the ballot to fund and implement the program.

As amended, the bill does not commit the state to anything but a study. While CCLP does not agree with some of the baseline assumptions in the bill including the use of substantial public resources to subsidize the purchase of private individual insurance products, we did support it, once amended, because we believe it moves the reform conversation forward by gathering additional data on key components of reform such as cost, affordability, subsidization and comprehensiveness of benefits and it assumes some key elements of the Blue Ribbon Commission's recommendations will be adopted.

CCLP worked extensively with the bill sponsors on amendments, and took the lead among stakeholder groups to ensure that we maximized the opportunity to advance the conversation on health care reform.

**For more information on SB08-217 [click here](#).**