



COLORADO CENTER
on LAW & POLICY

Justice and Economic Security for all Coloradans

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2011 legislative session saw advancement and setbacks for justice and economic security

A look at some work by the Colorado Center on Law and Policy (CCLP) at the Colorado General Assembly during its 2011 session.

Colorado Fiscal Policy Institute

The state budget

The Long Bill is the annual budget bill that outlines appropriations, or spending, for the fiscal year that begins July 1. The governor signed the Long Bill, Senate Bill 11-209, on May 6.

The state budget shrank again this year. Even as Colorado's population grows and the number of people who seek services from the state mushrooms, the amount of money the state will spend in 2011-12 will drop \$658 million below the current year's budget.

The total budget signed by the governor for 2011-12 equals nearly \$19.3 billion. After removing the category of "reappropriated funds," which captures money that is spent twice in the budget, the total spending package is \$17.8 billion.

As tax revenues remain below prerecession levels, and the General Assembly passed several measures to further reduce revenue, the state will not have enough money next year to provide services at the level that it does today.

Education grabbed most of the headlines as lawmakers whittled down proposed cuts to kindergarten through 12th grade classrooms from the \$332 million proposed by Gov. John Hickenlooper to a spending reduction of \$227.5 million.

But the education cuts told only part of the story. Services across the board, ranging from health care to human services to higher education, will face cuts again in the 2011-12 budget.

- Medicaid services took a variety of cuts as the number of people seeking health care through the program is expected to rise nearly 10 percent next year. That would mean 613,000 Coloradans would be receiving health care through Medicaid. Still, spending will increase just 4.4 percent. The 2011-12 budget reduces 18 benefits for Medicaid patients and cuts provider rates by 0.75 percent. Provider rates have been cut 6.25 percent during the four fiscal years since the start of the recession.
- The state share of spending for higher education will drop 11.5 percent, or \$80.9 million, while tuition increases are expected to approach 10 percent again next year.

- Total funding for the Department of Human Services – which captures services for the developmentally disabled, abused and neglected children and assistance for low-income families – will drop \$54.6 million, or 2.5 percent below the current budget.
- The Division of Child Welfare, which oversees child protective services and foster care programs, will be cut \$2.1 million, or 0.5 percent. State funding for those services has declined 12.7 percent, or \$27.7 million, since 2008-09.
- The Department of Corrections budget will decline 3.7 percent, or \$27.4 million, as the state makes a number of changes to housing prisoners, including closing the Fort Lyons Correctional Facility in Bent County.
- Spending for mental health institutions will decline \$3 million, or 3.3 percent.

Tax Expenditure Reporting

One of our main focuses for the legislative session was promoting increased transparency and accountability in government, especially within the tax code. One measure we developed along that line was House Bill 11-1104, sponsored by Rep. Ferrandino and Sen. Steadman. The bill required an annual, published report by the Department of Revenue showing the cost and effectiveness of tax expenditures that result in reduced revenue for the state. It includes income tax credits, sales tax exemptions, federal income tax deductions and severance tax exemptions. The report was to also include a study of who benefits from the tax expenditures by industry, business type and income class. That information is crucial to aiding lawmakers and taxpayers in making informed decisions about Colorado's future.

HB 1104 was killed in the House Finance Committee. The Colorado Fiscal Policy Institute (COFPI), along with many allies, presented compelling testimony, but the bill died on a party-line vote.

The following week, working with the same sponsors, we introduced Senate Bill 11-184. The bill initially included the same reporting requirements as those in HB 1104, but it also included a tax amnesty period, which would go, in part, to pay for tax reporting. The bill passed the Senate Finance Committee on a party-line vote despite fierce opposition by business groups and the Department of Revenue.

To mitigate some opposition, we met with both the Department of Revenue and the business lobby to address some of their concerns. We then worked with the bill drafter and the sponsors to create a bill that achieved our goals while addressing the objections of some opponents. We amended the bill so it required a biennial report on tax expenditures, as well as a biennial update of the Tax Profile Study, a report completed in previous years by the Department of Revenue that shows the progressivity, proportionality and distribution of the Colorado tax system. That report has offered useful insights in the past but has not been updated by the Department of Revenue in 10 years. Through those negotiations, we secured the support of the Denver Chamber of Commerce, the Colorado Competitive Council, the Department of Revenue and the Governor's Office. With the support and testimony of those organizations, coupled with our work, SB 184 passed on the last day of the session.

Other bills COFPI supported

House Bill 11-1052, PAYGO, sponsored by Rep. Hulinghorst and Sen. Morse, was defeated in the House Finance Committee. The bill would have implemented a Pay-As-You-Go system into Colorado's budget process for the first time. It would have required all measures that reduce revenue to identify a way to "pay" for tax cuts and other revenue reducing measures by linking those bills to either an offsetting increase in revenue or identify a specific spending cut.

House Bill 11-025, the Taxpayer Empowerment Act, sponsored by Sen. Carroll and Rep. Ferrandino, was signed by the governor. The bill improves transparency and accountability in state government by ensuring that contracts, as well as performance measures and standards for contracts, are available for public review.

Revenue-reducing bills

Lawmakers pursued a number of measures that would worsen Colorado's already-dire revenue picture. Several bills would reinstate tax credits and exemptions that were suspended last year, while other bills introduced new ways of reducing the state's revenue.

Among the most potentially damaging was House Bill 11-1293, which would cost the state nearly \$22 million next fiscal year by exempting software from sales and use tax. COFPI opposes the bill because it would increase the state's revenue shortfall and force even deeper cuts to critical services. The measure has passed the House and Senate.

Bills along similar lines included House Bill 11-1005, to reinstate a tax exemption for agricultural products; House Bill 11-1162, reinstating a sales tax exemption for soft drinks; and several bills to eliminate or suspend the state's Business Personal Property Tax (House Bill 11-1263, House Bill 11-1141, Senate Bill 11-026 and Senate Bill 11-098).

Those were among the numerous bills would have directly resulted in reduced revenue for the state by giving special treatment to narrow interests, from wood products to wind turbines. The measures would take the state in the wrong direction.

COFPI was opposed to three bills that would expand tax increment financing - only one of which passed. Tax increment financing is a tax subsidy that promotes development by transferring future public tax dollars to private development. The three bills would not have expanded tax increment financing in a responsible manner.

Unemployment Insurance solvency

After months of collaboration between COFPI, labor, business and Colorado Department of Labor, House Bill 11-1288 Unemployment Insurance Solvency Reform was introduced with Rep. Liston (R-Colorado Springs) and Rep. Pabon (D-NW Denver) as the primary House sponsors and Sen. Morse (D-Colorado Springs) as the primary Senate sponsor. HB 11-1288 is a modest proposal that increases employer unemployment premium rates and adjusts the rate tables to return the unemployment insurance trust fund to solvency as quickly as possible and modernize the system for the future.

The Unemployment Insurance system is a federally mandated and governed program with premiums paid entirely by employers to provide a benefit to employees who have lost jobs through no fault of their own. The UI system is the first line of defense in a recession and an important safety net for workers. Colorado's finance structure for the unemployment system was outdated, leaving the left the state ill-prepared for the onset of the recession. Like many states with high unemployment, Colorado's trust fund became insolvent in 2010 and the state began borrowing from the federal government. The working group convened by the Department of Labor had two goals for a reform proposal: first, to repay the federal loan before federally mandated interest and penalties applied against federal UI rates became effective, and rebuild the fund balance before the next downturn; and second, to construct a new UI trust fund rate chart that reflects and grows with the size of the Colorado economy and provides adequate reserves, less volatility and simpler administration. HB 11-1288 achieves both of those goals while mitigating the impact to employers and protecting eligibility and benefit levels for workers. The bill

passed unanimously (one vote accidentally cast in opposition in the House) out of both the House and the Senate and will be signed by the governor.

At a time when other states have looked to restrict eligibility and benefits for unemployed workers or dismantle this effective and efficient program, Colorado took a different route. HB 1288 is a big win.

Health Care Program

The 2011 Legislative Session included some significant health care bills, but far less activity on health than in previous years.

Bills of note that improved access to coverage

Senate Bill 11-200 (Boyd/Stephens) Colorado Health Benefit Exchange

Passed

The bill established the governance structure for Colorado's Health Benefit Exchange. The federal Patient Protection and Affordable Care Act (PPACA) requires states to establish exchanges by 2014 or defer that responsibility to the federal government. The bill was supported by an almost unprecedented coalition of consumers, providers, business and industry.

The exchange will be a competitive health insurance marketplace that, if well designed, enables individuals and small businesses to more easily shop for and compare health insurance products. The exchange will be a seamless entry point into private insurance and Medicaid. It will also match eligible individuals and businesses with sliding-scale subsidies for the purchase of private health insurance. Eligible people are those without employer-sponsored health insurance with incomes of less than 400 percent of the Federal Poverty Level (\$43,560 a year for an individual). The legislature retained significant oversight of the exchange, including establishing a new legislative oversight committee that will review and approve grants to establish the exchange prior to submission, review the financial and operational plans of the exchange and approve the hiring of an executive director.

Applications for the nine-person governing board are already being accepted, and the deadline is May 23.

Senate Bill 11-008 (Boyd/Gerou) Aligning Children's Medicaid Eligibility

Passed

Currently, eligibility thresholds are different for children up to age 5 (133 percent of poverty), and ages 7 to 18 (100 percent of poverty). This bill aligns Medicaid eligibility for children ages 6-19 with eligibility for children ages 0-5, so that all children in families with incomes up to 133 percent of the Federal Poverty Level are eligible for Medicaid. This bill is a win for Colorado families, simplifies and makes more efficient the administration of Medicaid, and creates a net reduction in state expenditures. CCLP supported the bill through its membership and participation in the All Kids Covered coalition.

Senate Bill 11-128 (Newell/McCann) Child-Only Health Plans

Passed

As of Sept. 23, 2010, PPACA required that health insurers not discriminate against children with pre-existing conditions by refusing to offer them health insurance. Shortly after that requirement took effect, all but three health plans doing business in Colorado pulled out of the child-only segment of the individual health insurance market. SB 11-128 ensures greater participation by health plans in that particular segment of the health insurance market. The bill controls costs and risks for health plans by establishing two open-enrollment periods per year when child-only plans can be sold, thus mitigating the industry's concern that any one plan might wind up enrolling a disproportionate number of high risk,

expensive children. CCLP engaged early on in a stakeholder process around the bill to ensure adherence, to the greatest extent possible, to the spirit, intent and requirements of federal health reform.

Senate Bill 11-250 (Boyd/Ferrandino and Summers) Medicaid Eligibility for Pregnant Women
Passed

The bill changes state law to make pregnant women with incomes from 133 percent to 185 percent of poverty eligible for Medicaid rather than Child Health Plan Plus (CHP+). The change was necessitated by changes in the federal Children's Health Insurance Program Reauthorization Act, passed in 2009. The bill actually saves Colorado money because the state is able to continue to collect the more favorable match rate offered under the CHP+ program, but the clients will be cheaper to serve in the Medicaid program. CCLP supported SB 11-250.

Bills of note that hinder access to coverage:

Senate Bill 11-213(Hodge/Gerou) CHP+ Assess Monthly Enrollment Fee
Passed

SB 11-213 establishes monthly premiums of between \$20 and \$50 depending on family size for children enrolled in CHP+, whose families make between 206 percent and 250 percent of the Federal Poverty Level (between \$46,041 and \$55,875 a year for a family of four). Advocates went all out to defeat this bill and are now asking the governor for a veto.

Joint Budget Committee staff and the Department of Health Care Policy and Financing (HCPF) agree that about 2,400 children will lose health insurance coverage as a result of the bill. CCLP's research on health care affordability, *The Cost of Care: Can Coloradans Afford Health Care*, found 25 percent of families in that income group have nothing left over at the end of the month after paying for necessary expenses and meeting other financial responsibilities.

Colorado has worked hard over the past few years to improve and streamline programs that provide health insurance coverage to children. As a result 38,000 more Colorado kids became insured between 2008 and 2009 despite increases in poverty and unemployment and 5,358 additional children were added to CHP+ over the past year as a result of HB09-1293 (Hospital Provider Fee) expansions. This is a signature accomplishment achieved by policy makers and advocates over the last few years, one to celebrate and build upon as we move closer to making the vision that all of Colorado's children will have health insurance a reality.

The bill became caught up in a partisan discussion about the role of government and how much "skin in the game" families who receive any assistance ought to have. Bill proponents believed families in this income group ought to pay more and wanted to generate income for the state by charging them more to insure their children despite the fact that according to the Department of Health Care Policy and Financing it would indeed cost the state money and no money would be generated during the next fiscal year as it will take 18 months to reprogram CBMS to accommodate this change.

Senate Bill 11-202 (Cadman/Gardener B.) Municipal County Hospital Sale Proceeds Use
Failed

SB 11-202 would have exempted municipal hospitals from the state's existing hospital conversion statute. Existing law requires that proceeds of the sale of a nonprofit hospital, which has provided a significant health care related community benefit throughout its existence, must remain as a community benefit dedicated to the health care needs of the community. This bill must be examined in the context of the potential sale of Memorial Hospital in Colorado Springs to a for profit health system. CCLP opposed this bill because the nonprofit hospital assets should, we believe, remain as a health care

community benefit for the affected community. Diversion of these assets to a different purpose would both reduce available health services and deviate from the intent and purpose for which the assets were developed. Not only is this detrimental to the community, it establishes bad precedent for the future use or diversion of assets from the sale or dissolution of any nonprofit.

Not introduced

Colorado has until July 1 to conform to certain insurance regulations to the requirements of PPACA. Most significant are those involving insurance appeals processes. No bill to do this was introduced this session. It remains to be seen how much of what is needed can be done by regulation or whether aspects of the appeals process, now handled in Colorado move to federal jurisdiction.

Colorado also did not conform statute to the health reform law's requirements, which have already been implemented, that health insurance companies cover preventive services without cost sharing.

Other issues that played out this session

Opting out of PPACA

House Bill 11-1273 (Nikkel and Stephens/Kopp) Health Care Opportunity Patient Empowerment Act
This bill did not pass.

A new strategy to undermine PPACA playing out in a number of states, proposes to use the Compact Clause of the U.S. Constitution to enable states to join together to petition Congress for relief from any federal health care law or requirement. Colorado Majority Leader Amy Stephens was the prime sponsor of the effort in Colorado. HB11-1273 had implications for Medicare, Medicaid and the delivery of health care in Colorado that was much broader than any PPACA implications. The bill not only encouraged Colorado to join an interstate compact for the purpose of evaluating how to provide health care in Colorado, but proposed that Colorado receive almost all federal money currently used to fund health care in Colorado, including Medicare funds.

CCLP opposed this bill for the following reasons:

1. There is no need to torture the Constitution by trying to challenge PPACA through a provision commonly used to facilitate interstate cooperation around issues impacting states' common boundaries, such as waterways or transportation systems. The Courts are the established procedural mechanism by which states may challenge and are challenging PPACA. In addition, Congress may choose to pass a bill to repeal PPACA in whole or in part. In fact, there is a bill pending in Congress that permits states to opt out of the individual mandate requirement by 2014, if they demonstrate that they have a plan that would cover at least as many individuals as would be covered under PPACA.
2. Colorado has spent a significant amount of time, including through the efforts of the bipartisan Blue Ribbon Commission on Health Care Reform, developing plans to address health care coverage and delivery in the state. It's past time to study what to do; it's time to do something.
3. Most significant and not much discussed, is that HB 11-1273 was an effort to dismantle the federal Medicaid and Medicare programs by proportionately allocating federal funds that support those programs to the states. While Medicaid is a state/federal partnership, Medicare is an entirely federal program. A request to allocate Medicare funding to Colorado is an unprecedented effort to dismantle the Medicare program.
4. Finally, the effort represented by the bill is futile. The U.S. Constitution requires that the President approve any Congressional action, including a Compact if approved. The likelihood that President Obama would approve states' efforts to dismantle PPACA is zero.

Rules Bill – Passed.

At the end of the session, in the last two days, the Rules Bill (SB11-78) was caught up in an effort by House Republicans to restore certain fees for payday lenders, despite the fact that a bill to restore those fees had failed in the Senate earlier in the Session. The Rules bill, introduced each year, is the mechanism by which the legislature confirms administrative rulemaking undertaken since the previous year, in this case, between November of 2009 and November 2010. Failure of this bill might have caused significant disruption to the already implemented hospital provider fee Medicaid and CHP+ expansions to parents up to 100 percent FPL and children to 250 percent FPL, as well as efforts by HCPF to move to electronic verification of income and social security for public health insurance applicants. In the end, the amendment was dropped and the bill passed.

Family Economic Security Program

The session did not see many changes in the arena of family economic security, given the budget shortfall that made it essentially impossible to increase spending. Nevertheless, the Family Economic Security Program at CCLP opposed several pieces of legislation that would have affected Colorado families' opportunities to achieve economic security. We supported others. With a few exceptions, the outcomes were good.

House Bill 11-1058 (Pabon, Jahn) would have prohibited accessing cash benefits through automatic teller machines at strip clubs. We opposed the bill as unnecessary, disproportionate to any perceived problem, and inappropriately stigmatizing public benefits recipients. It was postponed indefinitely in the Senate.

House Bill 11-1127 (Kagan, Carroll) would have specified permitted uses of consumer credit information by landlords, employers and certain insurers, including auto insurers. We supported the bill as balanced while being beneficial to people seeking housing, employment and such insurance. It was postponed indefinitely in the House.

House Bill 11-1149 (Acree, Harvey), among other requirements, would have mandated that applicants for public benefits produce a Social Security card. We opposed the bill as an unnecessary and burdensome addition to existing procedures through which applicants demonstrate identity and lawful presence. The bill failed.

House Bill 11-1224 (Joshi) would have repealed the existing low-income telephone assistance program that provides a state subsidy over and above the federal subsidy to eligible low-income individuals to offset the cost of their telephone land lines. It is funded by a monthly charge assessed on business and residential access lines. We opposed the bill as particularly harmful to low-income, elder Coloradans. It was postponed indefinitely in the House.

House Bill 11-1290 (Liston and Reisberg, Heath) would have made nonrefundable the finance charge paid by a payday loan borrower upon taking out the loan. We opposed the bill as repealing part of the payday lending reform enacted last year that set a six-month minimum term for payday loans with no prepayment penalties and pro-rata refunds of finance charges and interest upon prepayment. The bill was postponed indefinitely in the Senate.

Senate Bill 11-010 (Tochtrop, Priola) prohibited the denial of unemployment benefits to a recipient who is participating in approved training and who either left temporary work engaged in during a break or delay in the training; or left on-the-job training within 30 days after starting the training because it did

not satisfy federal law requirements. We supported the bill as allowing people to take advantage of job training programs designed to equip them to pursue better employment. It passed.

Senate Bill 11-124 (Hodge, Gerou) addressed the way unspent allocations of federal funds for Temporary Assistance to Needy Families are retained, the percentage of its allocation a county may retain, and reallocation of unspent funds among counties. We opposed the bill on the grounds that TANF funds are better spent on services to recipients. It passed.

Senate Bill 11-129 (Harvey) would have required private employers to use the federal e-verify system to establish eligibility for employment and contained significant sanctions for employers found in violation. We opposed the bill as unnecessary to the extent that it duplicates federal law, as burdensome and misguided to the extent that there remain significant questions as to whether e-verify is a reliable approach to determining if a potential new employee may legally be hired, and as imposing excessively stringent state sanctions for employers found to be in violation. The bill was postponed indefinitely in the Senate.

Other measures affecting justice and economic security

Immigration-related bills

The session saw a host of immigration bills and resolutions, which CCLP opposed because they were anti-immigrant, would have adversely affected people lawfully present in the country, were of questionable constitutionality given federal law, and would have increased state and local spending for no societal benefit. Typical provisions included authorizing police to require proof of citizenship or lawful presence upon a vehicle stop, increasing bond requirements for arrested people suspected of being undocumented, toughening paperwork required to vote and the like. The bills and resolutions were almost all rejected by the Legislature.

House Bill 11-1003 (Summers and Szabo, Harvey and Lundberg) would have required a government-issued photo ID for election-related purposes. The bill was postponed indefinitely in the Senate.

House Bill 11-1088 (Barker, Lambert) would have increased disincentives for bail bondsmen to provide bail to arrested people who might be undocumented, and would have required advising the court and district attorney before bail being set if there were reasonable grounds for believing the defendant might be undocumented. The bill was postponed indefinitely in the Senate.

House Bill 11-1107 (Baumgardner, Harvey) was an omnibus immigration bill echoing much of the Arizona approach to immigration issues in employment and law enforcement. The bill was postponed indefinitely in the House.

House Bill 11-1140 (Balmer, Harvey), among other things, would have sanctioned local governments that did not participate in the Secure Communities program. The bill was postponed indefinitely in the Senate.

House Bill 11-1252 (Holbert, Harvey) would have directed the Secretary of State to compare public databases and determine if there was evidence indicating registered voters were not citizens. Voters notified by the Secretary of State that there was evidence indicating they were not citizens would be obliged to prove citizenship. The bill was postponed indefinitely in the Senate.

House Bill 11-1309 (Baumgardner, Renfro) was another omnibus immigration bill addressing employment and law enforcement issues. The bill was postponed indefinitely in the Senate.

Senate Bill 11-54 (Lambert, Balmer) would have allowed warrantless arrest of people an arresting officer had probable cause to believe faced specified immigration sanctions. The bill was postponed indefinitely in the Senate.

Senate Concurrent Resolution 11-02 (Lambert, Holbert) would have referred to the voters a state constitutional amendment providing the same citizenship investigation of registered voters as set out in House Bill 11-1252, above. The resolution was postponed indefinitely in the Senate.

Senate Concurrent Resolution 11-03 (Lambert, Joshi) would have referred to the voters a state constitutional amendment providing that anyone elected to public office in the state of Colorado must provide proof of citizenship along with the oath of office. The resolution was postponed indefinitely in the Senate.

Senate Concurrent Resolution 11-04 (Lambert, Joshi) would have referred to the voters a state constitutional amendment providing all private employers in the state must use the federal e-verify system for establishing eligibility for employment and setting out significant sanctions for employers found in violation. The resolution was postponed indefinitely in the Senate.

Other measures

We worked on a number of other bills addressing issues related to our mission, supporting some, opposing others. Outcomes were mixed.

House Bill 11-1211 (Pace, Tochtrop), which we supported as a prudent constraint on spending by entities receiving public support, limits travel expenditures for employees of certain public entities, such as Pinnacle Assurance. The measure passed the House and Senate.

House Bill 11-1320 (Joshi, Cadman), which we opposed as inappropriately shackling public employees, would have prohibited collective bargaining for state employees. The measure failed.

Senate Bill 11-072 (Carroll, Levy), which we supported to expand remedies to employees not covered by federal law, would have increased coverage of state employment discrimination laws to smaller employers. The bill was postponed indefinitely in the House.

Senate Bill 11-126 (Giron and Johnston, Miklosi and A. Williams), which we supported as a matter of equity and economic benefit, would have authorized unsubsidized in-state tuition for certain undocumented Colorado high school graduates. The bill was postponed indefinitely in the House.

Senate Bill 11-172 (Steadman, Ferrandino), which we supported as an extension of significant rights to all Coloradans, would have created the Colorado Civil Union Act. The bill was postponed indefinitely in the House.

Senate Bill 11-249 (Tochtrop, B. Gardner), which we opposed as unnecessary and likely to be burdensome to defendants, including low-income defendants, would have extended the statute of limitations for collection of certain specified obligations. The bill was postponed indefinitely in the Senate.