



**2011 Colorado Legislative Session Summary
May 13, 2011**

The 2011 Colorado legislative session began on January 12th and concluded 120 days later on May 11th. The session was dominated by balancing budgets, bipartisanship and also intense partisan bickering. This report provides an overview of the 2011 session for clients of Miles Consulting, Inc. with an emphasis on legislative actions related to health care, including women's and children's health, mental health and public and environmental health.

During the **2010 elections**, the Democrats maintained control of the Senate, losing only one seat, giving them a majority of 20-15. The Republicans took control of the House of Representatives by one seat, giving them a majority of 33-32. Thus, the House elected new leadership. Rep. Frank McNulty (R-Highlands Ranch) was elected as the Speaker of the House, Rep. Amy Stephens (R-Colorado Springs) was elected the Majority Leader, and New Chairs were named for all of the House Committees. The Joint Budget Committee (JBC) was split evenly between the two parties, with 3 Democrats and 3 Republicans. Colorado also voted in a new Governor, John Hickenlooper (D-Denver). Split chambers and a new Governor forced bipartisanship for the passage of bills but caused friction over other policy decisions.

Budget Balancing

The legislature is charged with keeping the current fiscal year (FY10-11) budget in balance, while also developing a budget for the upcoming fiscal year (FY11-12). This proved especially challenging this year due to the new split membership of the Joint Budget Committee and the sheer amount of funds that needed to be cut after recent years of significant budget cuts.

FY10-11 Budget

The legislature adjusted the FY10-11 budget to bring spending into balance with reduced revenue. The following is a summary of some of the actions taken by the JBC to balance FY 10-11:

Health Care Policy & Financing (HCPF) —

- Transfer Health Care Expansion Fund to the General Fund (HCEF tobacco \$): *\$51 million*
- A CHIPRA (Child Health Insurance Plan Reauthorization Act) bonus payment received from the federal government to balance the budget: *\$13.7M*
- CHP+ Caseload decreased projections (from 87,260 to 70,300)
- Old Age Pension Medical Fund transfer to General Fund: *\$2M*

Department of Public Health and Environment (CDPHE) —

- Transfer Medical Marijuana Cash Fund to General Fund: *\$6.5 million*
- Transfer Tobacco Settlement funds (Read to Achieve balance and annual amount): *\$4.5M*
- Establish a cash fund for the CDPHE lab for more cost-effective equipment purchases (SB 161)

Department of Local Affairs (DOLA) —

- Transfer from the severance tax fund from moneys for local governments: *\$60 million*
- Transfer from the Mineral Impact Fund from moneys for local governments: *\$15 million*
- Transfer from the Permanent Fund from moneys for local governments: *\$4.8 million*
- Transfer from the Gaming Impact from moneys for local governments: *\$2.49 million*

Department of Education (CDE)—

- Reduce Counselor Corps performance grants: *\$750,000*

FY 11-12 Budget

For the FY 11-12 budget, the legislature needed to cut an additional \$450M from the state budget. SB 209, the “long bill” was approved by both the House and Senate in April and signed by the Governor in May. It includes the following provisions:

- Child Health Plan (CHP+): out of network reductions, elimination of retroactive enrollment, reduction in re-insurance, rate reductions, elimination of inpatient care during presumptive eligibility for pregnant women (\$1.5M)
- Reduce Medicaid provider reimbursement for most providers by .75% (bringing the total reduction during this recession to 6.5%)
- Eliminate Medicaid reimbursement for circumcision
- Reduce Medicaid hospital reimbursement for uncomplicated C-sections to be reimbursed the same amount as complicated vaginal births (\$3M)
- Reduce Medicaid reimbursement for products associated with Diabetes (\$400K)
- Reduce Medicaid reimbursement for in-patient renal dialysis (\$1M)
- Deny hospital readmission within 48 hours, up from 24 hours currently (\$1.1M)
- Prior authorize certain radiology services at outpatient hospitals (\$317K)
- Enforce limitations on Medicaid acute home health services (\$566K)
- Cap Consumer Directed Attendant Support (CDAS) wage rates (\$710K)
- 2% reduction in Medicaid Mental Health capitated payments (FY 10-11 carried into FY11-12)
- Transfer from the General Fund of \$42M to the Health Care Expansion Fund (HCEF) for CHP+ coverage of kids and pregnant women between 185% and 205% FPL.

There were a number of bills that accompanied the long bill through the legislative process as part of the budget package. These bills included the following related to health care:

- SB 210 – Transferring dollars from the Old Age Pension Medical Fund to the Medicaid budget.
- SB 211 – Tobacco Revenue Offset Medical Services. This bill uses funds from Amendment 35 (tobacco tax) to balance the budget. The total of \$33 million comes from the Tobacco Prevention and Cessation grants program, the Cancer, Cardiovascular and Pulmonary Disease Prevention, Early Detection and Treatment grants program, Breast and Cervical Cancer Screening (Women’s Wellness Connection) and the Health Disparities grant program. There were a few unsuccessful attempts to dedicate the remaining funds for direct services only or to prioritize specific programs over others. Many legislators, including those who have sat on the grant review committees, argued that the expertise and authority to administer these grants should remain in the hands of the review committees. This bill required the declaration of a fiscal emergency by a 2/3 majority of both houses (SJR11-009).

Approved Amendment 35 Cuts for FY11-12

Program	% of A35 Funds Allocated	Amt Expected FY11-12	Approved Cuts FY11-12	Remaining for FY11-12	Cut
Tobacco Grants	16%	\$ 23,207,058	\$ (17,660,700)	\$ 5,546,358	76%
Cancer, Cardio, Pulmonary Disease (CCPD) Grants	16% less amts to programs below	\$ 13,277,470	\$ (10,289,366)	\$ 2,988,104	77%
Breast & Cervical Cancer (WWC)	20% of the 16% to CCPD				
<i>Treatment</i>		\$ 1,215,340	0	\$ 1,215,340	0%
<i>Screening</i>		\$ 3,661,660	\$ (1,625,000)	\$ 2,036,660	44%
Medicaid Disease Management	\$2M from CCPD	\$ 2,000,000	\$ -	\$ 2,000,000	0%
Health Disparities (HD) Grants	15% of the 16% to CCPD	\$ 3,531,904	\$ (3,008,489)	\$ 523,415	85%
Grand Totals \$		\$ 48,993,175	\$ (33,049,124)	\$ 15,944,051	67%

- SB 212 – Transfer \$50M of funds that otherwise would have increased hospital payments under the hospital provider fee bill (HB09-1293) to the GF to offset Medicaid caseload expenses. Hospitals will not receive a reduction, but will not receive an anticipated increase
- SB 215 – Nursing Facility per diem rate reductions
- SB 216 – Children's Basic Health General Fund Appropriation
- SB 219 – Transfers to Health Care Services Fund. For FY 2011-12, net payments to safety net clinics through the Primary Care Fund were reduced. The Primary Care Fund is funded through Amendment 35 Tobacco Tax and expected to receive \$28.3M in FY 11-12. The bill included three different transfers from the Primary Care Fund:
 - To the general fund to balance the Medicaid budget (\$15,775,670)
 - To the Health Care Services Fund for safety net providers who participate in the Colorado Indigent Care Program (CICP). These funds are eligible for a federal match (\$11,755,000 state funds to be matched with an equal amount of federal funds for a total of \$23,550,000)
 - To the Special Distribution Fund for other safety net clinics that do not participate in the Colorado Indigent Care Program and are not eligible for the federal match (\$2,122,330).

The introduced bill included even deeper cuts but during the budget process, \$2M was restored to the CICP clinics and \$400,000 to the non-CICP clinics. Safety net clinics thus received a total cut of \$2.7M. This bill required a 2/3 majority of both houses to declare a fiscal emergency to allow A35 funds to be used for other health care purposes (SJR11-009).

- SB 224 – Suspend Nurse Home Visitor Program Funding Increase. This bill would suspend the expected 1% increase in tobacco settlement funds this program was scheduled to receive. Due to a reduction in the total tobacco settlement funds received by Colorado, program grantees are expected to receive a decrease of 2-3% in total funding.
- HB 1296 – Continue Sales Tax on Cigarettes, using sales tax receipts to balance the budget.

Some proposals for budget cuts were not passed, including the following:

- Delay Medicaid payments to health care providers by three weeks
- Cut in Medicaid pharmacy reimbursement for Federally Qualified Health Centers (FQHCs) of \$950,000
- Eliminate the CICP clinic program for a General Fund savings of \$6M
- Reduce Medicaid reimbursement for procedure codes reimbursed above 95% of Medicare rates to 95% of Medicare rates
- Restrict Medicaid oral nutrition benefit for clients over 5 years of age to cover only those “medically necessary” nutrition products.

Medicaid and Child Health Plan (CHP+) Policy Changes

The 2011 legislative session included several bills affecting Medicaid and CHP+ as follows:

SB 8 eliminates the Medicaid “stairstep” eligibility, by moving children ages 7-18 between 100 and 133% of the FPL from CHP+ to Medicaid. Not only is this expected to save the state significant funds, it assures that families with children of different ages have one insurance program, one set of benefits, and one provider network. It also assures that children do not have to switch from one insurance program to another on their 7th birthday. Due to a new federal law reauthorizing CHP+, it is now possible to do this and still continue to get the 2:1 CHP+ federal match for these kids.

SB 250 moved pregnant women on CHP+ to Medicaid between 134% and 185% of FPL. The federal government made this a requirement in order to receive the federal match for the new expansion population of pregnant women in CHP+ (205%-250% FPL)

SB 213 adds monthly premiums for CHP+ of \$20 for the first kid and \$10 for each subsequent kid up to \$50 per month for a family. This premium only applies to those families between 205-250% FPL, a new expansion population under the Colorado Affordable Care Act, otherwise known as the Hospital Provider Fee. Several child health groups are asking the Governor to veto to this bill, as it presents a barrier to access to health insurance and is expected to result in a 20–30% decrease in CHP+ enrollment.

HB 1242 requires the Department of Health Care Policy and Financing (HCPF) to review and submit a report on the **integration of mental and physical health** for Medicaid, such as reducing barriers to same-day billing for mental and physical health visits.

Three bills related to Medicaid and CHP+ failed to pass, including:

- HB 1025 proposed to **repeal the Hospital Provider Fee** which was enacted in 2009. This was postponed indefinitely with a large coalition working against it.
- HB 1149 proposed to have individuals **applying for public benefits show a social security card**. This part of the bill was amended out and this bill was considered lost in the House.
- HB 1285, sponsored by House Majority Leader Amy Stephens and Senator Betty Boyd, removed a ban for the Department of Health Care Policy and Finance to allow managed care for **long-term care**. There were significant concerns from many groups because of recent studies in New Mexico showing increases in overall costs associated with hiring a managed care company. The bill was changed in the House to be a study and was ultimately killed in the Senate Health and Human Services Committee.

Health Insurance Coverage

There were several bills related to private health insurance reform including:

SB 19 allows **small employers to reimburse employees for health insurance premiums** if the small employer does not have and has not had a small group plan for its employees in the last 12 months.

There were a number of bills introduced related to the implementation of national health care reform. As a result of the provision that no carrier can deny a child for pre-existing conditions, many health insurance companies stopped offering “child only” plans. SB 128 **requires insurance companies to offer “child only” policies** as a condition of participation in the individual market. The bill creates two open enrollment periods and rules for such policies to create an even playing field. The All Kids Covered Initiative and the Colorado Association of Health Plans worked together to bring this bill forward.

The legislature proposed three different bills to address national health care reform in Colorado. Only the bipartisan compromise bill passed. SB 200 creates the governance structure for a **Colorado health care exchange**. This bill details the appointments for members of the Exchange Board, has a strong conflict of interest clause and creates a legislative oversight body. The two bills that did not pass were SB 168 to **study the creation of a health care cooperative** and HB 1273 to **opt Colorado out of national health care reform** and other federal health programs including Medicaid, CHP+ and Medicare by entering into an interstate compact.

Mental Health and Child Welfare Policy Changes

2011 legislation on mental and behavioral health and child welfare policies included the following:

In 2010, Governor Ritter vetoed a bill which would have continued the **Sex Offender Management Board**. HB11-1138 was introduced to continue this program and ultimately passed.

SB 34 **requires Women Infants and Child (WIC) Educators to report child abuse and neglect**, as a mandatory reporter. SB 12 allows local boards of education to adopt policies allowing children to carry and self-administer **prescription drugs at schools** with certain restrictions. Another bill related to children at school was HB 1254, which clearly defines bullying, **requires each school district to adopt a comprehensive anti-bullying policy**, and creates a grant program to fund bullying prevention programs at schools. HB 1027 expands a pilot program to let military families use off-base **child care facilities** that meet federal standards. Currently, many military families are unable to use their child care benefit due to a lack of on-base child care slots.

Every few years **the mental health professionals** have a review of their statute called a “sunset process”. The mental health professionals included in the sunset bill (SB 187) are: Psychologists, Social Workers, Marriage and Family Therapists, Addiction Counselors, Licensed Professional Counselors and “Unlicensed” Psychotherapists. The bill does several things including the following:

- creates the state Board of Addiction Counselor Examiners
- changes the name of "unlicensed psychotherapists" to "registered psychotherapists"
- changes the name of the Grievance Board for unlicensed psychotherapists to the State Board of Registered Psychotherapists
- creates a candidate license for marriage and family therapists and licensed professional counselors
- authorizes the oversight boards to impose an administrative fine of up to \$5,000 per violation on regulated mental health professional for certain violations

- authorizes the boards to enter into confidential agreements to restrict the practice of a mental health professional who has a mental or physical illness that affects his or her ability to practice and specifies that such an agreement is not a disciplinary action
- allows oversight boards to order a mental health evaluation of regulated professionals to determine ability to continue practicing under a confidential agreement or restricted license
- eliminates the exemption from regulatory oversight provided to a mental health professional acting as a court-appointed child and family investigator in cases involving child custody and child abuse/domestic violence
- modifies the membership on the oversight boards to replace a member of the public with a representative of the regulated profession
- creates a peer assistance program after July 1, 2012 developed in conjunction with affected mental health professionals

Public Health Issues

General funds for local public health agencies (LPHAs) were not cut in FY09-10, FY10-11, or FY 11-12. However, since LPHAs also receive a percentage of the **tobacco settlement funds** and the total amount of those funds received annually is declining, there is a decrease in FY10-11 and an FY11-12.

HB 1069 requires elementary schools to provide at least 30 minutes of **physical activity** opportunities per day. The bill allows many activities to count towards the opportunity requirement, including but not limited to physical education, recess and field trips with a physical activity component. However, a school cannot replace physical education with physical activity.

HB 1016 adds “E-Ciggs” to the list of **tobacco products** making them illegal for minors to buy, possess or use on school property and subject to tobacco tax. E-Ciggs are smoke-free vapor cartridges which administer nicotine to the body.

Two bills addressed injury prevention for children. SB 40 requires youth coaches to obtain training on the signs of and referral for **proper treatment of concussions**. SB 227 **updates child-restraint laws** by requiring a child weighing more than 40 pounds in a motor vehicle with a rear seat that was not equipped at the time of manufacture with combination lap and shoulder belts to be restrained in a child restraint system. By removing the exemption, Colorado remains eligible for federal dollars.

The following bill did not pass:

SB 63 would have indicated that a **local government may consider health elements in their master plan** and strongly encouraged collaboration with local public health agencies that are currently gathering data and developing local public health improvement plans. This bill failed by one vote and the House. SB63’s language was later added to HB1217, but that bill also failed.

Environmental Health Bills:

HB 1026 requires the Colorado Department of Public Health and Environment (CDPHE) to designate a **storm water management** administrator and allows the director or their designee to sit on the governing body for the administrator.

HB 1291 approves the **State Improvement Plan (SIP) for Air Quality**. This plan helps Colorado come into federal guidelines for emissions and other air quality standards.

HB 1250 gives authority to the Department of Revenue to establish rules regarding **medical marijuana infused products** and how they are marketed and labeled to children. SB 134 bans the sale of **synthetic marijuana**, otherwise known as “spice”, which is sold in vending machines and can cause seizures. This bill passed. HB 1034 is a clean-up bill from last year’s bill establishing the regulation of **medical marijuana dispensaries**, establishing banking rules for businesses and also clarifying when someone can access their medical marijuana before obtaining their “red card”.

The following environmental health bills did not pass:

SB 258 would have allowed local boards of health to opt-in to a program authorizing growers to sell products made in home kitchens at farmer’s markets and roadside stands. The bill intended to create opportunities for **local foods to be sold in communities**. The bill allowed Local Public Health Agencies to develop a registry of such growers, charging a registration fee to cover direct and actual costs of administering the registry. However, there were significant concerns about food safety and the potential negative impact of food-borne illnesses on health and the agricultural economy.

HB 1179 would have updated the definition of **On-Site-Waste Water-Management** to give locals more flexibility on how they dealt with waste-water requirements in their communities.

HB 1223 would have **removed public health representation as a voting member from the Oil and Gas Commission**. There was broad and significant opposition to this bill and it died on the calendar.

HB 1261 would have established a specific limit of THC blood level for **driving while under the influence of marijuana**. This bill went through many versions and ultimately died in the Senate.

Health Care Providers and Workforce Policy Changes

There were several changes to workforce and provider policies in the 2011 session including:

HB 1101 exempts **Federally Qualified Health Centers from community clinic licensure** requirements making their requirements mirror those of a doctor’s office instead of a hospital. HB 1323 exempts **Rural Health Clinics from community clinic licensure** requirements.

HB 1019 allows a **school based health center to waive co-pays** and still bill private insurance for the visit. Previously, a clinic could not bill a private insurance company if it waived a co-pay.

HB 1281 moved the **Nurse-Faculty Student Loan Forgiveness** program from College Invest to the Primary Care Office at the Department of Public Health and Environment. It also dedicates some state dollars to the Colorado Health Services Corps, the state’s health care professional student loan repayment program. This allows the department to maximize foundation and federal dollars to administer the program.

SB 192 continued the **Prescription Drug Monitoring Program** used by providers to track patients’ narcotics prescriptions. This program helps providers determine if a patient needs a narcotic or may have an addiction to narcotics. Broadly supported by the medical, dental and nursing community, SB 192 was first introduced as SB 114 and killed in Senate Appropriations. The medical community brought this bill back as their own. It is paid for by an increase in the program’s fees. The current fee of \$7 will be increased in FYs 2011-2013 to \$17.50, to \$20 for FY 2013-2015 and up to \$25 for FY 2015-2021. This fee is an additional, optional fee paid by the prescriber when they renew their license.

SB 88 continued the regulation of **Direct Entry Midwives (DEMs)** in Colorado. Such midwives attend home births that make up about 1% of all Colorado births. The bill allows DEMS to obtain and administer eye ointment, vitamin K and Rho(D) immune globulin, anti-hemorrhagic drugs and IV fluids. It also requires the client disclosure form to indicate that the patient understands they are not retaining a Certified Nurse Midwife (CNM).

SB 242 **lowers the age for a retired volunteer nurse license from 65 to 55 years of age.** This bill may increase the number of volunteer nurses in the health care workforce.

The following bills did not pass:

SB 205 proposed a process for **Advanced Practice Nurses to be considered for private health insurance panels**, requiring insurance companies to communicate in a timely manner and provide reasons for denials.

HB 1152 proposed to **collect data on health care providers** to gain a better a better understanding of where providers practice, how often they work and their work settings.

HB 1217 had a very broad title “concerning access to health care”. It went through many changes, but ultimately included language from SB 63 (health planning in a community), a provision to prohibit the implementation of SB 213 (CHP+ premiums) and other issues related to long term care. The House did not agree with these amendments and the bill died.

Other Policy Changes

The following bills did not pass:

- SB 4 increases the sentence for those who commit **crimes against homeless** persons.
- SB 72 aimed to provide reasonable **remedies for certain employees who are discriminated** against in the workplace.
- HB 1290 was an attempt to roll back **payday lending** reform that passed narrowly in 2010. This policy was later included in SB 78, which approves all the rules promulgated since 2009. Generally policy decisions like this are not added to annual rules bill. The Governor threatened a special session if the rules bill died. In the final hours, the payday lending policy was removed and the rules bill passed.
- SB 172, which would have created **civil unions** for same-sex couples, passed through the Senate with bipartisan support but died in House Judiciary on a party line vote.

Interim Activities

The legislature has funding for five interim committees, including the following:

SB 111, Education Success Task Force to study remediation

SB 133, Discipline in Public Schools

SB 200, Health Care Exchange legislative oversight committee.

Legislative appointments will happen by July at which point the schedule and membership of these committees will be available online.

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