



## 2010 Year-end Report

**SUMMARY:** With medical marijuana regulation and public education reform at the forefront of the 2010 legislative session the **Colorado General Assembly** met the required 120 days and adjourned May 12. The session was contentious and political while budget restraints continued to be another focus of the Legislature. There was new leadership in the Senate as **Sen. Peter Groff** accepted an appointment in the **Obama** administration. **Sen. Brandon Shaffer**, D-Longmont, was elected Senate President and **Sen. John Morse**, D-Colorado Springs, was elected Majority Leader.

**DeFilippo Rees Robinette, LLC**, (DRR) in collaboration with **Centura Health's Advocacy** department supported, opposed or monitored 88 bills through the session. This was, once again, a challenging year with an anti-business atmosphere. When the gavels dropped Jan. 12, revenue shortfalls were the first big issue facing the 100-member assembly. Advocacy efforts focused on the three main components of the **Centura 2020** plan.

### Strengthening our Foundation

**Coverage and Access for the Uninsured/Underinsured** - Centura Health is in support of health care reform which expands access to care, makes health care more affordable, aligns incentives for health care being delivered at the right place, right time and at the right price.

**Insurance Reform** - Centura Health supports the end of denials for pre-existing conditions, exorbitant out of pocket expense and lifetime caps.

**Medicaid** - We support the expansion of Medicaid but are concerned with provider reimbursement. The state must address the need for access to primary care and the lack of providers who will accept the current reimbursement levels.

**State Budget** - We support the state in its need to balance the budget but want to make sure all areas of the budget are reviewed and that all cuts are equitable.

Colorado has a very popular initiative process outside the Legislature. Citizens may propose ballot initiatives, collect signatures and pour money into campaigns in order to change laws. Following the **FASTER** bill of 2009, a group began the process and was able to secure a spot on the

2010 ballot for three initiatives that would, experts believe, cripple the state. **FASTER** raised automobile registration fees to provide a funding stream for bridge and highway projects.

Dubbed "The Bad Three," supporters, angry that the legislature raised fees instead of going to the voters for highway funding, collected signatures at Department of Motor Vehicle Offices around the state to secure a place on the ballot for Amendments 60 and 61, and Proposition 101.

**Amendment 60**, if voters approve, will mandate cuts to property taxes by 50 percent forcing the state to backfill the lost revenue.

**Proposition 101**, if adopted by the voters, reduces car taxes, telephone taxes and guts the **FASTER** bill of 2009. The Colorado Department of Transportation estimates a loss of \$277 million to bridge and highway projects by reducing the vehicle registration fee to \$10 per vehicle no matter what the weight. It also would decrease the state income tax to 3.5 percent.

While the above are harmful to the state, **Amendment 61** eliminates Colorado's ability to build or expand its schools, roads, hospitals, college buildings, light rail, water and sewer systems, prisons—in fact, any of its capital infrastructure. It does away with bonding. It reduces the time frame for which a local district may repay a bond to 10 years. Bonding makes it possible to build schools in your neighborhood, fire stations, water projects, prisons, airports, health facilities, highways, transit, colleges, etc. Amendment 61 also removes public financing at the state level. It eliminates revenue anticipation notes and does away with certificates of participation.

The estimated cost to the state is \$4.2 billion annually and that could cost 52,000 state jobs plus another 50,000 by shutting down public financing, according to Rick Reiter, with Coloradans for Responsible Reform.

**Medicare** - We are concerned with the continuing cuts to nursing homes, home care and hospitals. Medicare reimbursement needs to cover the cost of providing care.

**Charitable Purpose** - We support transparency and the gained understanding by our public of the use of our tax-exempt status. Centura Health is a community benefit and we must continue to tell our story.

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**Provider Fee** - We support the continuance of the provider fee for our state and the expansion of access for over 100,000 Coloradoans as originally agreed upon.

Boyd and Riesberg sponsored **SB 10-169, “Concerning Authority for Moneys in the Hospital Provider Fee Cash Fund Generated by an Enhanced Federal Match through the 2010-11 Fiscal Year to be used to Offset General Fund Expenditures in the Medicaid Program, and Making an Appropriation therefor,”** which transfers funds from the Hospital Provider Fee Cash Fund to the Health Care Expansion Fund. The amount of the transfer is equal to the increased federal funds for Medicaid received under the American Recovery and Reinvestment Act generated from the hospital provider fee created by HB 09-1293. For the 2009-10 and 2010-11 state fiscal years, the bill authorizes the amount of increased federal financial participation, pursuant to the federal “American Recovery and Reinvestment Act of 2009” or other federal act, generated from appropriations out of the hospital provider fee cash fund to be used to offset other general fund appropriations for Medicaid services. The bill recognizes that moneys in the health care expansion fund have been used to offset general fund expenditures for Medicaid services. The bill specifies that the first \$41.4 million of increased federal financial participation shall be transferred to the health care expansion fund and that any amount in excess of \$41.4 million be appropriated for Medicaid services.

**Quality and Patient Safety** - We support the continuous improvement of quality and patient safety. We support a system which will have consistent reporting and standards both at the state and federal level.

During the 2009 interim, the Hospice and Palliative Care Committee met and out of that came **HB 10-1122, “Concerning Medical Orders Determining the Scope of Treatment an Adult Wishes to Receive Under Certain Circumstances,”** sponsored by Rep. **Ellen Roberts**, D-Durango, and Sen. **Suzanne Williams**, D-Aurora, which updates the Medical Orders and Scope of Treatment statutes. Bill proponents wanted to update the MOST form to make it clear that the patient’s wishes are followed. Discussions last summer led to the bill which, when introduced, was to change terminology in the statutes, not the meaning. However, there were concerns from the Colorado Catholic Conference. Current law requires that a patient be terminally ill to refuse life-sustaining treatment. The bill changed that to allow any patient the ability to refuse life-sustaining treatment. According to the Colorado Catholic Conference, this opens the door for assisted suicides. While the bill passed without the Catholic Conference amendments included, the proponents will be changing the MOST form in a fashion that they believe answers the Catholic Conference’s concerns.



Riesberg and Sen. **Paula Sandoval**, D-Denver, sponsored **HB 10-1283, “Concerning Increasing Patient Safety Outside of the Litigation Process, and, in Connection therewith, Requiring Physicians to Engage in Ongoing Professional Development, Facilitating Information Sharing about Health Care Workers, and Requiring Demonstration Project Data About Redress for Adverse Health Care Outcomes,”** which would have created the Patient Safety Act. The bill was brought forward by the Colorado Medical Society in response to last year’s case of drug use and needle tampering by a surgical nurse at Rose Hospital. Physicians and trial lawyers argued over whether or not what was said to a patient after an accident could be used in a possible lawsuit later. The “I’m Sorry Law,” where a physician can say “I’m sorry,” but not share any information as to what went wrong during a procedure is sometimes not enough for physicians. Dr. Mark Latos representing CMS testified in support of protection when a conversation takes place between a doctor and a patient as to what went wrong. The trial lawyers opposed that. The bill died April 5 in the House Judiciary Committee.

There were two pieces of legislation addressing false claims. **One, SB 10-167, “Concerning Increased Efficiency in the Administration of the ‘Colorado Medical Assistance Act’, and, in Connection therewith, Creating the ‘Colorado Medicaid False Claims Act’, Requiring a Post-Enactment Review of the Implementation of this Act, and Making an Appropriation,”** sponsored by Sen. **Betty Boyd**, D-Lakewood, and Rep. **Jim Riesberg**, D-Greeley, was supported by the governor’s office and addressed Medicaid fraud. Centura supported the measure as it mirrors federal law.

By establishing the Colorado Medicaid False Claims Act, it is assumed that the state will save up to \$400,000 in fiscal year 2010-2011 and at least \$400,000 in fiscal year 2011-2012. The act will:

- appoint an internal auditor to ensure that duplicate benefits are not being paid by other states to clients enrolled in Department of Health Care Policy and Finance (DHCPF) programs;
- implement an automated, pre-payment review system to reduce medical services coding errors in Medicaid claims, report annually on its implementation and identified errors; and
- purchase private health insurance coverage through the Health Insurance Buy-In Program for up to 2,000 eligible clients to create cost savings for the state.

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The act also states that anyone who knowingly submits a false claim or intends to defraud the state or a political subdivision is liable for up to three times the amount of damages, the costs of civil action, and a civil penalty of between \$5,000 and \$10,000. Persons ineligible to receive state funds and who report to the Attorney General within 30 days of receiving such funds may be liable for two times the amount of damages and no civil penalty, provided certain conditions are met. The bill specifies certain investigative, notification, and court procedures for false claims and requires the Attorney General to prepare an annual report for certain legislative committees.

SB 167 was amended to protect hospitals in the case of a disgruntled employee stealing patient records and there is a 5-year sunset on the bill requiring a review of its effectiveness. The bill was signed May 26, 2010.

The second, **HB 10-1357, “Concerning Creation of a False Claims Act, and Making an Appropriation in Connection therewith,”** sponsored by Reps. **Buffie McFadyen**, D-Pueblo, and **Joel Judd**, D-Denver, and Sens. **Chris Romer**, D-Denver and **Boyd** was broader and opposed mostly by the construction industry. It would have allowed anyone to file a lawsuit on behalf of the state even if the attorney general found no merit in the suit. It also did not allow for damages if the defendant was found not guilty. The bill died on the Senate floor with seven Democrats joining Republicans.

**Protecting Our Religious Heritage** - We support legislation which preserves the directives of our religious sponsors.

When rumors of a late bill regarding hospital procedures began to circulate around the Capitol in late March - early April, DRR once again contacted Senator Boyd. Again, she was instrumental in bringing the parties together. She was asked by the Colorado Center on Law and Policy (CCLP) to run a bill that would require hospitals to list services that they do not perform. Ed Kahn from the CCLP shared concerns that some hospitals would not perform certain reproductive services and also that they would not honor end of life wishes. According to a representative from the health department, under current rules and regulations if a hospital treats a patient in the emergency department for a D and C and does not perform a tubal ligation when requested, the hospital can be fined for denying the service. However, during this meeting it was also determined that there were very few complaints to the Colorado Department of Public Health and the Environment (CDPHE). It also was determined that patients and doctors talk to one another and a doctor more than likely will not refer a patient to a hospital that does not perform a desired service.

**Workforce Strengthening** - We support legislation which will help bring more health care workers into the workforce through loan repayment programs, scholarships, and other programs.

**SJR 10-35, “Concerning Support for Measures to Reduce Violence Against Medical Care Professionals in Hospitals,”** was the result of a number of meetings that began in the summer of 2009. Representatives from Parker Adventist Hospital and DRR met with Rep. **Mike May**, R-Parker, to educate him regarding the rise in assaults on hospital personnel at PAH. Our goal was to run legislation increasing the penalties for those who assault hospital employees while receiving care. Going in we knew that it would be a tough sell because assault laws already are in statute and because of the state’s budget crisis. While May was sympathetic, he was unwilling to sponsor a bill that had no chance of landing on the governor’s desk. Last fall, during a legislative tour of St. Anthony North, discussions of assaults in the emergency department transpired and Sen. **Lois Tochtrop**, an RN, said she understood the plight, but really could not carry a bill due to current budget constraints. Thus, the resolution.

The resolution acknowledged violence in the hospital workplace and expressed support for “exploring future measures designed specifically to strengthen penalties for perpetrators of assaults against medical care professionals in hospitals and in the field.”

The resolution passed both houses and the House sponsor, Rep. **Cindy Acree**, R-Arapahoe County, has agreed to sponsor such a bill for Centura in the next legislative session. While the state’s budget situation will not be any different, this is a step-by-step process and running this resolution was the first in a series of steps to passing a bill.

**Liability Reform** - We support pilots designed to bring down the cost of malpractice insurance and the unnecessary application of defensive medicine.

**Health IT** - We support standards for EMRs which will allow for integration between vendors and for sharing of data to facilitate more efficient and effective care.

### Creating Systems of Care

**All Payer Database** - We support an all payer database which will allow for providers to be able to share best practices and help us to develop protocols which will lead to better care for our patients.

Rep. **John Kefalas**, D-Fort Collins and Sen. **John Morse**, D-El Paso County, sponsored **HB 10-1330, “Concerning the Creation of an Advisory Committee to make Recommendations Regarding the Creation of a Colorado All-Payer**

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**Health Claims Database for the Purpose of Transparent Public Reporting of Health Care Information,”** which created an all-payer health claims database. The bill requires the Department of Health Care Policy and Financing (DHCPF) to create an advisory committee to make recommendations for creating a Colorado all-payer health claims database. The database is to be user-friendly, public, and meet certain criteria for transparency and data quality. Funding is to come from gifts, grants and donations received by January 1, 2012 or the database will not be created. The governor signed HB 1330 May 26, 2010.

**Readmissions** - We believe that by creating systems of care we will be able to provide better care to our patients and reduce the number of hospital readmissions.

**Loosening of Regulations** - In order to be able to better align with physicians and other health care providers, we support the lessening of regulations which may impede our ability to improve the delivery of care.



Over the course of the 2010 session, Centura representatives met with Senator Betty Boyd on several issues. One ongoing issue is the licensure fee increase for hospice facilities. In 2008, Colorado Center for Hospice and Palliative Care asked the Colorado Department of Public Health and Environment for increased regulation in the form of more frequent surveys. The department estimated the cost of increasing surveys at \$238,000, which would include one survey every three years.

When calculating the cost and a fee increase to hospice facilities, it was determined by the department that there should be a \$4,400 fee for all facilities except for those given an exemption. This fee increase was 15 times higher than the \$300 fee. DRR, along with **Jane Barnes** and **Cindi Pursley**, met with Boyd who asked the health department to sit down with the industry and attempt to reach a compromise.

Following a meeting with Centura, Dr. Ned Calonge, CDPHE, and other parties, there was a reduction in the fees and some easing of the Feb. 17 deadline with the Board of Health. With Boyd's help, the department, which was unwilling to budge before the meeting, sat down and really listened to our concerns and worked with the industry to find a solution.

## Moving Upstream to Manage Health

**Wellness** - We support legislation which would reimburse providers for improving and managing health including health risk assessments, coaching, and education classes.

### **Accountable Care Collaborative (Organizations)**

**(ACC, ACO)** - We support these collaboratives which will allow for health management of defined populations and improvements to the overall health status of the communities we serve.

**Tele Health/Medicine** - We support legislation which will reimburse providers for using new and innovative technology thus providing access to clinical specialties, education and monitoring capabilities to communities who would otherwise be without.