



## 2016 Colorado Legislative Review

The Arc of Arapahoe & Douglas was intensely involved in the highlighted bills. We monitored the others on weekly policy calls. All action alerts were shared through our email list serves.

### **HB 16-1405—State Budget Bill—Some Highlights**

#### CO Dept. Health Care Policy and Financing

- The 2016-17 budget proposed by the Administration included a 1% across-the board rate reduction for Medicaid providers. The Joint Budget Committee (JBC) identified options to avert a reduction in provider rates.
- The Administration also proposed rolling back a rate increase for Primary Care Services that had been in effect for the past two years. Originally, the rate increase was provided by the federal government to encourage states to increase Medicaid rates for Primary Care Services to rates paid by Medicare. CO covered the rate increase for the second year. Some primary care services would have seen up to %25 reductions under the proposal. However, the JBC identified other ways to avoid the reductions for most primary care services.

**\$500,739,116** for services to adults and children with IDD in the HCPF Office of Community Living budget:

- \$362,346,433—Adult DD Waiver
- 69,681,391—Supported Living Services (SLS) Waiver
- 26,310,826—Children’s Extensive Support (CES) Services Waiver
- 32,255,501—Case Management
- 6,960,460—Family Support Services
- 63,311—Preventive Dental Hygiene
- 3,121,194—Eligibility Determination and Wait List Management

The budgeted items noted above presume that all children eligible for the CES Waiver will be included as will all adults eligible for the SLS waiver.

The line item for the Adult DD waiver presumes 141 new enrollments:

- 14 transitions through the Colorado Choice Transitions program for persons currently living in nursing homes or at Regional Centers in Intermediate Care Facilities/for persons with IDD

- 40 emergency placements
- 55 enrollments for persons transitioning from foster care to the adult IDD waiver
- 32 placements for persons aging out of the CES waiver.

## **Bills supported by The Arc of CO**

**HB 1037—Income Tax Credit for Employment of Persons with Disabilities**—Rep. Windholz/Sen. Aguilar.

The bill would have implemented recommendations from an interim task group recommending tools to increase employment for people who are blind or visually impaired. The sponsors added persons with IDD to the included population. The bill would have provided state income tax credits for employers hiring the covered groups and also provided state tax credits for cost to the employer for equipment or technology to assist those hired. Postponed indefinitely in a House Committee

**HB 1027—Criminal Depositions for At Risk Adults**—Rep. Danielson/Sens. Todd and Sonnenberg

Under current law, a prosecutor may request to depose an at-risk adult victim or witness if the victim or witness may be unavailable at trial. The bill allows the request for both at-risk adults and at-risk elders. If the motion relates to an at-risk elder, the court shall schedule the deposition. If the motion relates to an at-risk adult, there is a presumption that the deposition should be taken to prevent injustice. The court may deny the motion if it finds that granting the motion will not prevent injustice. Signed

**HB 1101—Medical Decisions for Unrepresented Patients**—Rep. Young /Sen. Lundberg

An attending physician or a designated physician (physician) may make health care treatment decisions as a patient's proxy decision-maker if:

- After making reasonable efforts, the physician cannot locate any interested persons, or none of the interested persons are willing and able to serve as proxy decision-maker;
- The attending physician has obtained an independent assessment of decisional capacity by another health care provider not associated with the healthcare facility; and
- The physician has consulted with and obtained an agreement with the medical ethics committee of the health care facility where the patient is receiving care. If the health care facility does not have a medical ethics committee, the facility shall refer the physician to a party that can provide consultation and recommendations.

The authority of the physician to act as proxy decision-maker terminates if an interested person is willing to serve as proxy decision-maker or a guardian is appointed. When acting in good faith as the proxy decision-maker, an attending physician or his or her designee is not subject to civil or criminal liability or regulatory sanction.

The bill underwent numerous amendments and the sponsor worked with stakeholders to address concerns. Signed

**HB 1195 - Home Modifications in Medicaid Waiver Services**-- Reps. Landgraf and Young/Sens. Steadman and Crowder

Currently, in CO HCBS Medicaid waivers there is a lifetime cap on funds for home modifications for people with disabilities who require modifications to allow them to stay in their own homes. The bill would have required the state to amend HCBS waivers to allow the “caps” to re-set each time a waiver is renewed—usually every five years. The bill also would have clarified the definition of home modification services to ensure that services are related to an eligible person's disability as permitted by federal law, and not solely for a physical impairment. The bill passed the House but was Postponed Indefinitely in a Senate Committee.

**HB 1224 -Treat Trafficking of Children as Child Abuse**—Rep. Lundeen/Sen. Woods.

The bill amends the statutory definition of child abuse or neglect to include any case in which a child is subjected to human trafficking for involuntary servitude or human trafficking for sexual servitude. Signed

**HB 1254—POST Training re: People with Disabilities**—Rep. Young/Sen. Grantham

The bill requires the Peace Officer Standards and Training (POST)Board to provide a training curriculum on abuse and exploitation of persons 18 years of age and older who have an intellectual and developmental disability. Signed

**HB 1260—Extend Statute of Limitations for Sexual Assault**—Rep. Fields/Sens. Johnston and Cooke

The bill extends the statute of limitations for sexual assault to 20 years. Passed both chambers—sent to the Governor

**HB 1277—Appeal Process for Medicaid Benefits**—Reps. Landgraf and Lontine/Sens. Kefalas and Roberts

The bill requires the department of health care policy and financing to give a Medicaid recipient a 20-day advance notice if medical assistance benefits are being suspended, terminated, or modified, unless certain conditions are met. Under current law, the state department allows an applicant or recipient to file an appeal within 30 days after the date of notice of the intended action. The bill extends the time for appeal to 60 days after the effective date of the intended action. Signed

**HB 1321—Medicaid Buy In for Certain Waivers**—Rep. Young/Sens. Merrifield and Tate

The bill directs the department of health care policy and financing to seek federal authorization for and to implement a Medicaid buy-in program for persons who are eligible for home- and community-based services under the Supported Living Services, Spinal Cord Injury and Brain Injury Waivers. Signed

**HB 1328—Restraint and Seclusion**—Reps. McCann and Lee/Sens. Lundberg and Lambert

The bill strengthens the safety provisions for the use of restraint and seclusion on individuals, particularly youths, who are being detained by a state or local agency. Language is added to clarify that restraint or seclusion must never be used as a punishment, sanction, or part of a treatment plan, or for retaliation, or for protection, except in the case of demonstrated emergencies.

The bill defines conditions for restraint or seclusion and also establishes a study committee to report back to the legislature on the effects of restraint or seclusion on youth. Passed both chambers—sent to the Governor

**HB 1361—Patient Choice of Pharmacy**—Reps. Primavera and Becker/Sens. Sonnenberg and Newell

The bill would have prohibited a health benefit plan for prescription drug coverage, from:

- Limiting or restricting a covered person's ability to select a pharmacy or pharmacist of the covered person's choice
- Imposing a co-payment, fee, or other cost-sharing requirement for selecting a pharmacy of the covered person's choosing;
- Denying a pharmacy the right to participate in any of its pharmacy network contracts in CO.

The debate on the bill largely centered on whether or not a health plan could require patients to use only the pharmacies that the plan designated. Most health plans require that patients use mail order to refill maintenance drugs. Independent pharmacies and most chain pharmacies supported the bill. Insurance companies opposed it. Passed the House but was Postponed Indefinitely in the Senate

**HB 1373—Medical Marijuana Use at Schools**—Rep. Singer/Sens. Holbert/Marble

Under current law, a school district can allow a parent or guardian or other authorized caregiver to administer non-smokeable medical marijuana to students with a valid prescription but requires districts to adopt a policy for doing so. No CO district has enacted such a policy. The bill no longer requires districts to enact local policy. The bill describes the conditions under which medical marijuana products can be administered on school property, a school bus, or a school function. Passed both chambers--sent to the Governor

**HB 1384—Testimony—Legal Privilege for Advocates of Persons with Disabilities**—Rep. Danielson

The bill establishes a legal privilege related to testifying without consent for disability advocates. The bill was postponed indefinitely at the request of the sponsor.

**HB 1394—Aligning Issues for At Risk Persons with Developmental Disabilities**—Rep. Young/Sen. Grantham

The bill implements recommendations of the at-risk adults with intellectual and developmental disabilities mandatory reporting implementation task force charged under SB 15-109. The bill:

- Standardizes statutory definitions among Colorado Criminal Code, adult protective, and the office of community living
- Specifies enhanced penalties for crimes against an at-risk person apply to all persons 70 years of age or older and to all persons with IDD; and
- Clarifies the definitions of persons who are required to report instances of mistreatment of at-risk elders or at-risk adults with IDD.
- Reduces the time when a law enforcement agency or county department is required to prepare a written report from 48 hours to 24 hours;
- Specifies that a county department of human or social services is to conduct an investigation of allegations of mistreatment of an at-risk adult; and

- Clarifies that the human rights committee is responsible for ensuring that an investigation of mistreatment of an adult with IDD occurred.

Signed.

**HB 1398—Implement Respite Care Task Force Recommendations**—Reps. Young and Landgraf/Sens. Steadman and Martinez-Humenik

The bill appropriates \$900,000 from the IDD Cash Fund for CDHS to use a competitive bid process to identify a contractor to (among other things):

- conduct a study to demonstrate the economic impact of respite; provide an analysis of caregiver populations and the differences between caregivers who do and do not use respite services;
- show the impact of funds spent on respite services compared to funds saved in health care;
- use an evaluation tool to assess the respite care provided through Medicaid waiver programs and all Colorado respite care programs
- create an up-to-date online inventory that lists existing training opportunities and providers along with information on how to become a respite care provider;
- develop a statewide training system for people who want to provide respite care services;

Passed both chambers -sent to the Governor

**HB 1420—CO Healthcare Affordability and Sustainability**—Rep Hullinghorst/Sen. Crowder

The bill would have designated hospital provider fee revenue as an enterprise fund to exempt said revenue from TABOR limitations. The bill passed the House but was Postponed Indefinitely in a Senate Committee.

**HB 1426—Intentional Misrepresentation of Assistance Animal**—Reps. Primavera and Willet/Sens. Tate and Jahn

The bill “evolved” considerably during the legislative process and contains elements of two bills that were Postponed Indefinitely earlier—HB 1201 and HB 1308. The final bill makes it a petty felony offense for a person to knowingly and willingly misrepresent a service or assistance animal; the bill ensures that persons must be given a written or verbal warning first and authorizes the Dept. of Regulatory Affairs to assist in public education efforts to inform the business community and consumers about service and assistance animals. Passed both chambers—sent to the Governor.

**SB 19—Videotape Mental Condition Evaluations**—Sen. Cooke/Reps. Saine and Foote

The bill requires a court-ordered mental condition examination to be video and audio recorded. A copy of the recording must be included with the evaluator’s report. Passed both chambers—sent to the Governor

**SB 27—Medicaid Option for Mail Order Prescription Drugs**—Sens. Todd and Martinez-Humenik/Reps. Primavera and Landgraf

The bill allows persons receiving Medicaid benefits the option to receive through the mail prescribed medications used to treat chronic medical conditions. The recipient may receive up to

a certain amount of the medication and shall pay the same copayment amount as recipients receiving the medication through any other method. The department of health care policy and financing (department) shall encourage recipients to use local retail pharmacies for mail delivery. Passed both chambers—sent to the Governor

**SB 38—Transparency for Community Centered Boards**—Sen. Aguilar/Reps. Young and Sias

The bill originally would have required agencies designated as Community Centered Boards to be subject to the Colorado Open Records Act and for the state auditor to conduct regular performance and financial audits of those agencies. The Senate sponsor amended the bill to delete the CORA requirement. The bill was amended in the House to require agencies designated as CCBs to post notices of, agendas, and minutes of Board meetings and provide copies of materials distributed at Board meeting to the public; provide opportunities for public comment at Board meetings; and provide individual contact information for Board members. The bill also requires these agencies to provide revenue and expenditure information about services related to the CCB contact upon request. The bill further requires the state auditor to conduct financial and performance audits of CCBs every five years. Signed

**SB 77—Employment First for Persons with Disabilities**—Sen. Kefalas/Reps. Ginal and Primavera

The bill requires the heads of HCPF, CDLE, CDE, and CDHE to work through the State Rehab Council to develop an employment first policy that increases competitive integrated employment for persons with disabilities. The departments will develop a strategic plan to incentive employers to hire people with IDD and provide training and support for people with disabilities to identify, get, and maintain community based jobs in integrated settings. Scheduled for signing June 10.

**SB 120—Review by Medicaid Client for Billing Fraud**—Sen. Roberts/Rep. Coram

The bill would have a health care provider to provide a covered person with a written disclosure concerning charges for out-of-network services whenever the network facility schedules a procedure or seeks prior authorization from a carrier for nonemergency services for the covered person. Postponed indefinitely in a Senate Committee

**SB 169—72 Hour Mental Health Holds**—Sens. Martinez and Cooke/Reps. Landgraf and Tracy Kraft Tharp

Under current law, if law enforcement is contacted to support a person who might qualify for a 72 hour Mental Hold, the agency is required to take the person to a designated mental health facility. If no designated facility is available, a person can be taken to a law enforcement facility. In practice, people are taken to emergency departments whether or not the ED is in a designated mental health facility or to a law enforcement facility. The bill establishes protocol for monitoring and treatment for persons taken to law enforcement facilities and also establishes a due process procedure for extending a 72 hour hold. The bill, in its final form, sets a two year limit on use of law enforcement facilities for mental health holds and creates a stakeholder process to make recommendations. Passed both chambers—sent to the Governor

**SB 178—Grand Junction Regional Center Campus**—Sens. Lambert and Kefalas/Reps. Young and Brown

The bill requires the department of human services to vacate the Grand Junction regional center campus and list the campus for sale no later than July 1, 2018, or earlier, if the department can transition each person receiving services at the Grand Junction regional center campus to non-regional center campus residences before that date. The state would continue to operate services for people transitioned from the campus. Passed both chambers—sent to the Governor.

**SB 192—Assessment Tool for People with IDD Eligible for Services** -Sen. Lambert/Rep. Young

The bill requires the department of health care policy and financing, pursuant to the state department's ongoing stakeholder process relating to eligibility determination for long-term services and supports, to select a needs assessment tool for persons receiving long-term services and supports. Passed both chambers—sent to the Governor.

**SB 196—Inclusive Higher Ed Pilot Programs** -Sen. Kefalas/Reps. Ginal and Primavera

The bill appropriates \$250,000 from the IDD Cash fund to fund programs at UNC, CU-Colorado Springs and Arapahoe Community College. The bill requires the department of higher education the institutions participating in the pilot program, JFK Partners, and IN! -- a stakeholder group supporting inclusive higher education, to work together to develop pilot programs at the pilot sites. Scheduled for signing—June 6, 2016

## **Bills Opposed by The Arc of Colorado**

**HB 1054—End of Life Options for Terminally Ill Individuals**—Reps. Court and Ginal/Sen. Merrifield.

The bill would have created options to authorize authorizes an individual with a terminal illness to request, and the individual's attending physician to prescribe medication to hasten the individual's death. The House version of the bill was Postponed Indefinitely by the House and the twin version in the Senate was Postponed Indefinitely by a Senate Committee

**SB 16—Health Exchange Voter Approval to Impose Tax**—Sen. Lundberg/Rep. Sias

The bill would have placed a question on the Nov. 2016 statewide ballot as to whether the health benefit exchange can impose a tax to support its ongoing operations. The bill was Postponed Indefinitely in a House Committee

**SB 162—Medicaid Recipient Access to Medical Professionals**—Sen. Tate

The bill would have allowed Medicaid eligible patients to access treatment from non- Medicaid providers. Postponed Indefinitely in a House Committee

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