

Health Care Under the Gold Dome: 2021 Legislative Session

JULY 2021

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c|h|a
 Colorado Hospital Association

Today's Presentation



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**CHA's
 2021 Legislative Priorities**

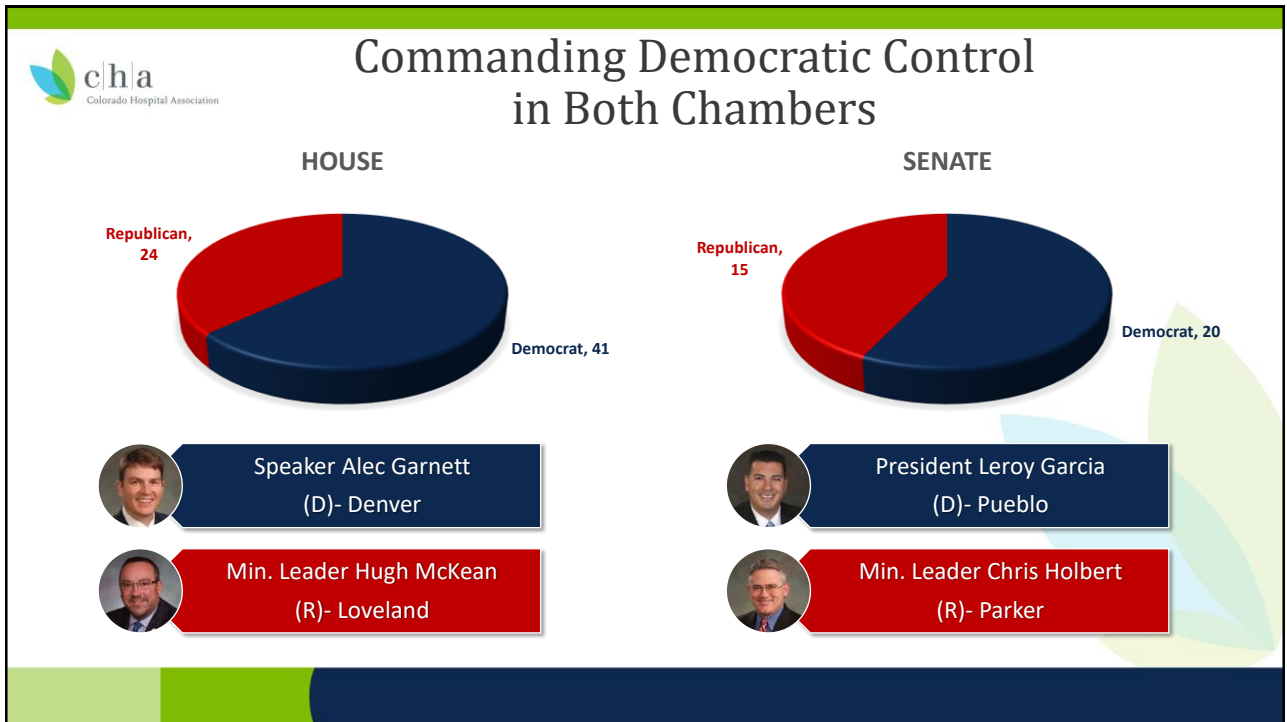
- Respond to the ongoing ramifications resulting from the COVID-19 pandemic and use lessons learned to facilitate improvements in Colorado's health care system
- Protect against policies that will have detrimental impacts on Colorado's health care system
- Work to support policies that provide critical resources to health care providers and improve clinical outcomes for Coloradans

Quick Tip!

Slides with this logo indicate CHA has an in-depth issue brief available at www.cha.com.




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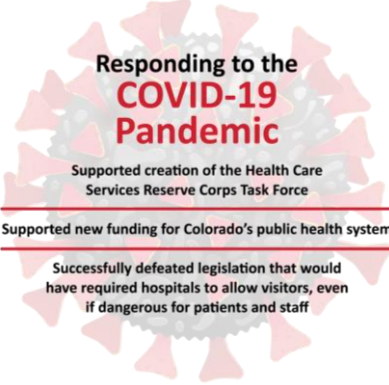


2021 CHA Results



Protecting Against Detrimental Policies

- Worked with Joint Budget Committee to **reject** recommended **\$80 million in cuts** to the Hospital Provider Fee
- Negotiated substantial changes** to the proposed **public option**
- Amended legislation** addressing **hospital billing requirements** for uninsured indigent patients




Responding to the COVID-19 Pandemic

Supported creation of the Health Care Services Reserve Corps Task Force

Supported new funding for Colorado's public health system

Successfully defeated legislation that would have required hospitals to allow visitors, even if dangerous for patients and staff



Supporting Policies that Provide Resources and Improve Clinical Outcomes

Secured an increase to Medicaid provider rates (1% to restore cuts from 2020 and an increase of 1.5% for 2021-22)

Amended and supported legislation to improve equity in pregnancy and childbirth outcomes

Supported legislation establishing reimbursement for health care services delivered by pharmacists and peer support professionals

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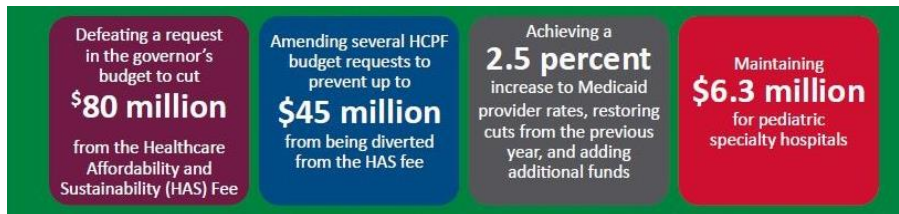
Health Care Affordability and State Budget

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State Budget

- 2021 brought a significant turnaround to the state budget:
 - In 2020, state budget faced \$3.3 billion shortfall, and hospitals suffered significant cuts
 - In 2021, the legislature had a nearly \$6 billion additional dollars due to federal COVID stimulus funds and passed a \$34.61 billion state budget for SFY 2021-22
- CHA was successful in lobbying the Joint Budget Committee on key hospital funding issues:



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Non-Provider Affordability Efforts



PRESCRIPTION DRUGS

- **Prescription Drug Affordability Board (SB 21-175)**
 - Sets an "upper payment limit" for drugs
 - Hospitals not exempted
- **Competitive Bidding (HB 21-1237)**
 - Applies to purchases for the state employee health plan
 - Expanded importation (SB 21-123)



INSURER REQUIREMENTS

- **Provider Credentialing (SB 21-126)**
 - Streamlines provider credentialing
 - Establishes 60-day timeline
- **PBM Accountability (HB 21-1297)**
 - Requires carriers to submit list of all PBMs with annual rate filings
 - Requires PBMs to provide real-time cost, benefit, and coverage data upon request

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Hospital Charity Care (HB 21-1198)



- Expands legislation passed in 2012 and 2014, and shifts oversight from CDPHE to HCPF
- Starting June 1, 2022, hospitals will have to screen uninsured for public coverage programs and hospital charity care
- Separate requirements for licensed health care professionals and medical debt collectors

Parameters	Enforcement
<ul style="list-style-type: none"> • Qualified patients: <250% FPL, insured patients upon request • Discounted rate not to be lower than the greater of 100% of Medicare or Medicaid rate • Must limit payments to monthly installments to 4% of patient monthly income and consider bill paid in full after 36 months • Limitations on selling debt or pursuing "extraordinary" collection actions 	<ul style="list-style-type: none"> • HCPF rules required to be promulgated by April 1, 2022 • Starting in 2023, hospitals will need to submit compliance information to HCPF • Demographic metrics including race, ethnicity, age, primary language spoken • HCPF has authority over corrective action plans and max \$5k fines for certain compliance failures • Specified penalties for civil claims

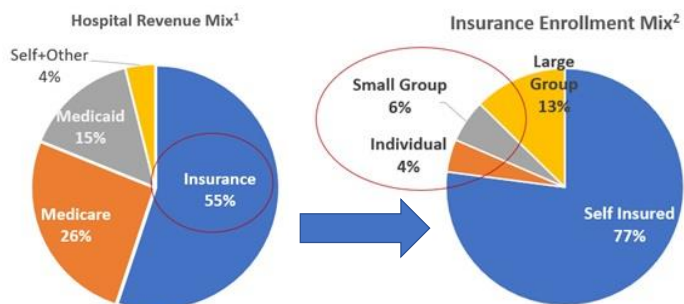
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"Colorado Option" aka "Public Option" (HB 21-1232)



Applicability	"Standardized plan" in individual and small group markets
Administration	Private plans
Providers	Hospitals and all other providers
Cost Savings	15% premium reduction over three years (2023-2025), with no enforcement until 2024
Accountability	"Tailored" accountability: Rate setting only used if carrier does not meet target and specific provider proved to be the cause
Rate Setting	Rate setting has a complex formula and strong guardrails



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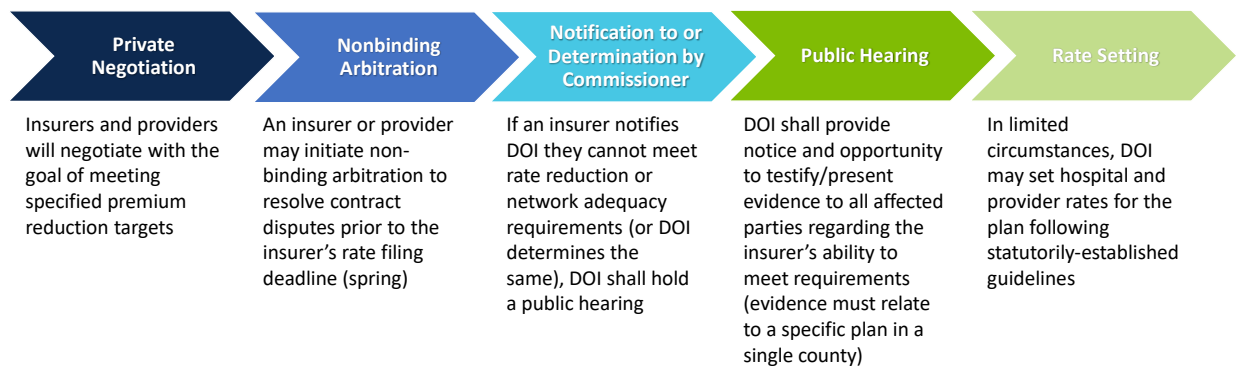
Colorado Option: Major Concessions

Proponent Concessions	CHA/Industry Concessions/Losses
Remove quasi-governmental entity	Small group included
Remove all-or-nothing approach; improved accountability	Rate setting
Medical inflation rate included	Medicare reference pricing
Rate “floor” with “higher of” approach	2021 benchmark year (not 2019)
20% reduction to 15% reduction	Multiple plans vs. single plan in each county
	Sunset provision not included

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Colorado Option: Annual Process



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Colorado Option: Hospital Rate Floors

After a rate hearing is held, the Commissioner of Insurance may compel hospitals to participate in a standardized benefit plan for the next plan year at a rate not to be set lower than the higher of:

HB 20-1349 Proposed Formula:

155% Medicare + Critical Access: 20%; Independent: 20%; Payer Mix: Up to 30%;

"Hospital efficiency" (margins, cost, NPR): Up to 40% -- Except no hospital shall be reimbursed less than 165% Medicare

OR

Maximum reduction of 20% off negotiated rate between that hospital and that carrier from prior year

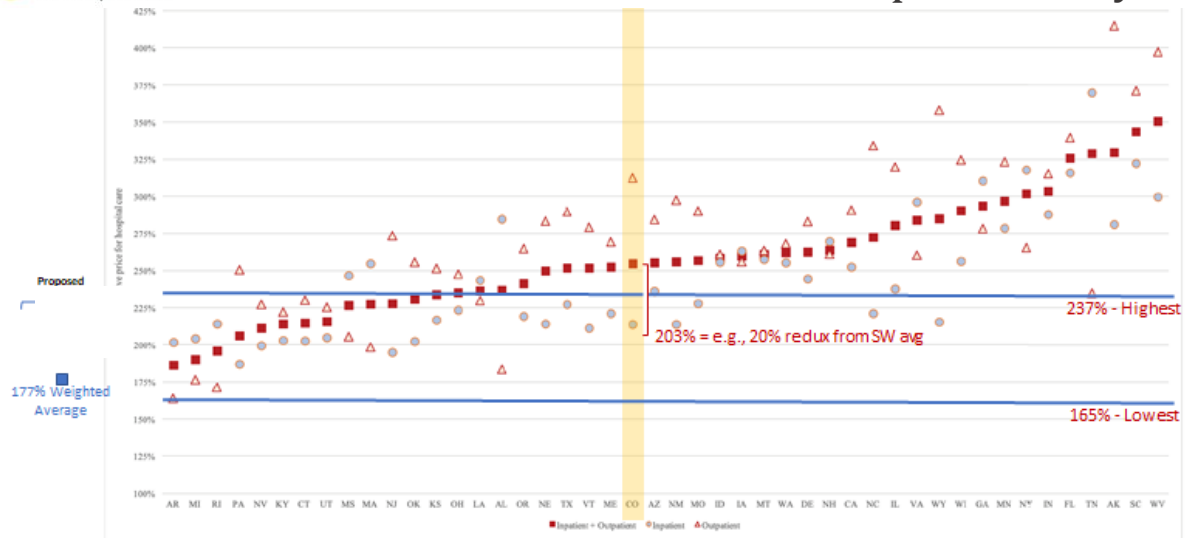
OR

If a hospital's rates are less than 10% below statewide median (for individual or small group), maximum reduction of 1/3 of the difference between their current rate and the 20-1349 formula or 165% of Medicare, whichever is higher

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Reduced Rates: How CO Compares Today



Calculations do not include other statutory guardrails (e.g., 20% below negotiated, 10% below median)

RAND, Figure 4.2 Relative Prices by State 2018

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Access and Health Equity



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Maternal Health: Protection of Pregnant People (SB 21-193, SB 21-194)



SB 21-193

- Requires CDPHE to add health facility requirements effective Jan. 1, 2022, that:
 - Allow a birthing person to have a companion in addition to their partner;
 - Allow newborns to remain with their families;
 - Not exclude persons who are giving physiologic birth from receiving care; and
 - Accept transfers of pregnant persons from their home or birthing center without discriminating against them based on their protected class or planned place of birth.

SB 21-194

- Prohibits insurers (including Medicaid) from discriminating based on the type of provider or facility
- Extends Medicaid coverage from 60 days to 12 months postpartum (pending federal approval)
- By July 1, 2023, and every three years thereafter, the Colorado Maternal Mortality Review Committee (CMMRC) will make recommendations on:
 - Reducing maternal mortality and improving maternal health equity, and
 - Improving data collection and reporting from hospitals, health systems, midwifery practices and birthing centers.

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Maternal Health: Additional Public Coverage (SB 21-009, SB 21-025)



- SB 21-009 creates a reproductive health program (beginning Jan. 1, 2022) covering various forms of contraception for individuals who do not qualify for Medicaid due to their citizenship or immigration status
- SB 21-009 also specifies that family planning services provided under Medicaid include a 12-month supply of any FDA-approved contraceptive drug, device, or product
- SB 21-025 expands family planning services to individuals earning up to 260% of the federal poverty level (FPL)



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Medication Access and Coordination



- Medicaid coverage for pharmacist-administered behavioral health injectables (HB 21-1275)
- Expanded access to opioid antagonists (SB 21-122)
- Board of Pharmacy to consider expanding scope of Prescription Drug Monitoring Program (PDMP)
 - Authority to track all prescription drugs if recommended (HB 21-1012)

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Medicaid Regulations



- Medicaid Telehealth

- HB 21-1190 aligns telemedicine definitions between the Medical Practice Act and Medicaid
- HB 21-1256 requires revised Medicaid rules for providers who primarily or exclusively provide telemedicine

- SB 21-022 requires Medicaid to improve notice to providers regarding potential overpayments



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COVID-19 Response



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COVID Response



- Creating a Health Care Services Reserve Task Force (HB 21-1005)
- Protecting personal information for public health workers (HB 21-1107)



- Defeated bill requiring hospitals to permit visitors (HB 21-1172)
- Defeated bill prohibiting employers from requiring COVID-19 vaccine (HB 21-1191)
- SB 21-127 would have expanded DORA's use of emergency rules
- SB 21-090 would have provided immunity for businesses complying with public health guidelines during COVID-19 emergency

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Behavioral Health



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Behavioral Health



INFRASTRUCTURE

- HB 21-1097 creates the Behavioral Health Administration (BHA)
 - Responsible for most state behavioral health programs (excludes private insurance and Medicaid)
- SB 21-137 provides over \$550m in behavioral health funding for:
 - Maternal and child health
 - Workforce development
 - Community transitions
 - Co-responder programs



CRISIS RESPONSE

- HB 21-1251 limits the use of ketamine by EMS providers and law enforcement
- HB 21-1085 allows counties to license secure transport services related to behavioral health crisis

Impacts to Hospitals' General Operations





Energy Benchmarking (HB 21-1286)



- Sets energy consumption performance standards for large buildings, overseen by Air Quality Control Commission (AQCC) at CDPHE
 - Large Buildings: > 50k ft.; excludes storage, parking garages, airplane hangars, manufacturing, industrial, agricultural, and some small-scale residential buildings
 - Does not exempt hospitals, but allows for campus-level benchmarking
 - Uses U.S. Dept. of Energy “Energy Star Portfolio Manager” tool to support benchmarking
- Colorado Energy Office (CEO) will provide technical assistance and develop publicly available information
 - Will develop a list of buildings required to comply and assess \$100/year fee; may impose fees up to \$5k for noncompliance
 - Public entities generally exempt from fees and penalty assessments
- Timeline
 - 2021-2022: Appointed task force will develop recommendations for AQCC
 - Dec. 31, 2022: Initial benchmarking data due to CEO
 - 2024: Benchmarking compliance begins; reassessed every five years
 - 2029: AQCC may expand benchmarking to buildings < 50k ft

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Civil Liability

- Additional Liability under Respondeat Superior (HB 21-1188)
 - Reverses Colo. Supreme Court ruling in *Ferrer v. Okbamical*, allowing liability for employers when they acknowledge liability for an employee or agent's tortious actions
- Several civil liability bills failed, but will be back
 - Bill extending statute of limitations for injuries to minors (SB 21-061, laid over to July 2021)
 - POWR Act regarding employee discrimination claims, would have extended definition of employee to independent contractors (SB 21-176, defeated)
 - Bill in response to *Wagner v. Planned Parenthood* that would have limited premises liability for mass casualty events (not introduced) - *Wagner* held that premises liability actions are legitimate due to foreseeability




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Questions



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Evaluation

To use the QR code:

- Focus your camera on the code and you will see a link to the survey monkey pop up on the screen.
- Press this link and you will be taken directly to the evaluation.

We encourage everyone to take a minute now to complete the survey.



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Additional Resources



2021 Legislative Report, CHA Issue Briefs, and 2021 Implementation Overview now available at www.cha.com

Please let us know if you would like to be added to CHA's Monthly Regulatory Update newsletter and call

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