GREGORY S. LINDQUIST, ESQ. focuses his practice on civil health care fraud and abuse and regulatory compliance. His expertise is concentrated in assisting clients with matters arising under federal and state false claims acts, federal civil monetary penalties laws, the federal anti-kickback statute, Stark Law, and Emergency Medical Treatment and Active Labor Act. Prior to joining Caplan and Earnest, Mr. Lindquist served as Associate Counsel in the U.S. Department of Health and Human Services Office of Counsel to the Inspector General (HHS OIG) in Washington, D.C., and also practiced health care law at a Denver firm.

GREGORY JAMES SMITH, ESQ. acts as Special Counsel for the Boulder law firm of Caplan and Earnest, LLC and concentrates his practice in business matters for health care professionals, serving as counsel for physicians, physical therapists and other health professionals and their respective professional associations, as well as for home health and rehabilitation agencies and for medical, technology, and service enterprises. Mr. Smith holds current appointments as an instructor in the graduate school of University College at the University of Denver’s Healthcare Leadership Program (DU), as a member of the Affiliate Faculty in the Department of Health Care Ethics, Rueckert-Hartman College of Health Professions, Regis University (Regis) and has previously served as an Assistant Clinical Professor in the Department of Family Medicine, School of Medicine, University of Colorado Denver (UCD). In addition to teaching at DU, Regis and UCD and work in leadership positions for the Denver and Colorado Bar Associations and Continuing Legal Education in Colorado, Inc. (CLECI), he has participated as a planning committee member or faculty member in several programs related to regulatory compliance and bioethics, among other topics, for health care professionals, attorneys and for law and health professions students. Smith received a B.A., cum laude with Distinction in History, from The Colorado College (CC) in 1969, a J.D. from Cornell Law School in 1972, a Master of Humanities (M.H.) from UCD in 2009 and a Master of Arts (M.A.) in Bioethics and Health Policy from Loyola University Chicago (Loyola) in 2012. He will receive the Doctor of Bioethics (DBE) from Loyola in May 2016. Smith received the Doyle Award from CLECI in 2010, the Worner Award from CC in 2013, and achieved Fellow Emeritus status in the Colorado Bar Foundation in 2011.
MATTHEW ULLRICH’s practice focuses on health care law, specifically related to contracts, federal and state compliance, and policies and regulations for Medicaid and Medicare matters. He also specializes in HIPAA and telehealth/telemedicine matters. Prior to joining Caplan and Earnest, Mr. Ullrich worked as a Contract Performance and Operations Specialist at the Colorado Department of Health Care Policy and Financing (Colorado Medicaid). While there, his responsibilities included drafting, negotiating, and managing contracts for Behavioral Health Organizations (BHOs) and Programs of All-Inclusive Care for the Elderly (PACE), and Medicaid policy implementation. As the BHO and PACE contract manager, Mr. Ullrich advised these organizations and Medicaid leadership on policies, procedures, rates, legislation, and federal and state regulations.

The authors gratefully recognize the significant contributions of Erin Butler, law clerk at Caplan and Earnest, LLC, for her efforts in the preparation of this article. Ms. Butler is a third-year law student at the University of Colorado Law School and also holds a Master of Arts from Colorado State University. Ms. Butler’s many achievements include a second place finish in the 2015 LawMeet’s Intellectual Property Negotiation Competition, second place in the 2015 LawMeet’s Transactional Competition, Honorable Mention Overall and Best Draft at the 2014 CU/DU Transactional Competition, member of CU’s Environmental Law Journal, semi-finalist in the 2014 Colorado Appellate Advocacy Moot Court Competition, and Treasurer of CU’s Barrister’s Council. In addition, the authors gratefully acknowledge the invaluable assistance of Claudia C. Heaphy, legal assistant, Caplan and Earnest, LLC.

This article surveys some of the significant developments in Colorado health law during 2015. To avoid duplication with other articles contained in this issue of the Annual Survey, we will discuss only on a limited basis developments relating to health law that have not already been dealt with elsewhere in this issue of the Annual Survey in other articles on topics such as Administrative Law, Criminal Law, Insurance Law, Malpractice Law, or Tort Law; reference to such articles being had for all purposes. In addition, legislative developments related to budgetary matters are not discussed, nor are cases that merely repeat earlier established principles. Proposed legislation and vetoed bills are not covered by this article.

Note: For convenience, the names of certain departments and agencies of Colorado state government may be abbreviated in this issue of the Annual Survey with the use of the following acronyms: BCE (Board of Chiropractic Examiners), BDE (Board of Dental Examiners), ENHA (Board of Examiners of Nursing Home Administrators), BOH (Board of Health), BON (Board of Nursing), BOP (Board of Pharmacy), CDB (Colorado Dental Board), CDPHE (Colorado Department of Public Health and Environment), CMB (Colorado Medical Board), HCPF (Department of Health Care Policy and Financing), DHS (Department of Human Services), DOI (Division of Insurance), DORA (Department of Regulatory Agencies), DPO (Division of Professions and Occupations), MSB (Medical Services Board), and PTB (Physical Therapy Board).

CASE LAW

Colorado Supreme Court

In Colorado Medical Society v. Hickenlooper, 2015 CO 41, the Colorado Supreme Court addressed the nature and effect of then-Governor Bill Ritter, Jr.’s decision to opt-out certain Colorado hospitals from Medicare’s regulation requiring physician supervision of Certified Registered Nurse Anesthetists (CRNAs) who administer anesthesia. The Colorado Supreme Court affirmed the court of appeals’ order, but on different grounds, and dismissed the lawsuit brought by the Colorado Medical Society (CMS) and the Colorado Society of Anesthesiologists (CSA).

In its ruling, the Colorado Supreme Court addressed two arguments raised by the Governor and three intervening medical associations: first, that CMS lacked standing to challenge the Governor’s opt-out decision; and second, that CMS failed to state a claim upon which relief could be granted. The Colorado Supreme Court affirmed the court of appeals’ decision dismissing the petitioners’ complaint; however, the supreme court held “that, contrary to the assumption that has undergirded this case to this point, the Governor’s attestation with regard to physician supervision of CNAs is not a generally binding interpretation of Colorado law that is subject to de novo review.” Id.
at ¶ 4. Instead, the Governor’s attestation has a single effect: to exempt Colorado’s critical access hospitals, along with certain rural general hospitals in Colorado, from Medicare’s federal supervision requirement. The court found that to the extent the Governor’s decision regarding the attestation is reviewable at all, it is reviewable only for gross abuse of discretion. Because the petitioner did not allege that such gross abuse of discretion occurred, the court affirmed the decision of the court of appeals.

The federal regulation at issue in Colorado Medical Society conditions Medicare reimbursement on physician supervision of CRNAs who administer anesthesia. This regulation also permits a state to opt out of this requirement if the state’s governor submits a letter to the Department of Health and Human Services’ Centers for Medicare and Medicaid Services requesting an exemption.

In 2010, then-Governor Bill Ritter, Jr., sent such an opt-out letter, which concluded that opting out of the physician supervision requirement would be consistent with Colorado law. The CMS and CSA filed suit, claiming the Governor’s decision to opt-out from the physician supervision requirement violated Colorado law.

In its ruling, the Colorado Supreme Court held that the court of appeals misunderstood, first, the nature and, second, the effect of the Governor’s opt-out decision. The court ruled the Governor’s opt-out decision has a single effect: to allow certain Colorado hospitals to opt-out from the physician supervision requirement imposed by federal regulation.

The Governor’s decision does not affect the legal standard governing who may administer anesthesia under Colorado law. Consequently, the court held that the Governor’s opt-out decision is either reviewable for a gross abuse of discretion or is entirely unreviewable. However, CMS did not allege that such a gross abuse occurred; it alleged that the Governor misinterpreted Colorado law, a claim that is not reviewable even under an abuse of discretion standard. Accordingly, the court affirmed the court of appeals’ decision dismissing the petitioners’ claims.

Colorado Court of Appeals

In Colorado Department of Health Care Policy and Financing v. S.P., 2015 COA 81, S.P. was injured in a snowboarding accident at a ski area. Following her accident, she applied, and was accepted, for Medicaid assistance. Over the next several years, Medicaid paid $142,779 for S.P.’s medical care in connection with the accident. S.P. sued the ski area and eventually settled the case for $1 million. Medicaid was entitled to a statutory lien against the settlement for repayment of the medical assistance it provided. C.R.S. § 25.5-4-301(5)(a). However, the settlement agreement did not specify the portion of the settlement amount attributable to medical expenses, as distinct from other categories of damages.

Subsequently, S.P. and Medicaid could not agree on a repayment amount, and the agency — Colorado Department of Health Care Policy and Financing (the Department) — sued to enforce its lien. The trial court was required to calculate the repayment amount. Both parties argued for their preferred method of calculating the repayment amount. The court applied its own formula, a hybrid of S.P.’s and the Department’s methods, and ordered S.P. to repay Medicaid $25,375.

On appeal, the Colorado Court of Appeals noted that “as of yet, Colorado has adopted no particular method applicable to all cases in which parties seek apportionment of a third-party settlement for purposes of determining the amount of a Medicaid reimbursement lien.” Id. at ¶ 10. However, after considering the U.S. Supreme Court decisions, the court of appeals concluded that “the touchstone of any method used to calculate apportionment of medical expenses must be that it is not arbitrary or one-size-fits-all, and that it employs reasonable means.” Id. (citing Wos v. E.M.A., 133 S. Ct 1391, 1402 (2013)). While noting that the method used by the trial court may not be applicable to every case involving payment of Medicaid liens from settlements with third parties, as applied here the court of appeals held that the trial court’s method was not unreasonable or arbitrary. Accordingly, the court of appeals affirmed the trial court’s judgment and remanded the case to the trial court to release the funds held in its registry consistent with the court of appeals’ opinion.
LEGISLATIVE DEVELOPMENTS

The 2015 Colorado Legislative Session resulted in some key pieces of health care legislation and others that failed. Of the 392 House Bills introduced, 193 passed. Of the 290 Senate Bills introduced, 174 passed.

Measures related to behavioral health were passed, as were issues related to health care delivery, including measures involving telehealth. While many bills were defeated or never made it out of committee, including SB 15-259 (involving out-of-network providers), HB 15-1135 (terminally ill individuals and end-of-life decisions), and HB15-1389 (hospital provider fee enterprise), many expect these and other failed measures to return in future sessions. Below is a summary of some notable 2015 health care legislation that passed and was signed into law by the Governor or allowed to become law without his signature.

HB 15-1015: Interstate Compact-EMS Providers. This new law allows Colorado to enter into compacts with other states to recognize and allow emergency medical services (EMS) providers licensed in a compact member state to provide EMS in Colorado. Effective August 5, 2015.

HB 15-1029: Telehealth — Coverage Under Health Benefit Plan. This important new law has a significant impact on commercial health insurance because it removes population restrictions previously in place for providing treatment via telemedicine, requires equivalent reimbursement for telemedicine services as if the patient received in-person care, and prevents cost and benefit service limits on telemedicine services not also applied to in-person care. Previously, telemedicine was limited to smaller counties with less access to health care systems and sometimes there were caps on the amount of services a patient could receive via telemedicine. Effective January 1, 2017.

HB 15-1032: Mental Health Services for Minors — Additional Authorized Mental Health Professional Provider. Under current law, a professional person or a facility may render mental health services to a minor who is at least 15 years of age with the minor’s consent. This bill specifies that other licensed mental health professionals such as licensed psychologists, licensed social workers, and licensed professional counselors may also render these services to minors in any practice setting. Effective March 20, 2015.

HB 15-1033: Strategic Planning Group on Aging. This new law establishes a strategic action planning group, appointed by the Governor, to study issues related to the increasing number of Colorado residents 50 years of age and older and to issue a comprehensive strategic action plan on aging. The bill directs specific areas for the group to analyze and to make recommendations on. This is an important measure as Colorado’s population is maturing, and strategic planning for how to care for an aging population is critical. Effective June 4, 2015.

HB 15-1039: Licensed Health Care Facilitator — Donation of Medication, Medical Supplies, and Medical Devices — Conditions. This new law allows for a licensed facility or prescription drug outlet to donate medications, medical supplies, and medical devices to a nonprofit entity that has legal authority to possess the materials or to a person legally authorized to dispense the materials. The bill also specifies that a person or entity will not be subject to civil or criminal liability or professional disciplinary action for donating, accepting, dispensing, or facilitating the donation of materials in good faith, without negligence, and in compliance with the other requirements listed under C.R.S. § 12-42.5-133. Effective August 5, 2015.

HB 15-1075: Naturopathic Doctors — Treatment of Children Under Two Years of Age — Requirements and Prerequisites — Sunset Review. This new law allows a registered naturopathic doctor to treat a child who is under two years of age if the provider meets various criteria, such as: providing the child’s parent or legal guardian with the most recent immunization schedules recommended by the Advisory Committee on Immunization Practices to the Centers for Disease Control and Prevention and recommends that the parent or legal guardian follow the schedule; obtaining five hours per year of education or practicum training related to pediatrics in accordance with continuing professional competency requirements (depending upon the age of the child); developing and executing a written collaborative agreement with a licensed physician who is a pediatrician or family physician that outlines responsibilities and a process for consulting and referring; getting parent or legal guardian informed consent, etc. Effective March 26, 2015.
HB 15-1186: Medicaid — Autism, Waiver Program — Appropriation. This new law significantly impacts the Home and Community-Based Services Children with Autism Waiver Program offered by Colorado Medicaid and broadens Medicaid’s ability to provide services to more children. It increases the age limit for children receiving services from six to eight years of age, removes the current cap on the annual dollar ($25,000) amount of services that may be provided to every child and instead allows the Medical Services Board to set an annual dollar limit, and states that subject to available appropriations there will be no waiting list for services for eligible children who apply for the waiver program versus being prioritized on a waitlist in the past. The bill also increases the frequency of program evaluation for the Autism Waiver. Effective July 1, 2015.

HB 15-1232: Epinephrine Auto-Injectors. This new law permits entities and organizations other than schools or hospitals (licensed or certified under C.R.S. § 25-1.5-103(1)(a)(I)(A) or -103(1)(a)(II)) to acquire and stock epinephrine auto-injectors pursuant to a prescription. Additionally, not only does the bill dictate how epinephrine auto-injectors must be stored by these entities and organizations, but it also states that entities and organizations must designate employees or agents who have completed the appropriate training requirements to be responsible for the storage, maintenance, control, and general oversight of the epinephrine auto-injectors.

Furthermore, the bill provides that those employees, agents, or other individuals of the entities and organizations who have completed necessary training may administer epinephrine auto-injectors to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis. Lastly, the bill outlines training and reporting requirements, the use of emergency public access stations, and those individuals and entities that are immune from criminal and civil liability. Effective May 8, 2015.

HB 15-1281: Newborn Screening — Pulse to Detect Congenital Heart Defects. This new law requires a birthing facility (meaning a general hospital or birthing center licensed or certified and that provides birthing and newborn care services) that is below 7,000 feet to test all infants born in the facility for critical congenital heart defects using pulse oximetry prior to the newborn’s release from the birthing facility. Each birthing facility shall report the results of the pulse oximetry screenings to the Department of Public Health and Environment. Effective August 5, 2015.

SB 15-015: Mental Health Coverage for Autism-Spectrum Disorder. This new law clarified that autism spectrum disorder (ASD) is a mental disorder for purposes of state and federal mental health parity laws, and therefore, the benefits for ASD must be no less extensive than the coverage provided for a physical illness. Furthermore, the bill clarified that coverage under a health benefit plan for ASD benefits cannot contain any limits on the number of services or visits and providing benefits for ASD that are substantially equivalent to benefits for a physical illness does not constitute an addition to the state’s essential health benefits re-
SB 15-019: Colorado Health Benefit Exchange — Performance Audit. This law allows the state auditor to thoroughly audit the operations of the Colorado health benefit exchange (Connect For Health Colorado) whenever the state auditor deems appropriate. Effective April 3, 2015.

SB 15-071: Pharmacists — Substitution on Medication. This new law allows a pharmacist filling a prescription order for a specific biological product to substitute an interchangeable biological product for the prescribed biologic only if the federal Food and Drug Administration has determined that the biological product to be substituted is interchangeable with the prescribed biological product and the practitioner has not indicated that the pharmacist shall not substitute an interchangeable biological product for the prescribed biological product.

The bill also requires the dispensing pharmacist or his or her designee within a reasonable amount of time after dispensing a biologic product to communicate to the prescribing practitioner the specific biological product dispensed to the patient, including the name and manufacturer of the biological product. The new law defines how this communication is to take place, and it requires the pharmacy to retain a written or electronic record of the dispensed biological product for at least two years after the substitution. Effective April 3, 2015.

SB 15-137: PACE Programs — For-Profit Providers — Conversion. This law allows for-profits, nonprofits, public, and private providers to offer PACE services in Colorado as permitted by federal law.

The bill also outlines requirements that PACE organizations must fulfill no later than 60 days prior to the closing or effective date of a conversion of a nonprofit PACE provider to a for-profit PACE provider, including a conversion plan and written notice of the conversion plan to the Attorney General. The new law will require the nonprofit PACE organization converting to a for-profit PACE organization to bear all costs associated with public oversight and review by the Attorney General of the conversion, including the retention of outside experts if needed. Within 10 days after receipt of the conversion plan, the Attorney General shall post the complete conversion plan on its website, receive public comments about the plan, and post public comments as soon as practicable to its website. The public comment period shall be a minimum of 30 days. Effective August 5, 2015.

SB 15-197: Advanced Practice Nurse — Prescriptive Authority — Mentorships. This new law makes it easier for Nurse Practitioners (NPs) to obtain and maintain prescriptive authority. Among other requirements, an NP must have completed at least three years of combined clinical work experience as a registered nurse (RN) or as an NP to obtain provisional prescriptive authority. This bill removed a previous 1,800-hour preceptorship requirement. In order to obtain full prescriptive authority, an NP must complete 1,000 hours in a structured mentorship with a physician or an NP with full prescriptive authority (in addition to other requirements) within three years of receiving provisional prescriptive authority. This bill reduced this requirement from 1,800 hours and relaxed the mentorship requirements by allowing them to be completed solely with an NP. Effective September 1, 2015.

SB 15-228: Medicaid — Provider Rates. Among many other requirements, this bill establishes a process for Colorado Medicaid to review provider rates so that each provider rate is reviewed at least once every five years. This bill allows the Joint Budget Committee (JBC) or advisory committee (also established by the bill) to request out-of-cycle reviews of provider rates based upon a majority vote. When this happens, the JBC or advisory committee shall notify Colorado Medicaid by December 1 of the year prior to the year in which the out-of-cycle review will take place.

The bill also requires an annual report of the analysis conducted by Colorado Medicaid on access, service, quality, and utilization of each service subject to a provider rate review. Colorado Medicaid must compare the rates paid with available benchmarks, including Medicare rates and usual and customary rates paid by private-pay parties, and use qualitative tools to assess whether payments are sufficient to allow for provider retention, client access, and to support appropriate reimbursement of high-value services. Lastly, the new law outlines the responsibilities and composition of the advisory committee. Effective June 5, 2015.

SB 15-265: Hospital Care Liens. This new law requires hospitals to bill other payers, including
property and casualty insurers and the primary medical payers of benefits, before filing a lien against personal injury awards. If no payers of benefits are identified for the injured person due to lack of insurance, a lien may be created. If a hospital is notified of a payer of benefits after it creates a lien, the hospital shall make good-faith attempts to bill the identified payer. An injured person who is subject to a lien in violation of this rule may bring an action in district court to recover two times the amount of the lien attempted to be asserted. The new law also defines the term “payer of benefits.” Effective August 5, 2015.


**HB 15-1191: Physician Designation Disclosure Requirements — Inclusion of Dentists.** The bill adds dentists to the Physician Designation Disclosure Act, which imposes certain standards and requirements on health care entities that assign designations to physicians as an assessment or measurement of the care or clinical performance of physicians, thereby imposing those same standards and requirements when health care entities assign designations to dentists. The bill also renames the law the Physician and Dentist Designation Disclosure Act. Effective August 5, 2015.

**HB 15-1214: Consortium for Prescription Drug Abuse Prevention — Study — Opioid Drug Products — Report.** The bill requires the Governor to direct the Colorado Consortium for Prescription Drug Abuse Prevention to study the barriers to and the efficacy of the use of abuse-deterrent opioid analgesic drug products as a way to reduce abuse and diversion of opioid drug products. On or before January 15, 2017, the Consortium is required to report its findings to the Public Health Care and Human Services Committee and the Health, Insurance, and Environment Committee of the House of Representatives; and the Health and Human Services Committee of the Senate; or their successor committees. Effective May 11, 2015.

**HB 15-1233: Respite Care Task Force — Creation — Members — Department of Human Services — Report.** The bill creates the Respite Care Task Force to study the dynamics of supply and demand with regard to respite care services in Colorado. The majority and minority leadership of the Senate and House of Representatives will appoint six members to the task force, and the Governor will appoint eight members. The members of the task force will serve without compensation or reimbursement for expenses. The Department of Human Services (Department) will assist the task force. The Department may contract for an external study of respite care and must provide the final results to the task force. The task force will submit a report to the General Assembly by January 31, 2016. Effective May 29, 2015.

**SB 15-11: Medicaid — Spinal Cord Injury Waiver Program — Use of Complementary and Alternative Medicine — Appropriation.** The bill extends the repeal date for the pilot program providing complementary and alternative medicine to certain individuals with spinal cord injuries to September 1, 2020. The bill changes the description of chiropractic care, massage therapy, and acupuncture from complementary and alternative “therapies” to complementary and alternative “medicine.”

Subject to available appropriations, the General Assembly intends that the Department of Health Care Policy and Financing (state department) enroll every eligible person who applies for the waiver and that an eligible person is not placed on a waiting list for services. The bill directs the state department to continue to use a volunteer

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If no payers of benefits are identified for the injured person due to lack of insurance, a lien may be created.
outreach coordinator throughout the duration of the pilot program and specifies the volunteer’s duties. In addition, the bill extends the date for the independent evaluation of the pilot program to January 1, 2020.

The bill appropriates $179,347 of general fund moneys to the state department to use for 0.8 FTE for general administration, operating expenses related to general administration, general professional services and special projects, and medical services premiums. In addition, the state department anticipates that it will receive $183,302 in federal funds for those same purposes. Effective June 5, 2015.

HB 15-1368: Persons with Intellectual or Developmental Disabilities — Crisis Services — Cross-System Response for Behavioral Health Crises Pilot Program — Appropriation. The bill establishes the Cross-System Response for Behavioral Health Crises pilot program (pilot program). The pilot program is established to provide crisis intervention, stabilization, and follow-up services to individuals who have both an intellectual or developmental disability and a mental health or behavioral disorder, and who also require services not available through an existing home- or community-based services waiver or not covered under the Colorado behavioral health care system. The pilot program will begin on or before March 1, 2016, and will consist of multiple sites that represent different geographic areas of the state. The pilot program will:

- Provide access to intensive coordinated psychiatric, behavioral, and mental health services as an alternative to emergency department care or in-patient hospitalization;
- Offer community-based, mobile supports to individuals with dual diagnoses and their families;
- Offer follow-up supports to individuals with dual diagnoses, families, and caregivers to reduce the likelihood of future crises;
- Provide education and training for families and service agencies;
- Provide data about the cost in Colorado of providing such services throughout the state; and
- Provide data about systemic structural changes needed to remove existing regulatory or procedural barriers to the authorized use of public funds across systems, including the Medicaid State Plan, Home- and Community-Based Service Medicaid waivers, and the capitated mental health system.

The Department of Health Care Policy and Financing (Department) shall conduct a cost-analysis study related to the services that would need to be added to eliminate service gaps and ensure that individuals with intellectual and developmental disabilities are fully included in the Colorado behavioral health system. The Department shall also provide recommendations for eliminating the service gap.

The bill appropriates $1,695,000 to the pilot program fund created by the bill. The $1,695,000 is reappropriated to the Department for use by the Division of Intellectual and Developmental Disabilities. Effective June 5, 2015.

SB 15-178: Colorado Commission for the Deaf and Hard of Hearing — Membership — Duties — Terms of Office — Continuation Under Sunset Law. In accordance with the recommendation of the Department of Regulatory Agencies contained in its sunset review, the bill continues the Colorado Commission for the Deaf and Hard of Hearing for nine years, until 2024. In addition, the bill:

- Requires the Commission to report to the General Assembly annually, on or before September 1 of each year, with recommendations for administrative and legislative changes that would benefit the deaf and hard of hearing community;
- Limits the terms of commissioners to two consecutive four-year terms;
- Repeals the requirement for Senate confirmation of commissioner appointments;
- Clarifies that the commission also serves persons who are deaf-blind;
- Changes the membership of the commission to add a commissioner who is deaf-blind in place of the existing position for a member of the public; and
- Makes technical changes to the commission’s enabling statute to remove obsolete or conflicting language.

Effective July 1, 2015.
SB 15-53: Opiate Antagonist Medication — Expanded Access — Immunity. The bill allows physicians, physician assistants, and advanced practice nurses with prescriptive authority (collectively referred to as licensed prescribers) to prescribe, and pharmacists (licensed dispensers) to dispense, an opiate antagonist, either pursuant to a direct prescription order or in accordance with standing orders and protocols, to:

- An individual at risk of experiencing an opiate-related drug overdose event;
- A family member, friend, or other person in a position to assist an at-risk individual;
- An employee or volunteer of a harm reduction organization; or
- A first responder.

Licensed prescribers and dispensers acting in good faith in prescribing or dispensing opiate antagonists as permitted under the bill are immune from professional discipline and civil and criminal liability. Additionally, first responders and harm reduction employees and volunteers are not subject to criminal or civil liability when acting in good faith to furnish or administer an opiate antagonist to an at-risk individual or a family member, friend, or other person in a position to assist an at-risk individual. Effective April 3, 2015.

SB 15-105: Respiratory Therapists — Continuation Under Sunset Law. The bill implements the recommendations contained in the Department of Regulatory Agencies’ sunset review and report on the Respiratory Therapy Practice Act as follows:

- Authorizes the director to discipline a licensee who fails to timely respond to a complaint issued against the licensee;
- Authorizes the director to order a licensee to undergo a physical or mental evaluation to determine the licensee’s fitness to practice respiratory therapy and to suspend the license of a licensee who refuses to submit to an evaluation when ordered by the director;
- Imposes a two-year waiting period for obtaining a new license when a licensee’s license is revoked or surrendered in lieu of discipline;
- Removes the ability of the director to discipline a licensee merely because the licensee has a physical or mental disability that affects his or her practice and instead authorizes discipline only if the licensee fails to: Notify the director of a physical or mental illness or condition that affects his or her ability to practice; practice within the limitations imposed by the illness or condition; or practice within any restrictions agreed to in a confidential agreement entered into with the director;
- Authorizes the director to enter into a confidential agreement with a licensee under which the licensee agrees to limit his or her practice based on the effect the licensee’s physical or mental illness or condition has on his or her ability to practice with reasonable skill and safety to clients;
- Eliminates the requirement that the director send letters of admonition via certified mail; and
- Strikes references to the National Board of Respiratory Care as the body that credentials respiratory therapists and instead grants the director the power to select the appropriate national credentialing body upon whose practice standards to base licensure in this state.

The automatic termination date of the bill and the regulation of respiratory therapists by the director of the Division of Professions and Occupations is extended until September 1, 2024, pursuant to the provisions of the sunset law. Effective July 1, 2015.

SB 15-128: Medical Facility Reports of Sexual Assault — Anonymous Reports. Current law requires a medical facility to report to law enforcement when certain medical personnel collect medical forensic evidence of a sexual assault (evidence) if the victim consents. The bill adds nurses to the medical personnel. The bill requires the report to be:

- A law enforcement report if the victim requests that the evidence be collected and at the time of the medical treatment chooses to participate in the criminal justice system;
- A medical report if the victim requests that the evidence be collected but at the time of the medical treatment chooses not to participate in the criminal justice system; or
An anonymous report if the victim consents to the collection of the evidence but at the time of the medical treatment chooses not to have personal identifying information disclosed to law enforcement or to participate in the criminal justice system.

For an anonymous report, the medical facility shall not provide information identifying the victim to law enforcement, and law enforcement shall not submit the evidence for testing. For a law enforcement or medical report, law enforcement shall submit the evidence for testing pursuant to existing law.

The bill clarifies that a victim may speak anonymously to law enforcement and that no report is required if evidence is not collected. Effective March 30, 2015.

**SB 15-192: Pharmacists — Long-Term Care Facilities — Authority to Prescribe Substitute Therapeutic Drugs.** The bill authorizes a licensed pharmacist to provide therapeutic alternate drug selections, either a therapeutic interchange selection or a therapeutically equivalent selection, as those terms are defined, to a patient if, during the patient's stay at a licensed nursing care facility or a long-term acute care hospital, the selection has been approved:

- In accordance with written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections from the list. If a nursing care facility or a long-term acute care hospital does not have an existing quality assessment and assurance committee of which a licensed pharmacist is a member, the bill authorizes the facility to form such a committee and develop a facility pharmaceutical list with written guidelines and procedures for making therapeutic interchange and therapeutically equivalent selections from the list. Effective June 5, 2015.

**HB 15-1067: Licensed Psychologists — Continuing Professional Development and Education.** The bill requires a licensed psychologist to complete continuing professional development and educational hours to maintain his or her license as a psychologist. The State Board of Psychologist Examiners (Board) is required to adopt rules establishing a continuing professional development program that includes:

- The development, execution, and documentation of a learning plan;
- A requirement that every two years a psychologist complete at least 40 hours of continuing professional development; and
- A requirement that the psychologist maintain documentation of the continuing professional development hours.

The bill allows the board to audit up to 5 percent of licensed psychologists each two-year cycle to determine compliance with the requirements. The bill clarifies that the records of assessments or other documentation in connection with the continuing professional development are confidential. Effective April 8, 2015.

**HB 15-1182: Certified Nurse Aides — Scope of Practice.** The bill allows a certified nurse aide who is deemed competent by a registered nurse to perform the following tasks: digital stimulation, insertion of a suppository, or the use of an enema to stimulate a bowel movement; G-tube and J-tube feedings; and placement in a client’s mouth of pre-sorted medication that has been boxed or packaged by a registered nurse, a licensed practical nurse, or a pharmacist. A registered nurse who in good faith determines that a certified nurse aide is competent to perform the tasks is not liable for the actions of the certified nurse aide. Effective March 31, 2015.
HB 15-1187: Veterinarians — Regulation by the State Board of Veterinary Medicine — Complaints — Mental Health Examinations — Confidential Agreements. The bill specifies that the Board of Veterinary Medicine (Board) may only require a licensed veterinarian to participate in a peer health assistance program (program) and enter into a stipulation with the board concerning his or her participation in the program upon receipt of a signed complaint about the licensed veterinarian. Upon receipt of a signed complaint, the board may require the licensed veterinarian to submit to a mental health examination to determine his or her ability to practice if the board has reasonable cause to believe that he or she is unable to practice veterinary medicine with reasonable skill and safety to patients and clients due to a mental illness or condition or excessive use of alcohol, a habit-forming drug, or a controlled substance.

The board, if it determines that a licensed veterinarian who submitted to a mental health examination can provide limited services with reasonable skill and safety to patients and clients, may enter into a confidential agreement with the licensed veterinarian to limit his or her practice based on the restrictions imposed by his or her illness, condition, or disorder, as determined by the board; however, the board shall not enter into a confidential agreement with a licensed veterinarian subject to discipline for habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance.

A licensed veterinarian’s failure to comply with a confidential agreement constitutes grounds for discipline. Effective May 8, 2015.

HB 15-1309: Dentists and Dental Hygienists — Interim Therapeutic Restorations — Reimbursement for the Placement of Interim Therapeutic Restorations — Permitting Requirements — Appropriations. The bill allows a dental hygienist to apply to the Colorado Dental Board (Board) for a permit to place interim therapeutic restorations (ITRs). A dental hygienist who meets the following requirements is eligible to receive a permit to place ITRs:

- Holds a license in good standing to practice dental hygiene;
- Carries professional liability insurance;
- Completes the required hours of dental hygiene practice; and
- Completes a board-approved course based on uniform standards developed by an ITR advisory committee.

To the extent that state Medicaid or children’s basic health plan reimbursement is available for the placement of ITRs, the reimbursement will extend to services provided via telehealth in connection with the placement of an ITR.

The bill establishes the Interim Therapeutic Restorations Advisory Committee to develop uniform standards for training dental hygienists to place ITRs.

The board may discipline a dentist or dental hygienist who fails to comply with the ITR standards.

The bill appropriated $37,940 to the Department of Regulatory Agencies from the Division of Professions and Occupations cash fund. It appropriated $11,648 to the Department of Health Care Policy and Financing from the general fund, the hospital provider fee cash fund, and the children’s basic health plan trust fund. Effective August 5, 2015.

HB 15-1352: Naturopathic Doctors — Formulary of Medications Authorized in Naturopathic Medicine Practice — Expansion. The bill expands the naturopathic formulary and the authority of a registered naturopathic doctor (ND) to use certain medications in the practice of naturopathic medicine. With regard to specified medications, the bill expands the authority of NDs to:

- Obtain a medication from a registered or licensed wholesaler, manufacturer, or prescription drug outlet;
- Administer, which includes direct application of the medication to the patient; and
- Dispense, which includes properly packaging and providing the medication to the patient for subsequent administration.

The expanded authority applies to the following actions and medications:

- Obtaining and administering saline, sterile water, topical antiseptics, and local anesthetics, including those with epinephrine, in connection with minor office procedures;
• Obtaining and administering oxygen in emergency situations;
• Obtaining and administering vitamins B6 and B12;
• Obtaining, administering, or dispensing FDA-regulated substances that do not require a prescription; and
• Obtaining and administering vaccines, in accordance with federal guidelines, for patients who are at least 18 years of age.

The bill permits an ND to obtain the specified medications from a manufacturer, wholesaler, or in-state prescription drug outlet licensed or registered by the state board of pharmacy and protects those entities from liability when providing medications to an ND in compliance with the bill and in good-faith reliance on the ND’s registration information. Effective June 5, 2015.

**HB 15-1360: Acupuncturists — Authority to Practice Injection Therapy — Rules.** The bill allows acupuncturists to practice injection therapy to treat patients. Injection therapy is defined as the injection of sterile herbs, vitamins, minerals, homeopathic substances, or other similar substances into acupuncture points by means of hypodermic needles. Prior to practicing injection therapy, an acupuncturist must receive the necessary training as determined by the director of the Division of Professions and Occupations. The bill allows acupuncturists to obtain substances for injection therapy from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. The director is required to promulgate rules concerning injection therapy. Effective June 5, 2015.

**REGULATORY DEVELOPMENTS**

*Note:* This section generally includes a sample of significant regulations promulgated to take effect in the prior year. Typically, this section does not include policy updates from the various agencies or departments.

**Department of Regulatory Agencies — Division of Professions and Occupations**

**3 C.C.R. 709-1, Colorado Dental Board**

These amendments implement HB 14-1227, which concerns the continuation of the Colorado Dental Board and other statutory changes to the Dental Practice Act. This rule incorporates all definitions in C.R.S. § 12-35-103, as amended by this rule. Effective June 30, 2015.

**3 C.C.R. 722-1, Massage Therapy Licensure Rules and Regulations**

These rules reflect amendments to Rules 4, 5, 7, and 9. The purposes of these rules are to correct formatting and grammatical errors, clarify the rules regarding extensions of time for educational programs, and clarify reporting requirements for applicants and licensees. Effective January 30, 2015.
3 C.C.R. 715-1, Occupational Therapy Rules

The purpose of these rules is to establish the continuing professional competency requirements, clean up prior rules, and provide reporting requirements to occupational therapists and occupational therapist assistants and aides. Effective March 17, 2015.

4 C.C.R. 732-1, Licensure and Physical Therapist Assistant Certification

The purpose of this rule is in response to SB 14-063, which concerns the mandatory review of existing executive agency rules conducted by each principal department. This rule also creates a new Board Rule 102 to clearly identify the nationally recognized accrediting agency for accrediting physical therapy and physical therapist assistant programs. Additionally, this rule creates new Rules 204 and 303 to clarify the licensure and certification by examination requirements. Effective May 15, 2015.

3 C.C.R. 716-1, Nursing

The purpose of these rules is to implement SB-197:

- Chapter 10, § 7 amends the Certified Nurse Aide’s (CNA’s) scope of practice.
- Chapter 13, § 10 amends the tasks that are included in the CNA’s expanded scope of practice, and which are not considered delegated nursing tasks.
- Chapter 15 amends the requirements for an Advanced Practice Registered Nurse to obtain prescriptive authority from an 1,800-hour Preceptorship with a Physician Preceptor or Physician Preceptor and RXN Preceptor to a requirement of at least three years of combined clinical work experience as a professional nurse or as an APRN and 1,000-hour mentorship with a physician or an APRN with full prescriptive authority. This amendment also adds definitions of “Clinical Work Experience,” “Mentor: Physician Mentor,” and “Mentor: RXN Mentor,” “Mentorship Agreement,” “Synchronous Communication,” and removes definitions of “Physician Mentor,” “Physician Preceptor,” “Preceptorship,” “RXN Mentor,” and “RXN Preceptor.”
- Additionally, these rules adopted new Chapter 24, which authorizes APRNs with prescriptive authority to participate with qualified pharmacists in drug therapy management, and also delineates the requirements and responsibilities for APRNs with prescriptive authority who enter into an agreement with a Colorado licensed pharmacist to provide “drug therapy management.” Effective November 14, 2015.

3 C.C.R. 719-1, State Board of Pharmacy Rules

The purposes of the amendments to this rule are to (1) implement SB 15-053 concerning pharmacists’ use of a protocol and standing order to dispense a non-controlled substance opioid antagonist for an opiate-related drug overdose event; and (2) implement HB 15-1039 concerning the donation of prescription medications by licensed health care facilities. Effective September 14, 2015.

3 C.C.R. 713-10, Rule 110 — Accepted Minimum Scores on the Flex Examinations

3 C.C.R. 713-17, Rule 100 — Step 3 of the U.S. Medical Licensing Examination and Level 3 of the Comprehensive Osteopathic Medical Licensing Exam

The purpose of the amendment to this rule is to add the Federal Licensure Examination (FLEX) as an approved examination pursuant to C.R.S. § 12-36-107(1). This amendment also allows the Board to waive the seven-year time requirement in which an applicant must successfully complete USMLE Steps 1, 2, and 3 or COMPLEX USA Levels 1, 2, and 3 from the date the applicant first sat for any step of the USMLE or any level of the COMPLEX. This amendment also adds the minimum scores required for applicants who successfully completed the FLEX. Effective October 15, 2015.

3 C.C.R. 713-37, Rule 950 — The Physician’s Role in Prescriptive Authority for Advanced Practice Nurses


Department of Human Services

12 C.C.R. 2519-1, Child Protection Ombudsman Program

The promulgation of rules for the Child Protection Ombudsman is required by statute, C.R.S. § 19-3.3-102(4). These rules include the duties and qualifications for the Ombudsman; criteria for reviews and investigations; timing of reviews and investigations; reporting of recommendations; access to documents; and reporting. Effective February 1, 2015.

9 C.C.R. 2503-5, Adult Financing Programs

The purposes of the amendments to this rule are to (1) implement SB 14-130, which provides an increase to the Personal Needs Allowance (PNA) by $25 (effective March 20, 2015); (2) implement SB 14-012, which allows the State Department to promulgate rules allowing a county to waive the requirement that a person apply for Supplemental Security Income benefits prior to receiving Aid to the Needy Disabled State Only (effective June 1, 2015); (3) implement SB 15-065 and to clarify the appropriate use of EBT cards for recipients of Temporary Assistance for Needy Families/Colorado Works and Adult Financial cash benefits (effective September 1, 2015).

10 C.C.R. 2505-10, § 8.100 and 10 C.C.R. 2505-03, §§ 110 and 170

The purpose of this rule change is to make revisions to the current policy regarding lawfully residing children who do not meet the five-year waiting period. In 2009, HB 09-1353 authorized the Department to remove the five-year waiting period for all lawfully residing children and pregnant women. Changes to the Colorado Benefits Management System were made to be in alignment with federal and state regulations. Effective July 1, 2015.

10 C.C.R. 2505-10, § 8.125 — Provider Screening

The purpose of this rule was to implement the ACA Provider Screening Requirements as issued by CMS. This rule applies to Medicaid and CHP+ providers and is designed to prevent fraud, waste, and abuse. Providers are required to revalidate enrollment at least every five years, and all current providers must be revalidated by March 2016. Ordering, referring, and prescribing providers will be required to enroll with the Department. An application fee will be required from some providers. There are three risk categories assigned to providers and, based on the risk level, some providers will be required to have site visits while some will require background checks and fingerprint submissions. Licensure verifications, exclusion database checks, and meeting federal and state rules are required for all. Providers, fiscal agents, and managed care organizations will be required to disclose ownership and control interests. Effective July 1, 2015.

10 C.C.R. 2505-10, § 8.492 — Respite Care

The revision of the respite rule allowed for the targeted rate increase to be implemented and removed unintended limitations on services for the In-Home Respite service. Effective July 1, 2015.
These rule changes intend to enhance the consumer experience, allowing ample time to inform clients about their buy-in eligibility prior to charging premiums. The rule allows an individual to disenroll from a buy-in program. Effective May 1, 2015.

10 C.C.R. 2505-10, § 8.201 — Adult Dental Services

This rule amends the adult dental rule in order to better define amount, scope, and duration. The amendment is designed to increase access for adults and to reduce burden on providers. The rule also corrects typos and other technical errors. Effective May 1, 2015.

10 C.C.R. 2505-10, § 8.746, Appendix A — Outpatient Fee-for-Service Substance Use Disorder Treatment Services Benefit Coverage Standard

This revision amends 10 C.C.R. 2505-10, § 8.746 to incorporate the Outpatient Fee-for-Service Substance Use Disorder Treatment Services Benefit Coverage Standard into rule. The Benefit Coverage Standard, which went into effect April 8, 2015, will be incorporated directly into the Department’s administrative rules as an appendix. Effective October 30, 2015.

Department of Public Health and Environment

6 C.C.R. 1007-1, Part 2 — Radiation Control Registration of Machines, Facilities, and Services

This rule change clarified definitions for individuals performing services related to radiation machines and delineated the requirements for an operator or any computer tomography (CT) system used on a living human. Effective March 30, 2015.

6 C.C.R. 1011-1, Chapter 11, Convalescent Centers


6 C.C.R. 1011-1, Chapter 20, Ambulatory Surgical Center

This rule is designed to reflect current industry and department standards, reorganize the former rule into a more concise format, and differentiate between centers that perform surgery under general anesthesia and centers that perform diagnostic procedures under mild sedation. It incorporates definitions and standards for an ambulatory surgical center with a convalescent center into the former rule pertaining only to ambulatory surgical centers. Effective February 14, 2015.

6 C.C.R. 1011-1, Chapter 26, Home Care Agencies

This rule incorporates several legislative directives required by HB 14-1360, including (1) requiring owners, managers, and administrators of home care agencies and home care placement agencies to undergo a state and national fingerprint-based criminal history record check when applying for a license or registration; (2) time frames for record retention and department inspection of records; (3) setting fees to cover the costs of the department’s oversight; and (4) factors to be considered regarding the employment or placement of a home care worker with a criminal history. Effective June 14, 2015.

6 C.C.R. 1014-4, Colorado Health Care Professionals Credentials Application

As mandated by the Colorado legislature, all health care entities and health plans that collect information that is used in credentialing health care professionals are to use this uniform application. Effective December 15, 2015.

6 C.C.R. 1009-1, Rules and Regulations Pertaining to Epidemic and Communicable Disease Control

This rule clarifies who must report conditions (i.e., laboratories and/or individuals) and the required timing of reporting (i.e., 24 hours or 7 days). Regulations 1-3 were reformatted. To comply with CDC reporting requirements, an accession number is now required to be included on all reported diseases with supporting lab results. This rule also adds a requirement for clinical and reference labs.
to submit cultures or original clinical material for specific reportable conditions as listed in isolate submission to the state public health lab. This rule also removes MRSA from the list of Conditions Reportable by all Laboratories, and adds several conditions to the reportable conditions list. Effective November 14, 2015.

6 C.C.R. 1009-2, Infant Immunization Program, Vaccines for Children Program, and Immunization of Students Attending School

This amendment adds rules regarding the immunization information and the contents of an online learning module to meet the requirements of HB 14-1288. Also in accordance with HB 14-1288, these amendments change the required frequency of submitting exemption forms. This rule also requires that schools, other than colleges and universities, report aggregate immunization and exemption data annually by December 1 of each year to the Department. Effective October 15, 2015.

5 C.C.R. 1006-1, Vital Statistics

This rule adopts changes to promote the use of electronic registration of vital events. Effective September 14, 2015.

5 C.C.R. 1006-2, Medical Use of Marijuana

This rule removes notary requirements, refines definitions of debilitating medical conditions, and makes several technical clarifications. Effective September 14, 2015.

CASES

Colorado Department of Health Care Policy and Financing v. S.P. . . . . . . . . . . . HTH-3
Colorado Medical Society v. Hickenlooper . . . HTH-2