

Colorado Center on Law and Policy

Health Law and Policy Update: January 10, 2014

Open enrollment continues

Individuals and small businesses can now shop for health insurance through [Connect for Health Colorado](#), Colorado's new health insurance marketplace. Sign up for coverage now.

This week's updates:

- [Legislative Session Opens](#)
- [States should study health care spending to control costs](#)
- [Little Sisters of the Poor and the Employer Mandate](#)

Legislative Session Opens

On Wednesday, the Colorado General Assembly began its legislative session for 2014. With a number of health-related bills likely to be introduced this year, CCLP will continue to speak up on behalf of low-income Coloradans. Stay tuned for more legislative updates.

States should study health care spending to control costs

On Wednesday, a national, bipartisan [group](#), co-chaired by former [Governor Bill Ritter](#), recommended states study local health care spending in order to control the high cost of health care. The [report](#) by the State Health Care Cost Containment Commission identifies major factors affecting health care spending nationally and makes recommendations to help states keep costs down.

Looking at health care nationally, the committee identified nine major factors driving the high cost of care including the prices for physician services, hospital stays, and drugs. Even the lowest prices in the U.S. often exceeded the highest prices in other developed countries, like Chile, Argentina, Spain and France. For example, the average price for a normal vaginal delivery in the U.S. is \$3,096, far exceeding the \$1,837 price tag in Australia, the next most expensive country.

The commission recommends that states form an alliance of stakeholders and government officials to help improve the quality of health care while lowering overall costs. Such an endeavor might bring together state insurance regulators, Medicaid officials, business leaders, health plans, providers and hospitals, consumers, and other experts.

The commission recommends that this alliance collect data to analyze the components of health spending and the quality of care delivery. The alliance should work together to use this data to make recommendations leading to cost-reduction and increased quality.

Colorado has a long history of bipartisan cooperation to improve health care. Four years ago, Colorado's bipartisan Blue Ribbon Commission for Health Care made recommendations about improving access to health care coverage in Colorado. As health care costs continue to rise, CCLP will continue to support efforts to bring diverse voices together to understand and solve the problems driving high health care spending.

Read the full report on the commission's [website](#).

Little Sisters of the Poor and the Employer Mandate

On December 31, 2013, U.S. Supreme Court Justice Sonia Sotomayor temporarily enjoined the U.S. Department of Health and Human Services from requiring the Little Sisters of the Poor Home for the Aged in Denver to comply with the contraceptive coverage requirements of the Affordable Care Act (ACA). The injunction was issued pending the receipt of a response and further order of Justice Sotomayor or the full Court. A decision about what happens next is expected any day.

The ACA requires employers with more than 50 full-time employees to offer insurance coverage to their employees or be subject to a [penalty](#). The insurance coverage offered must include ten essential health benefits, including certain recommended preventive services which are to be provided at no cost. Various categories of preventive services must be included, among them women's [preventive health services](#). As recommended by the Institute of Medicine (IOM), women's preventive services include "Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling, as prescribed by a health care provider for women with reproductive capacity (not including abortifacient drugs)."

A number of employers and religious organizations objected to the requirement to provide contraception on religious grounds. The Obama administration responded by promulgating rules that created a religious exemption for group health plans of religious employers and an exemption for non-profit religious organizations. In order to claim the exemption, self-insured religious employers, like the Little Sisters of the Poor, are required to certify their status and provide a copy of their self-certification to their Third Party Administrator (TPA). The third party administrator must then provide or arrange separate payments for contraceptive services for the women in the

health plan of the organization, at no cost to the women or to the organization. The costs of those payments can be [offset](#) by adjustments in federally-facilitated exchange user fees paid by a health insurance issuer with which the third party administration has an arrangement.

The Little Sisters is eligible as a non-profit religious organization for the exemption. It objects, however, to the requirement to provide the [certification](#) to their TPA saying that doing so is in effect an authorization to the TPA to provide contraception and other services and therefore violates their faith. The Little Sisters challenge the requirement under the Religious Freedom Restoration Act.

The Little Sisters and its TPA both qualify for the exemption, but Little Sisters argues that the TPA contracts with other providers that are not exempt, including their pharmacy contractor, and that there may be some point in the future when their TPA decides to offer contraceptive coverage.

The federal government argues that Little Sisters already has the full protection of the exemption, as does their religiously affiliated TPA. The obligation to certify that they meet the criteria for the exemption is a minimal burden and in doing so they are not directing their TPA to offer contraceptive services. At least one legal scholar argues that the TPA, even if not exempt, is not obligated by the employer with whom it contracts to provide contraception, but by the federal government (See [Martin Lederman](#)).

The Court has three options in this case: it can lift or extend the stay, send the case back to the lower court, or take the case. For the Supreme Court to take the case at this point would be an extraordinary step, as normally cases work their way up to the Supreme Court through the Circuits.

In the 20 cases filed opposing the certification requirement thus far, 19 stays have been granted including the stay in this case. The fact that the court has granted stays in each of these cases does not necessarily indicate that those who have filed suit are likely to ultimately succeed in their cases.

Read the Little Sisters' [application for relief](#), the United States' [Response](#), and the Little Sisters' [reply](#) online.