

# Health Law and Policy Update:

## March 16, 2012

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### Health reform law approaches second anniversary

As the national health reform law approaches its second anniversary March 23, the Patient Protection and Affordable Care Act has already made health care insurance more available to Coloradans. **Because of the law, young adults who are having difficulty finding or affording health coverage can stay on their parents' health insurance policy until age 26.** In December, the Obama administration announced about 2.5 million young adults became insured in 2011, substantially more than previous years.

The rise in newly insured young adults can be attributed to the new provision in the law. Many young adults might otherwise have gone without health insurance in a difficult job market. The Department of Health and Human Services [estimated](#) almost 36 percent of young adults lacked health insurance prior to the passage of the law. That number [dropped to just more than 27 percent](#) in the second quarter of 2011.

During March, Health Law and Policy Update will feature key facts about health reform to arm advocates and the public with clear facts about the law. The first in the series was March 9: [Insurance companies are no longer allowed to deny insurance to children with pre-existing conditions.](#)

## Headline of the week

### HHS releases final exchange and Medicaid regulations

The U.S. Department of Health and Human Services this week released [final exchange regulations](#) and [final Medicaid regulations](#). The exchange regulations set guidelines for establishing individual and small business exchanges, certifying health plans to participate in the exchanges, determining eligibility for health insurance affordability programs and enrolling in health plans. The Medicaid regulations establish new eligibility rules, simplify eligibility and enrollment processes and provide alternatives to states for creating a seamless eligibility and enrollment experience with the exchanges.

Sections of both sets of regulations were published as interim final rules and will remain open for comment for 45 days after the regulations are published in the Federal Register, expected March 23. Find a summary of details on [healthcare.gov](#).

# Advancing the debate

## **Report examines workplace wellness programs**

The Georgetown University Health Policy Institute released a [report and analysis](#) of workplace wellness programs last week.

According to authors JoAnn Volk and Sabrina Corlette, "employers are increasingly turning to workplace wellness initiatives to curb rising health care costs." The programs, "if properly designed, hold the potential to improve health and encourage healthier behaviors" but "there is ... limited evidence of what works. ... If poorly designed, workplace wellness programs can shift costs to those with the greatest health care needs, run afoul of federal anti-discrimination and privacy laws and the ACA's prohibition on health status rating and potentially affect which workers remain in employer plans and which end up in new health insurance exchanges...."

Workplace wellness is of interest in Colorado because the General Assembly has passed two laws, House Bill 09-1012 and House Bill 10-1160, regarding workplace wellness programs.

As described in the Georgetown paper, workplace wellness programs can generally be grouped into two categories, supports for healthy behaviors such as smoking cessation or weight loss, and financial penalties on people who fail to comply with performance goals such as achieving or maintaining a certain body mass index or blood pressure targets. While current law limits penalties for non-compliance to 20 percent of the cost of coverage, provisions in the Patient Protection and Affordable Care Act permit employers in 2014 to add as much as 30 percent to the cost of coverage for employees who do not meet wellness goals. In addition, the Secretary of Health and Human Services has the authority to increase that limit to 50 percent. Programs that tie incentives to achievement of wellness standards are required today to comply with federal benchmarks to protect against discriminatory behavior. The Georgetown paper makes the case for careful monitoring and enhanced protections.

The principle concern raised in the paper is whether linking wellness targets to the amount an employee pays for health insurance undermines a key goal of the health reform law, which is a prohibition on charging people more for health insurance based on claims history or health status. Complying with targets is often not that simple -- sometimes, in fact, it is medically inadvisable to do so.

A host of reasons show why it can be difficult for people to participate in wellness programs, ranging from health status to financial ability. A single working parent, for instance, who has more than one job and lives in a neighborhood that is not walkable and does not have a full-service grocery store, and who cannot take time off from work without being penalized, might have a far more difficult time achieving a target body mass index. The difficulty with penalizing people by raising the cost of health insurance for not meeting wellness goals is it becomes even more difficult for them to access necessary care and preventive services. The cycle that can breed is the sicker someone is, the less access to insurance. That's exactly the problem the Affordable Care Act is designed to avoid.

The Georgetown paper reviews the laws recently passed in Colorado, noting the state's protections and provisions exceed federal standards. Colorado's law (House Bill 10-1160) permits standards-based wellness programs. The Colorado Division of Insurance released its [first report](#) on workplace wellness programs in January, finding several carriers offer financial incentives related to workplace wellness, although the majority of programs offered in Colorado appear to offer access to wellness or health promotion tools.

The Colorado Center on Law and Policy worked in the face of substantial opposition to ensure the Colorado law included protections for people unable to participate, as well as adequate monitoring and

reporting requirements, because of our concern that without protections, wellness programs might make access to health insurance and health care more difficult for vulnerable people. Now that the Affordable Care Act makes it possible to increase costs attached to wellness programs, those protections are even more important.

The additional costs wellness programs can impose on employees have policy implications for implementation of the Affordable Care Act, the Georgetown paper says. Under the law, people are exempted from the mandate to purchase health insurance if premiums exceed 8 percent of income, and people are allowed to purchase insurance through a health insurance exchange if employer-sponsored insurance premiums exceed 9.5 percent of income. As policymakers decide what costs should be included in the income calculation, one challenge will be determining whether the higher costs paid by people out of compliance with targets in wellness programs should be taken into account.

Among the key policy recommendations in the report is that the increased cost of wellness program related penalties ought to count in measuring the affordability of premiums under the Affordable Care Act, or that subsidies offered through the exchange ought to take wellness related costs into account. A summary of the paper is available from the [Robert Wood Johnson Foundation](#) and news coverage from [BusinessWeek](#).

## What's new

### **Covering Kids and Families releases toolkit for schools**

Colorado Covering Kids and Families recently posted an online [Medicaid and CHP+ Outreach and Enrollment Toolkit for Schools](#), a "one stop shop" for schools and school districts interested in starting or expanding public health insurance program outreach and enrollment efforts. It includes resources such as a sample memorandum of understanding between a school district and an eligibility site, and shares contact information for individuals who have experience establishing and running an outreach and enrollment program at a school.

## What you can do

### **CCLP and partners to release report detailing consumer hopes for insurance exchange**

Join the Colorado Center on Law and Policy, the Colorado Consumer Health Initiative and the Colorado Public Interest Research Group for an event to release a new study, "Exchange Implementation in Colorado: Engaging the Consumer Perspective," on Monday, March 19. The report details findings from conversations with more than 700 Coloradans across the state about their perspectives about the Colorado Health Benefit Exchange. The report will be released at press events across the state and available on CCLP's website after noon Monday. The Denver event will be 10 a.m. at Servicios de la Raza, 4055 Tejon St. in Denver. Details are in a [media advisory](#).

### **Webinar will detail resources outside Medicaid**

Medicaid enrollment begins for low-income adults without dependent children on April 1. The Colorado Coalition for the Medically Underserved, through its Connect to Coverage Campaign, presents a webinar covering resources available outside the Medicaid program 2 to 3 p.m. on Tuesday, March 20. [Register for the webinar online](#).