

## Health Reform

October 8, 2012



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Capitol Journal will be  
available on October 15th.

### Top Story

*While states have been slow to move ahead on health exchanges, they are moving forward on another key component of federal health reform: defining what will be included in the plans insurers will offer under the law.*

## SNCJ Spotlight

### States look to answer 'essential' health question

Although 35 of the 50 states have yet to create the marketplaces known as health benefits exchanges required by the Affordable Care Act, they aren't completely ignoring the law's impending requirements. A majority, in fact, are moving forward on another key component of federal health reform: defining what will be included in the health coverage plans insurers will offer under the law.



By Rich Ehsen

According to consulting firm Avalere Health, 23 states and the District of Columbia met the U.S. Department of Health and Human Services' (HHS) Sept. 30 target date to identify benchmark health plans that define the essential health benefits (EHB) for all individual and small group policies the ACA requires. Analysis from the National Academy for State Health Policy indicates at least 10 more are still working on their EHB options, with several expected to soon submit their own plans. Three — Alabama, Louisiana and Tennessee — have opted to not choose an EHB plan.

The EHB benchmark decisions are critical because that standard will determine how comprehensive those health plans will be and how much they will cost. The ACA requires states to adopt benchmark plans that include 10 coverage categories: preventative care, maternity and newborn services, pediatric services, mental health and substance abuse, prescription drugs, hospitalization, emergency care, out-patient care, laboratory services and rehabilitative care, including ongoing support or “habilitative” services. States can adopt a benchmark plan that doesn’t itself meet all coverage categories, but they must then add whatever benefits they need to meet that standard. The plans they adopt will be good for two years, 2014 and 2015, after which states will choose their benchmark plan each year.

While much of the media’s attention has been centered on how insurance plans will operate within health care exchanges, each state’s EHB benchmark also applies to policies sold outside the exchange system as well as to millions of newly-minted Medicaid enrollees who obtain coverage via the ACA (though state Medicaid agencies will actually select the plan they use). Exceptions include grandfathered individual and small market plans, self-insured and large company plans (those with 50 or more employees) and other specialty plans.

“These standards impact the whole individual and small group market,” says National Academy for State Health Policy (NASHP) program director Sonya Schwartz. “Each benchmark plan establishes a model policy that defines the benefits and services that are included in those health plans. That’s important because if you need coverage for something that’s not included in the benchmark, and your plan hasn’t chosen to go beyond that, you’re out of luck. You’ll be paying for those services out of pocket.”

That fiscal hurt could also be applied to states. Under the ACA, if a state adopts benefits that exceed the federal requirements, it must cover those costs on its own.

In that regard, however, states — and health insurers — have been working at a disadvantage: the federal government has yet to announce final EHB requirements. Last December 16, the U.S. Department of Health and Human Services issued a bulletin that offered states a glimpse at the agency’s intended regulatory approach, if not hard and fast rules. According to that guidance, state EHB plans would have to include not only the 10 broad coverage categories, but also, among several things, “reflect typical employer health benefit plans,” “account for diverse health needs across many populations” and balance “comprehensiveness and affordability” for those purchasing policies.

Robert Zirkelbach, a spokesman for the health insurance trade association America's Health Insurance Plans, says that while such guidance is helpful, it does not replace the certainty that health insurers need to be able to have appropriate plans ready for the beginning of enrollment on Oct. 1, 2013.

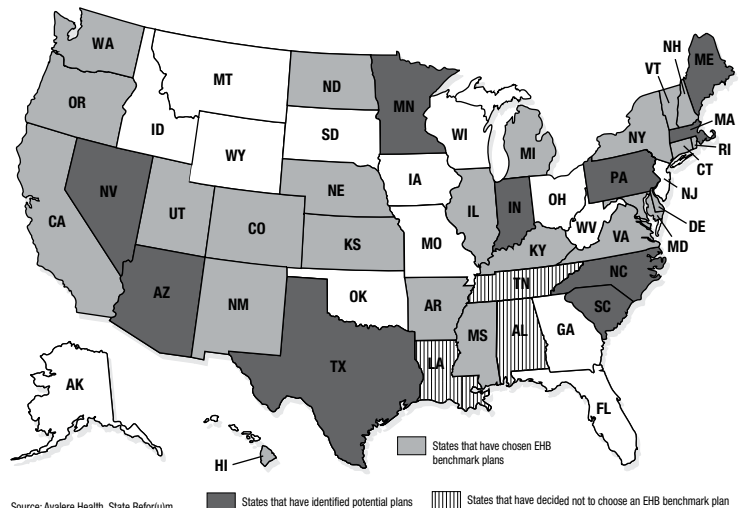
"It takes from 12 to 18 months for health insurers to develop a benefits package, get it approved and bring it to the marketplace," he says. "Our members need the certainty of knowing what the rules are going to be so they can get down to the business of developing benefits packages that are going to be attractive to consumers."

Even without official standards, states were not totally in the dark. The HHS guidance made it clear that states could choose from myriad options: any one of the state's three largest small group plans, any of the three largest plans for state or federal employees, or the largest HMO for the state's commercial insurance market.

NASHP's Schwartz says to date a majority of states that have chosen benchmarks have opted for small group plans, with Utah and Maryland choosing a state employee plan and Connecticut going with an HMO.

Coverage varies state to state. California, Washington and Maryland, for instance, have adopted EHB plans that include acupuncture services. Oregon rejected a call to cover bariatric surgery to fight obesity, but did endorse cochlear implants for hearing-loss patients. Virginia and Michigan favor plans with chiropractic services; Oregon does not. Mental health offerings vary widely, and an analysis of eight of the proposed state EHB plans by Avalere Health found that all of them exceeded federal minimum requirements for prescription drug coverage, but by vastly different degrees. The California plan, for instance, covers only about 26 percent of those allowed by the ACA. Four states — Mississippi, Virginia, Vermont, and Washington — covered at least 85 percent of those drug options.

## Bird's eye view



### Substantial progress on ACA health plan benchmarks

The Affordable Care Act requires states to provide a minimum package of services called "essential health benefits" (EHBs), and the Department of Health and Human Services is allowing each state to model its EHB plan after an existing small group health insurance plan, state employee health benefit plan, federal employee health benefit plan or HMO plan. Twenty-three states have selected such benchmark plans, according to the consulting firm Avalere Health and the State Reform (u)m, an initiative of the National Academy for State Health Policy. At least seven more states have identified potential EHB plans, while three others have opted not to choose a benchmark plan.



Variations are to be expected, but state lawmakers and work groups responsible for making these decisions clearly appear to be leery of adding benefits that will later be deemed not acceptable for federal subsidies.

That wariness was evident even in California, the first state to begin implementing the Affordable Care Act after it became law in March, 2010. In an August appearance at a National Conference of State Legislatures health reform seminar in Chicago, California Assemblyman Bill Monning (D), then the chair of the Assembly Health Committee, cited his state's perpetual budget deficits when noting that it was critical his colleagues "not include essential benefits that the federal government won't subsidize."

Last week, Monning said that while several "individual mandate" bills — those requiring insurers to cover specific treatments or medications — were introduced, virtually all were tabled with the blessing of their authors. Lawmakers eventually chose a Kaiser small group plan that carries a broad spectrum of services, with no additional mandates to deal with. It was a decidedly rare moment of restraint in a state known for heavy-handed regulation, one Monning said was an indication of how serious lawmakers are about avoiding costly missteps in implementing the ACA.

**"The learning curve has been tough for everyone, but particularly so for legislators."**

"It was a lot of hard work," he says, noting that much of that effort was in educating colleagues about the intricacies of the ACA and the health industry in general.

"The learning curve has been tough for everyone, but particularly so for legislators," he says. "It has been even more so for those who don't specialize in health."

Whether Monning and lawmakers across the country have guessed correctly won't be known for a while. Virtually nobody expects final regulations until after the elections in November. But Micah Weinberg, a senior policy analyst at the Bay Area Council, a San Francisco-based business group that supports the health reform law, believes those final rules will be in line with what states are already doing.

"It isn't inconceivable that the federal government would issue rules drastically different than what states are expecting," he says. "But they have to know that would create enormous problems at this point."

He also notes that the essential benefits question is only one of many yet to be answered, including if and how the law will make health insurance more affordable. He adds that many consumers don't yet realize that, even with federal subsidies, their insurance rates will likely increase under the ACA, not go down.

"The coverage will be substantially more comprehensive, but it will cost more," he says.

On that front, says AHIP's Zirkelbach, insurers are prodding federal officials to revisit such ACA tenets as the age rating band, which bars insurers from having variations in rates based on enrollees' age that vary by more than a 3-to-1 ratio. Most

current age bands are a 5-to-1 ratio, which Zirkelbach says is a fair balance that prevents policies from becoming too costly for the younger enrollees necessary for the system to have any chance of working as intended.

“For this to work, coverage has to be affordable,” he says.

Patrick Johnston, president and CEO of the California Association of Health Plans, also questions the impact of forcing insurers to adopt a 3-to-1 ratio, something he calls “a political conclusion, not an actuarial fact.” He says he has heard talk of HHS phasing in the 3-to-1 age band over time, but without the final regulations it is, at this point, just talk.

“To make the (Oct. 1, 2013) deadline, there has to be clarity on these cost drivers,” he says.

The myriad of enormous challenges is so far keeping enthusiasm in check among even the law’s staunchest proponents. During a conference call last Monday with media and several high ranking California officials — including Monning, Sen. Ed Hernandez (D) and state Health and Human Services Secretary Diana Dooley — Daniel Zingale, vice president of the California Endowment, a health advocacy group, expressed great optimism over how California has proceeded with ACA implementation. But he also couched much of his enthusiasm with caution.

“Nobody is declaring ‘mission accomplished’ on this yet,” he said.

— By RICH EHISEN

*This is the latest in SNCJ's ongoing coverage of states' implementation of the Affordable Care Act. We will continue to offer in-depth coverage of this issue throughout the foreseeable future.*

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## Budget & taxes

**S**TATE ECONOMIES FALTER IN Q2: Since last fall, most state economies have been improving — at least until the second quarter of this year. This past April through June, the economic health of 36 states declined compared to the preceding three months, the weakest result for state economies since the third quarter of 2011, when all but five declined, according to the Bloomberg Economic Evaluation of States (BEES).

The downturn reflects a drop in hiring nationwide, which in turn held down workers’ incomes and stock prices, all of which figure into the BEES index.

“Firms are behaving quite cautiously with respect to fixed business investment and hiring across the nation,” said Joseph Brusuelas, a senior economist at Bloomberg LP in New York. “We’re feeling the drag all over, even where things are slightly better.”

The few places where things are slightly better are the 10 states — including energy producers North Dakota and Texas — that showed signs of improvement in the second quarter, compared to 35 that showed gains in the 1st quarter. The economies of four other states, including Iowa and Massachusetts, didn't move significantly one way or the other.

The downward trend overall isn't good news for President Obama's re-election campaign. Some of the faltering states are expected to be key battlegrounds in November, including Colorado, Florida, North Carolina, Ohio and Virginia.

The trend also seems likely to continue as the U.S. economy as a whole is struggling due to weaker demand for exports and falling natural gas prices, according to Chris Jones of TD Economics in Toronto.

"It's a broad slowdown in the world economy," he said. (BLOOMBERG BUSINESSWEEK)

**STATE TAX REVENUE FORECAST MIXED:** The outlook for state tax collections next year is mixed, according to a new report from the National Conference of State Legislatures. NCSL's "Projected State Tax Growth in FY 2013," which is based on a survey of legislative fiscal directors in all 50 states and the District of Columbia, indicates that nearly all of those jurisdictions expect total tax collections to be higher in FY 2013 than they were in FY 2012. And this year marks the third in a row that most states are predicting growth over the previous fiscal year.

However, most states are also anticipating that growth will be only modest, between 1 percent and 4.9 percent. Only two states — Georgia and Oklahoma — forecast growth of more than 5 percent for all three major tax categories: personal income taxes, general sales and use taxes, and corporate income taxes.

One major factor in the modest projections for FY 2013, according to the report, is the limited number of notable state tax changes this year. So far, 2012 has seen the smallest aggregate tax cut (0.2 percent) in the 32 years NCSL has been collecting this data.

NCSL's findings parallel those of the Nelson A. Rockefeller Institute of Government, which reported last month that total state tax collections had risen for 10 straight quarters, beginning with the first quarter of 2010, but that the rate of growth had slowed in the last four. (NATIONAL CONFERENCE OF STATE LEGISLATURES, NELSON A. ROCKEFELLER INSTITUTE OF GOVERNMENT)

**BUDGETS IN BRIEF: ILLINOIS** has amassed over \$271 billion in debt, enough that every private-sector employee in the state would have to pony up \$55,000 to pay it off, according to a report released in late August by the research group State Budget Solutions. The debt includes the state's unfunded pension liability, owed retiree insurance benefits, budget gaps and outstanding bonds

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(ILLINOIS WATCHDOG.ORG). • **NEW JERSEY** Gov. Chris Christie (R) said last week he will veto every spending bill that reaches his desk until Democrats, who control both houses of the Legislature, approve a tax cut. Democrats have refused to do so until they know whether the state will meet the revenue projections Christie has forecast, which Standard & Poor's has called optimistic (BLOOMBERG BUSINESSWEEK, STATE NET). • Nearly 2,400 of the people who received unemployment insurance benefits in 2009 lived in households with annual incomes of \$1 million or more, according to a report from the Congressional Research Service. Congressional lawmakers are considering eliminating such payments to high earners as one way to reduce the nation's \$1.1 trillion projected deficit (BLOOMBERG BUSINESSWEEK).

— *Compiled by KOREY CLARK*

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## Politics & leadership

**S**URPRISING ELECTION FRAUD SCANDAL SURFACES IN FL: It has usually been Democrats who have been accused, mostly by Republicans, of doing little to deter voter fraud — or worse. In a recent op-ed piece on CNN's Website, Reince Priebus, the chairman of the Republican National Committee, went as far as to say, "Democrats know they benefit from election fraud."

But the tables turned last month when news broke that suspicious voter registration forms submitted by a company under contract with the Republican Party of Florida, had turned up in Palm Beach County. The number of affected counties quickly grew to a dozen, and the scandal has since spread to other states, including Colorado and Nevada.

The Florida Department of Law Enforcement (FDLE) announced last week it was launching a criminal investigation into the matter, after reviewing registration forms filed by Strategic Allied Consulting that were deemed suspicious by elections supervisors. Many of the forms were incomplete, some included addresses for voters that were locations of businesses, including a gas station and a Land Rover dealership, and at least one included the information of an individual who was deceased.

"Following the review, there was criminal predicate," said FDLE spokeswoman Gretl Plessinger. "There was a possibility that crimes were committed."

Upon learning of the questionable registration forms, the state Republican parties in Florida, North Carolina, Colorado and Virginia promptly fired Strategic Allied Consulting, and the Republican Party of Florida also filed an election fraud complaint against the firm.

But top Democrats say the reputation of the veteran GOP consultant who owns Strategic Allied Consulting, Nathan Sproul, was hardly unknown to Republicans before this scandal. He gained national attention during the 2004 election, when he was under contract with the RNC and a canvasser working for one of his firms in Oregon told a TV news reporter he'd thrown away Democratic registrations, an allegation that was also made by a disgruntled Sproul employee in Nevada to CBS news and other outlets.

"I have grave concerns not just about the Republican National Committee's decision to retain this company, but also about what the company has allegedly done," U.S. Rep. Elijah E. Cummings (D-Maryland) said in a statement. "Contrary to a 'zero-tolerance' policy, it appears that the RNC knew exactly what it was doing when it hired this company as the only one it uses to conduct this kind of work across the country."

Officials at Strategic Allied Consulting counter that Sproul was never charged on the 2004 allegations. And Sproul's lawyer, David Leibowitz, said he expects a similar outcome this time.

"There were a couple thousand contractors doing this across Florida," he said. "There were bound to be some problems. I agree, the allegations keep coming up. But essentially, the findings are groundless." (MIAMI HERALD, NEW YORK TIMES)

**ELECTION CASES COMING DOWN TO WIRE:** As of late last month there were 15 legal cases pending across the country concerning new election restrictions. With roughly a month left before the presidential election, the cases leave judges with little time to resolve election issues in states where the margin of victory for either President Barack Obama or Mitt Romney may only be a few thousand votes.

Two of the most significant cases are in Ohio, a state where Obama is slightly favored, according to a recent Quinnipiac University/New York Times/CBS News poll, and which no Republican has ever been elected president without carrying. One of the cases centers around a challenge by the Obama campaign to the law passed by the state's GOP-controlled Legislature eliminating early voting in the three days before the election for all citizens except members of the armed services. In making its case, Obama for America claimed that in the three days leading up to the 2008 presidential election, 93,000 Ohioans cast their ballots. A federal judge ruled on Aug. 31 that the state could not take away voting privileges for some of its voters and not others.

## In the hopper

At any given time, State Net tracks tens of thousands of bills in all 50 states, the US Congress and the District of Columbia. Here's a snapshot of what's in the legislative works:

**Number of Prefiles last week: 570**

**Number of Intros last week: 380**

**Number of Enacted/Adopted last week: 475**

**Number of 2012 Prefiles to date: 13,797**

**Number of 2012 Intros to date: 83,869**

**Number of 2012 Session Enacted/Adopted overall to date: 27,935**

**Number of bills currently in State Net Database: 180,177**

— Compiled By FELICIA CARRILLO  
(measures current as of 10/3/2012)  
Source: State Net database



But Attorney General Mike DeWine, a Republican, appealed the ruling, contending the state has made such a distinction between military and civilian voters in the past, and the U.S. Court of Appeals in Cincinnati has agreed to expedite that appeal.

The other case concerns provisional ballots filed in the wrong precinct. Ohio rejected 14,355 wrong-precinct ballots in 2008, but U.S. District Judge Algenon Marbley in Columbus ruled on Aug. 27 the state could not throw out such ballots if they were filed in the wrong precinct because of poll-worker error.

Both cases are challenging, according to Edward Foley, director of the election law program at Ohio State University's Moritz College of Law in Columbus.

"The court may struggle with ambiguity in these two cases," he said. "Neither case is open or shut."

In Pennsylvania, the state Supreme Court, on Sept. 18, set aside a lower court ruling upholding the state's new voter ID law and directed the judge in that case to revisit his decision and assess whether all citizens would be able to obtain the forms of ID the law requires. A state analysis found that the law might exclude as many as 759,000 eligible voters from casting ballots in the presidential election, 9 percent of the electorate and significantly more than the 620,478 voters who comprised Obama's margin of victory in the state in 2008.

Two Democratic justices dissented from the majority in the high court's 4-2 decision, saying the court should have struck down the law outright, especially with less than two months to go before the election.

"The eyes of the nation are upon us," Justice Debra McCloskey Todd wrote, "and this court has chosen to punt rather than to act."

Last week, however, the lower court judge, Commonwealth Court Judge Robert Simpson, ruled that the state had, in fact, fallen short on ensuring citizens "liberal access" to proper ID and reversed his earlier decision upholding the law.

Another state where election-related legal action appears to be settled, at least for this year, is Wisconsin. Two lower court judges in Madison, Dane County Circuit Court Judges Richard Neiss and David Flanagan, declared the state's new voter ID law unconstitutional in separate decisions in March and July, respectively. And both judges denied the state a stay of their judgments pending further legal action.

"The inescapable reality is that the need for stability, predictability and adequate preparation for the electoral process strongly weighs against this court granting a stay and thus changing the voting process at this late hour," Flanagan stated.

Last month, the state Supreme Court refused to grant a stay as well, meaning the law will not be in place for the upcoming election.

## Upcoming stories

Here are some of the topics you may see covered in upcoming issues of the *State Net Capitol Journal*:

- **Elections**
- **Fracking**
- **Cap and trade**

But other cases are still pending in several other states besides Ohio and Pennsylvania, including Alabama, Colorado, Florida, Louisiana, Nevada, New Jersey, New York, South Carolina and Texas, according to Ohio State's Moritz College. According to Foley, however, the timing of the cases is less unusual than the number of them.

"It's not unprecedented to have these last-minute lawsuits over voting process," he said. "They've just snowballed since *Bush v. Gore*," the case that effectively decided the 2000 presidential election. (BLOOMBERG BUSINESSWEEK, OHIO STATE UNIVERSITY MORITZ COLLEGE OF LAW, STATELINE.ORG, STATE NET)

## In case you missed it

A new study predicts all 50 states will have obesity rates of 44 percent or higher by 2030, driving obesity-related illnesses and their associated costs through the roof.

In case you missed it, the article can be found on our website at

[http://www.statenet.com/capitol\\_journal/10-01-2012/html#sncl\\_spotlight](http://www.statenet.com/capitol_journal/10-01-2012/html#sncl_spotlight)

### AZ INDEPENDENTS FACE LONG ODDS DESPITE STATE'S

**INDEPENDENT STREAK:** The number of independent voters in Arizona has nearly tripled over the past two decades. There are now more registered independents in the state than Democrats, 1 million-plus versus about 935,000 respectively, as of the August primary, and it won't be long before they outnumber the state's 1.1 million Republicans too.

But the surge in independent voters hasn't made it any easier for independent candidates to make the state's ballot. That's because the state's election laws, written by the two major parties, tilt the political playing field decidedly in their favor.

Among the biggest obstacles independents face is the signature requirement to qualify for the ballot. While established party candidates need to get signatures from 1 percent of their party's registered voters in the district in which they are running, independents have to get signatures from 3 percent of their party's voters in their district.

And if an independent does manage to make the ballot, his or her name is guaranteed to appear last on the list of candidates, due to an election law change 12 years ago excluding independents from a requirement that candidate names be rotated to ensure equal exposure.

Then there are the financial hurdles, such as being eligible for only 70 of the public funding major party candidates get and the challenge of raising private money without a major party endorsement.

"Who's going to give me money?" asked Doug Quelland, a former Republican lawmaker who is now running for the state Senate as an independent. "It's a two-party dictatorship."

But some think independents' electoral fortunes could change if a proposition on the November ballot prevails. Proposition 121 would replace partisan primaries with an all-in primary in which the top two finishers would advance to the general election, regardless of party affiliation. (AZCENTRAL.COM)

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**POLITICS IN BRIEF:** Members of the Chicago Teachers Union voted 16,428 to 4,337 last week to ratify the new three-year contract that union leaders agreed to last month, ending an eight-day teachers strike. The contract now has to be approved by the Chicago Board of Education (CHICAGO TRIBUNE). • The U.S. Supreme Court has declined to take up the National Organization for Marriage’s (NOM) appeal of a federal judge’s ruling upholding **MAINE**’s campaign finance disclosure law. The decision could force NOM to reveal its list of contributors to a 2009 people’s veto of gay marriage in the state (BANGOR DAILY NEWS). • The U.S. Supreme Court has declined to hear a challenge to **WASHINGTON**’s top-two primary system from the state’s Democratic and Libertarian parties. The parties alleged that the state’s primary system, which allows candidates to identify themselves as members of a party even if the party objects, would confuse voters, but the high court’s decision effectively allows the ruling of the San Francisco-based 9th U.S. Circuit Court of Appeals, which found no evidence of confusion and upheld the primary system, to stand (SEATTLE TIMES).

— *Compiled by KOREY CLARK*

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# Governors

**BROWN WRAPS UP MARATHON CA BILL SIGNING SESSION:**  
California Gov. Jerry Brown (D) finished addressing hundreds of bills last week, including over 100 in the last few hours before the deadline to act. Overall, Brown signed or vetoed 659 bills in September. For the year, Brown signed 876 regular session bills. He also vetoed another 120, or about 12 percent of what lawmakers sent to him.

Measures the governor endorsed include legislation to allow so-called “Dreamers” — young undocumented immigrants granted a waiver by the federal government — to obtain driver’s licenses, a bill defining the state’s essential health benefits benchmark under the Affordable Care Act (see *SNCJ Spotlight* in this issue) and a controversial proposal to establish defined benefit private-sector pensions for low income workers without access to an employer-sponsored retirement plan.

Those signings pleased many pro-labor and immigration advocates, but he also earned their wrath by nixing bills that would have extended greater labor protections to live-in housekeepers and farm workers and barred local officials from helping federal authorities to deport undocumented immigrants. Brown also vetoed two measures (AB 1461 and SB 961) that would have barred California health insurers from rejecting policy applicants based on pre-existing health conditions. Brown cited technical elements contained in the bills’ language and noted he would work with lawmakers to craft replacements, most likely in an upcoming special session

on health care reform the governor has called for December.

Many of the governor's signings and vetoes also seemed to be done with an eye toward bolstering the chances of Proposition 30, his November ballot measure that would raise billions of dollars in new taxes to help balance the state's chronically underwater budget. Many included messages the *Los Angeles Times* called "part lecture and part sales pitch," seemingly designed to show lawmakers — and the public — that he was serious about fiscal discipline.

The governor rejected, for instance, attempts by leaders in both houses to restart the state's redevelopment program: SB 1156, authored by Senate President Darrell Steinberg (D), which would have allowed local officials to create special authorities to finance redevelopment projects, and AB 2144 from Assembly Speaker John A. Perez (D), which would have expanded local development financing projects already in place. Brown vetoed similar measures from other lawmakers as well.

He was even more direct in signing AB 2358, legislation to erect a statue honoring former California governor and U.S. president Ronald Reagan. In his message, Brown said he was proud to sign the bill, noting he had served as Secretary of State under Reagan. But he also referenced his old boss signing in 1967 the largest tax hike of any state in history. Reagan signed off on the increase after inheriting a massive budget shortfall from his predecessor, Brown's father, Gov. Pat Brown (D).

"Even in those days [Gov. Reagan] demonstrated courage and unique leadership ability - even to the point of raising California taxes when he saw they were needed," Brown wrote. (LOS ANGELES TIMES, SACRAMENTO BEE, SAN JOSE MERCURY NEWS, STATE NET)

#### **PERRY PLAN LINKS COLLEGE FUNDING TO GRADUATION RATE:**

Texas Gov. Rick Perry (R) pitched several higher education proposals last week, including a call to tie 10 percent of a university's funding to its graduation rate. Perry said action was needed to push Lone Star State colleges and universities to graduate more students and in a more timely manner. Perry also called for schools to implement a four-year tuition freeze, provide more transparency about tuition costs and create four-year degrees that cost no more than \$10,000. Lawmakers are expected to take up the governor's proposals in January. (DALLAS MORNING NEWS, AUSTIN AMERICAN-STATESMAN)

## **The week in session**

**States in Regular Session:** DC, MA, NJ, OH

**States in Recess:** PA, IL, NY, MI

**In Pro Forma Session:** US

**States Currently Prefiling or Drafting for 2013:** AL, FL, KY, MT, ND, NH, NV, VA

**States Adjourned in 2012:** AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IN, KS, KY, LA, MD, ME, MN, MO, MS, NC, NE, NH, NM, OK, OR, PR, RI, SC, SD, TN, UT, VT, WA, WI, WV, WY

**State Special Sessions Adjourned in 2012:** AK "c", AL "a", CO "a", CT "a", CT "b", DE "b", FL "b", HI "b", KY "a", MD "a", MD "b", MN "b", NJ "a", NY "a", PR "c", PR "d", UT "a", VA "a", WA "c", WA "d", WV "a"

Letters indicate special/extraordinary sessions

— Compiled By Felicia Carrillo  
(session information current as of 10/4/2012)  
Source: State Net database

**SCOTT SAYS FL OYSTERS NEED MORE GA WATER:** Saying the state's oyster industry is on the verge of collapse, Florida Gov. Rick Scott (R) called on federal officials last week to increase the flow of water coming from Georgia's Lake Lanier, a federal reservoir that is a major supply of drinking water for the metro Atlanta area. Flows from the lake have been the subject of a decades-long legal feud between Florida, Georgia and Alabama. This summer, the Supreme Court decided against intervening in the latest round of legal wrangling. Scott has met with officials from the U.S. Army Corps of Engineers, which controls the lake, but said it will likely take Congressional action to change the current flow restrictions. (TALLAHASSEE DEMOCRAT, ASSOCIATED PRESS)

**GOVERNORS IN BRIEF:** The administration of **NEW MEXICO** Gov. Susana Martinez agreed last Wednesday to settle a lawsuit and not revive a plan to cancel the driver's licenses of immigrants who fail to verify whether they still live in the state. The decision came after District Judge Sarah Singleton issued an order permanently blocking the administration from canceling licenses of any immigrants initially checked unless the state has evidence of fraud (ASSOCIATED PRESS).

• **COLORADO** Gov. John Hickenlooper (D) defended the controversial drilling practice of hydraulic fracturing, or "fracking," last week, saying it was "opening up an entire universe of opportunities" that would make natural gas a "bridge fuel" to the future use of renewable energy resources. He added that "large-scale renewable energy is not technically feasible at this moment in history" (COLORADOAN [FORT COLLINS]).

• **LOUISIANA** Gov. Bobby Jindal (R) issued Executive Order BJ 2012-21, which bars state executive branch agencies from buying or leasing new vehicles without first obtaining written permission from his office (STATE NET).

— *Compiled by RICH EHISEN*

# Hot issues

**B** **USINESS: CALIFORNIA** Gov. Jerry Brown (D) signs SB 1234, which would create a private sector defined-benefit pension plan for workers who do not have access to a retirement plan through their employer. Gov. Brown also signs a companion bill, SB 923, which requires more study to be done on the plan, that lawmakers take a final vote before it can be implemented and that a board overseeing the program be increased from seven to nine members (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown signs AB 2026, which extends for two additional years a program that gives film and TV producers tax breaks for filming in the Golden State (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown signs AB 1447, which

requires auto dealers who offer their own financing to include a 1,000-mile, 30-day warranty with each car they sell. Gov. Brown also signs a companion bill, AB 1534, which requires those dealers to post a fair market valuation on the cars they sell (LOS ANGELES TIMES). • **CALIFORNIA** Gov. Brown signs 2386, which adds breastfeeding as a protected right in the workplace (STATE NET). • **CALIFORNIA** Gov. Brown vetoes AB 1450, which would have barred employers from requiring job applicants to already be employed (CALIFORNIA GOVERNOR’S OFFICE). • **CALIFORNIA** Gov. Brown vetoes AB 2676, which would have required farm workers to have continuous access to shade and enough “suitably cool” water for each employee to drink one quart per hour throughout a shift. Agricultural operations that violated the law would have faced jail time and fines up to \$10,000. Brown said the Golden State already has the most stringent protections in the nation for outdoor workers (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown vetoes AB 889, which would have, among several things, required that live-in workers be compensated if their rest period was interrupted during an eight-hour period and eased eligibility requirements for workers’ compensation. Brown said the issue needed more study (CALIFORNIA GOVERNOR’S OFFICE). • **NEW YORK** Gov. Andrew Cuomo (D) signs SB 6426, which allows Empire State micro-distilleries to sell liquor at the state fair, recognized county fairs, and not-for-profit farmers’ markets. It goes into effect next March (STATE NET).

**CRIME & PUNISHMENT:** **CALIFORNIA** Gov. Jerry Brown (D) vetoes AB 2460, which would have barred peace officers from selling to the public potentially unsafe handguns that are not available at stores (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown signs SB 9, legislation that allows some juvenile offenders serving a life sentence without parole to petition for a resentencing hearing if they were minors when they committed the murder that led to their sentence (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown vetoes SB 1310, which would have increased the fine for motorists who text or hold a cell phone to their ear while behind the wheel (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown vetoes AB 1270, legislation that would have allowed reporters the right to interview specific state convicts (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown vetoes AB 1434, which would have required law enforcement officers to get a search warrant in order to obtain location information generated by a cell phone, tablet computer or automobile navigation system (LOS ANGELES TIMES). • **MICHIGAN** Gov. Rick Snyder (R) signs SB 1109, which imposes a minimum 25-year prison sentence on Wolverine State criminals convicted of a fourth felony, if that felony is considered a “serious crime” like murder, rape or armed robbery (MLIVE.COM).

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**EDUCATION:** The **MICHIGAN** House and Senate approve SB 1122, which requires Wolverine State schools to develop concussion awareness programs for coaches, parents and all other personnel involved in school athletics. Lawmakers also endorse HB 5697, which bars schools from allowing a concussed athlete to return to competition unless they have first been cleared by a doctor. Both measures head to Gov. Rick Snyder (R), who is expected to sign them into law (DETROIT NEWS, STATE NET). • **CALIFORNIA** Gov. Jerry Brown (D) signs AB 2109, which requires parents who enroll students who have not received the required public school vaccines to get a waiver from a physician or a nurse practitioner saying they have received information about the benefits and risks of immunization (CONTRA COSTA TIMES). • **CALIFORNIA** Gov. Brown signs SB 1052, which provides for the selection, development and administration of free open digital textbooks for the most popular lower-division courses at Golden State public universities and colleges. Gov. Brown also signs SB 1053, which creates an open source library to house the textbooks and courseware (CALIFORNIA GOVERNOR'S OFFICE). • **CALIFORNIA** Gov. Brown signs SB 1425, which requires state universities that generate more than \$10 million in media revenue annually to provide equivalent academic scholarships to student athletes who are injured and lose their sports scholarships, or have exhausted their NCAA athletic eligibility before they have completed their degree (LOS ANGELES TIMES). • **CALIFORNIA** Gov. Brown vetoes legislation that would have required the California State University and University of California systems to consider a professor's record of community service in the hiring, promotion, retention and tenure process. Brown said the bill was duplicative of policies already in place (STATE NET). • **CALIFORNIA** Gov. Brown vetoes SB 259, which would have granted collective bargaining rights to graduate student researchers at the state's public universities (STATE NET). • **CALIFORNIA** Gov. Brown signs AB 2367, a bill that will allow schools to sell their garden produce and reinvest the money in their garden programs (SAN JOSE MERCURY NEWS).

**ENVIRONMENT:** The U.S. Supreme Court rejects a challenge to a federal rule that bars development on 50 million acres of roadless areas in national forests in **UTAH**, **WYOMING** and other states. The Court's ruling leaves intact a 10th Circuit Court decision that upheld the so-called roadless rule that took effect under President Bill Clinton (SALT LAKE TRIBUNE). • **CALIFORNIA** Gov. Jerry Brown (D) signs SB 594, which allows Golden State consumers with multiple energy meters to install one renewable energy facility that will serve all meters on the same property or on adjoining property. Current law requires separate facilities at each meter (WOODLAND DAILY DEMOCRAT). • **CALIFORNIA** Gov. Brown signs

## Upcoming elections

(10/25/2012 - 10/26/2012)

10/23/2012

**Alabama Special Primary**  
House Districts 30, 34

SB 2245, which exempts the act of restriping streets and highways to include bicycle lanes from requirements of the California Environmental Quality Act (CALIFORNIA GOVERNOR'S OFFICE).

**HEALTH & SCIENCE:** The **NEW JERSEY** Senate approves SB 2135, which would create a health insurance exchange in the Garden State. The measure moves to the Assembly (BERGEN RECORD, STATE NET). • **CALIFORNIA** Gov. Jerry Brown (D) signs AB 1453 and SB 951, which collectively establish the essential health benefits (EHB) standard for comprehensive health packages being sold to individuals and small employers through the state health benefits exchange set to begin operation in 2014 (STATE NET). • **CALIFORNIA**, Gov. Brown vetoes AB 369, which would have barred a health plan or insurer from requiring a patient to try and fail more than two medications before allowing the patient to have the pain medication prescribed by their doctor (CALIFORNIA GOVERNOR'S OFFICE). • **CALIFORNIA** Gov. Brown vetoes AB 1461, which would have barred insurers from rejecting individual insurance applicants outside of the state's yet-to-be-implemented health benefits exchange due to preexisting health conditions (STATE NET). • **CALIFORNIA** Gov. Brown vetoes SB 1246, which would have required the state Department of Public Health to establish specific nurse-to-patient staffing ratios for Golden State hospitals. Brown said the agency is already on track to do this without legislation (STATE NET).

**IMMIGRATION:** **CALIFORNIA** Gov. Jerry Brown (D) signs AB 2189, legislation that allows undocumented immigrants granted Deferred Action status by the federal government to obtain driver's licenses (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown vetoes AB 1081, which would have prohibited local law enforcement agencies from holding arrestees for federal immigration authorities unless the crime or conviction involved a serious or violent felony (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown signs SB 1064, which permits a court to place a child in any marriage dissolution, dependency, or probate guardianship proceedings with a parent, legal guardian, or relative regardless of the relative's immigration status (STATE NET).

**SOCIAL POLICY:** **CALIFORNIA** Gov. Jerry Brown (D) vetoes AB 1476, which would have given Golden State judges the authority to recognize multiple parents if doing so is "required in the best interest of the child." Brown said the law could have unintended consequences (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown signs SB 1172, which bars children under 18 from undergoing so-called "gay conversion" psychotherapy to change their sexual orientation (STATE NET). • **CALIFORNIA** Gov. Brown signs SB 1140, which decrees that marriage is a civil, not religious, contract and specifies that religious personnel cannot be compelled to



solemnize a marriage that is contrary to the tenets of their faith. The measure also bars entities that refuse to perform a marriage from losing their tax-exempt status (STATE NET).

**POTPOURRI: CALIFORNIA** Gov. Jerry Brown (D) signs AB 1527, which bars people from openly carrying rifles in public, even if unloaded (SACRAMENTO BEE). • **CALIFORNIA** Gov. Brown vetoes SB 1160, which would have prevented agencies from disrupting cell phone service without a court order. The bill was born out of an action by the Bay Area Rapid Transit agency last year that cut wireless service in San Francisco subway stations to disrupt a planned protest (SAN JOSE MERCURY NEWS).

— Compiled by *RICH EHISEN*

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## Once around the statehouse lightly

**BULLY FOR TEDDY:** Theodore “Teddy” Roosevelt was likely the most physically fit president in U.S. history, but you wouldn’t know it by his performance at Nationals Park in Washington D.C. over the last six years. At every home game since 2006, Teddy has joined Abe Lincoln, Thomas Jefferson and George Washington — employees wearing enormous likenesses of the former presidents — in a race around the stadium warning track. Heading into Wednesday’s season finale against Philadelphia, the quartet had lined up more than 500 times and not once had Teddy finished first. The losses were often spectacular: he has tripped, crashed into walls, run the wrong way, been knocked down by a leprechaun, stopped to tweet, been attacked by a shark, or just simply face-planted all on his own, a dismal showing that had some folks crying foul. Arizona Sen. John McCain called it “a vast left-wing conspiracy being organized by pinko commie liberals within the Beltway.” McCain’s comment was firmly tongue in cheek, but others, well, not so much. Noted Roosevelt biographer Edmund Morris, for one, called the whole thing “extraordinarily unfunny,” while Kermit Roosevelt III, Teddy’s great-great grandson, said, “Teddy would have physically dominated any of those guys.” A lobbying group has even been formed, adopting the slogan: “Let Teddy Win.” And yet the losses continued...until last week. On Wednesday, the combatants entered the field as always through centerfield, and Teddy quickly fell a good 90 feet behind. But as the three leaders reached the right field foul line, a quirky mascot that looked suspiciously

like a mini version of the famed “Phillie Phanatic” took them all out with a tackle that would have made Eagles Hall of Famer Chuck Bednarik proud. Teddy sprinted past, made the turn toward home and, with the crowd deliriously roaring its approval, finally tasted victory. Bully!

**ONE, TWO, THREE, FOUR, YOUR CITY’S REALLY POOR:** This week’s example of adding insult to injury comes to us from California’s Central Valley, where the city of Stockton’s ongoing bankruptcy case has drawn national attention and, to its consternation, become part of its sporting rivalry with neighboring Bakersfield. As the *Sacramento Bee* reports, each city has a minor league hockey team, and the two teams regularly face off against one another. When the puck drops on their Dec. 27 meeting, however, there might be a little more blood spilled than usual. That’s because the Bakersfield Condors’ management has dubbed it “Our City Isn’t Bankrupt Night,” with festivities to include handing out phony million-dollar bills and Rolls Royce automobiles. The Condors are known for wacky promotions, including once offering fans plungers bearing the Stockton Coyotes’ logo. While most are taken in stride, this one is drawing scathing rebukes from Stocktonians, who see nothing funny about their city’s fiscal woes.

**UNSAFE AT ANY SPEED:** When Florida parent La’Tasha Reed Dullivan heard about Gov. Rick Scott’s recent education listening tour, she quickly signed up to attend when the gov visited her son’s charter school. But as the *Miami Herald* reports, her application for a security clearance was rejected. That she might be a security risk was news to Dullivan, who, as a licensed child care worker and a Medicaid provider, has passed Level 2 background checks since 1993. Those screenings have included being fingerprinted, a review of her driving records and undergoing national and state searches for any criminal history. Flabbergasted, she ran herself through the system again, wondering if someone had stolen her identity. Alas, it was clean as a whistle. The police won’t comment, so Dullivan can only summarize it thus: she is perfectly safe to work with kids, but not to ask the governor a question or two.

— By *RICH EHISEN*



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