

THIRD IN A SERIES

ColoradoCare

An Independent Analysis – Governance

Existing Power Structures Would See Major Changes

OCTOBER 2016



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About this series

This is the final report in a three part series. The first two reports are available at coloradohealthinstitute.org.

- "ColoradoCare – An Independent Analysis: How It Would Work, How It Would be Financed and Questions to Ask"
- "ColoradoCare – An Independent Analysis – Finances: Plan Would Achieve Universal Coverage but Likely Fall Short of Funds"

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Amendment 69 on Colorado's 2016 ballot has ignited a robust debate about health care reform on a level not seen since Congress considered the Affordable Care Act in 2009. Opinions run strong on both sides, but no one can deny the discussion around ColoradoCare has shed light on some of the biggest questions about health care reform.

The Colorado Health Institute has published two reports on ColoradoCare — an overview and a financial analysis. This final report examines some of the remaining questions about ColoradoCare, with a focus on how it would alter existing structures of power and authority in the state's health system.

The report analyzes the ways ColoradoCare would change the existing dynamic surrounding health policy decisions. And it takes a closer look at the ColoradoCare Board of Trustees, which would wield much of the influence in the new system.

ColoradoCare: A Brief Recap

Amendment 69 on the November 2016 ballot proposes to create ColoradoCare, a taxpayer-financed entity to achieve universal health coverage in Colorado.

ColoradoCare would replace most private health insurance. Medicaid and other state-federal programs would transfer to ColoradoCare's control. Purely federal programs, such as Medicare, TRICARE and the VA, would continue to be the primary insurers for their members.

ColoradoCare would be funded by a new 10 percent

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tax on payroll and other income. For those who work, employers would pay 6.67 percent and employees 3.33 percent of the payroll tax. The self-employed would pay the full 10 percent. Non-payroll income, such as proceeds from real estate and investments, also would be taxed at 10 percent. Medicare recipients would not be exempt from the tax. Additional funding would come from the federal money that pays for some existing programs and out-of-pocket payments by beneficiaries.

Every person who lives in Colorado would be a beneficiary and eligible to receive services. However, federal programs such as Medicare would remain the principal source of coverage for enrollees. Coloradans also could purchase private insurance if they chose.

Changes to Power and Authority

The current system vests power over health care in a number of public and private entities. ColoradoCare would consolidate much of that power under its board. Some entities, such as the federal government, would see few changes in their authority. On the other hand, the state legislature would cede much of its influence over the health care system and how it is financed.

Other groups would gain power under ColoradoCare. In particular, ColoradoCare would extend limited voting rights regarding the program and election of board members to Colorado residents — even those who do not currently enjoy the right to vote. For example, immigrants without legal documentation would be members of ColoradoCare and eligible to participate in ColoradoCare elections. (They also would pay taxes toward the ColoradoCare system.)

Figure 1 shows some of the leading players in the current system and how their roles would change under ColoradoCare.

Here's a brief look at what various groups would experience under ColoradoCare.

ColoradoCare Board of Trustees

Amendment 69 was designed to concentrate authority in a Board of Trustees that would govern ColoradoCare. This board would be outside the control of the state legislature and executive branch. It would not be subject to the Taxpayer's Bill of Rights, the 1992 state constitutional amendment that limits government revenue and restricts many fiscal options.

The board would assume much of the power over health care that is spread among various entities in the current system. It would manage finances and budgets, set provider payment rates and member benefits, contract with participating providers and set up an election system for ColoradoCare.

An interim board of 15 members would be appointed by the governor and senior legislators. Voters would elect a permanent board of 21 members from seven districts to govern ColoradoCare after the interim start-up period. Board members could serve up to two four-year terms.

Interim and Permanent Boards

Interim Board of Trustees: 15 members

- Five senior elected officials get to appoint three trustees each: the governor, Senate president, speaker of the House, Senate minority leader and House minority leader.
- Interim board will serve up to three years.

Permanent Board of Trustees: 21 members

- ColoradoCare voters will select trustees in nonpartisan elections. Seven geographical districts get three members each.
- First election must take place within three years of the passage of Amendment 69.

The Legislature


Legislative authority over health policy would be reduced under ColoradoCare.

Currently, the legislature approves budgets for the state's insurance programs, designed primarily for Coloradans of low-income and those with disabilities — chiefly Medicaid. The legislature also has some authority, with the governor, to change Medicaid eligibility levels — something they did in 2013, when they greatly expanded eligibility after passage of the Affordable Care Act (ACA).

Under ColoradoCare, these powers would shift to the Board of Trustees. Amendment 69 would require the current year's funding for Medicaid and other health programs to be locked in place and transferred directly to ColoradoCare. The state's transfer of Medicaid funds to ColoradoCare would have to increase each year based on inflation and population growth. This would take roughly a quarter of the state's general fund budget out of the legislature's hands.

The amendment also requires the legislature to pass several laws to implement ColoradoCare. These laws would:

Figure 1. ColoradoCare’s Proposed Changes to the Current Governmental Power Structure

	Under the Current System	Under ColoradoCare
State Government: Power Shifts to ColoradoCare Board		
		Power delegated to ColoradoCare board
 Legislature	<ul style="list-style-type: none"> Sets Medicaid benefits and provider rates. Approves payment reforms. Passes annual budgets for health agencies. 	<ul style="list-style-type: none"> ColoradoCare board would oversee coverage for Medicaid members. Legislature would be required to send Medicaid funds to ColoradoCare.
Division of Insurance (DOI)	<ul style="list-style-type: none"> Oversees small group and individual market. Approves premium prices. 	<ul style="list-style-type: none"> ColoradoCare coverage not subject to DOI oversight or price regulation. DOI would have ombudsman offices to research ColoradoCare complaints.
Health Care Policy and Financing	<ul style="list-style-type: none"> Administers Colorado Medicaid and Child Health Plan <i>Plus</i> (CHP+). 	<ul style="list-style-type: none"> ColoradoCare would handle most benefits for the people eligible for Medicaid and CHP+.
Secretary of State and county clerks	<ul style="list-style-type: none"> Oversee all elections. 	<ul style="list-style-type: none"> Board writes rules for its own elections. Clerks and secretary of state would run non-ColoradoCare elections.

Federal Government: Power Remains and Grows Because of Waivers



U.S. Department of Health and Human Services

- Administers Medicare
- Oversees Medicaid in cooperation with state.

- No change to Medicare.
- Able to approve or deny waivers required for ColoradoCare — effectively giving the federal government power to block ColoradoCare from being implemented if it denies the waivers.

Voters: Ineligible Adults Gain a Vote in Board and Tax Elections



Colorado registered voters

- Vote for or against Amendment 69.

- Repeal or keep Amendment 69 in a future election.
- Registered voters with less than one year of residency could not vote in elections for the ColoradoCare board or tax increases for the program.

Non-citizen residents

- Ineligible to vote.

- Allowed to vote in elections for the ColoradoCare board and tax increases after one year of residency.

- Shut down the state’s insurance marketplace, Connect for Health Colorado, and transfer its functions to ColoradoCare.
- Transfer Medicaid, Child Health Plan *Plus* (CHP+) and any other federal-state health coverage programs to ColoradoCare.
- Transfer parts of workers’ compensation coverage to ColoradoCare.
- Allow the Department of Revenue to collect taxes on behalf of ColoradoCare.

The governor and top Republican and Democrat in each chamber of the legislature each would appoint three people to the interim Board of Trustees for ColoradoCare.

Department of Health Care Policy and Financing (HCPF)

ColoradoCare would take over administration of the Medicaid and CHP+ programs from HCPF and be required to continue all benefits set by state statutes. The two programs, which provide health care coverage for 1.4 million vulnerable Coloradans, account for the bulk of HCPF’s \$9.1 billion annual budget and its 436-employee workforce. More than half of HCPF’s budget — \$5.4 billion — comes from federal matching funds. ColoradoCare would need federal approval in the form of waivers to assume administration of the programs and receive that funding. The amendment stipulates that HCPF help ColoradoCare apply for the waivers.

Colorado Division of Insurance (DOI)

Currently, the DOI regulates insurance policies sold on the individual and small group markets and has final approval over the prices companies are allowed to charge for premiums. It would retain those functions, but most private insurance plans would likely be replaced by ColoradoCare, which would not be subject to the DOI’s regulations.

However, ColoradoCare would be required to provide funding to the state commissioner of insurance to operate separate ombudsman offices for beneficiaries and providers. These offices would be in charge of investigating complaints, responding to inquiries and making recommendations to the Board of Trustees.

The Federal Government

Federal agencies would not be directly subject to ColoradoCare. However, the new system would depend on the U.S. Department of Health and Human Services approving waivers for ColoradoCare to take over the state’s Medicaid program and Connect for Health Colorado. Without these waivers, ColoradoCare could not function. By law, federal agencies could grant waivers only if ColoradoCare met minimum requirements for maintaining coverage and containing costs.

Insurance Companies

ColoradoCare would lead to a vastly diminished insurance industry in Colorado. While Coloradans would have the option to purchase private health insurance, they would not be exempt from paying the ColoradoCare tax. So it is likely that most Coloradans would choose to drop their private health coverage if ColoradoCare is implemented.

Based on the experiences of other developed countries with systems similar to ColoradoCare, the Colorado Health Institute estimates that commercial insurance would pay only about five percent of health care expenses that would otherwise be covered by ColoradoCare. About 440 health insurers participate in Colorado’s market, although just 10 of them account for three-quarters of the market, according to the DOI.¹

Workers’ Compensation

ColoradoCare would change the state’s workers’ compensation insurance system. Currently, workers’ comp insurers collect premiums from employers and then pay medical claims and lost wages for injured workers. Pinnacol Assurance, a state-chartered insurance company created 100 years ago, covers about 58 percent of the state’s companies, but other workers’ comp insurers operate in Colorado as well.

If Amendment 69 passes, ColoradoCare would pay medical expenses for all workers who suffer injuries on the job, but only if state law requires their employers to provide workers’ comp insurance. ColoradoCare would not cover the lost wages portion of workers comp. Because of that, employers would still have to carry some level of workers’ compensation insurance coverage.

Physicians and Hospitals

ColoradoCare would contract with all providers to pay for the health care services used by beneficiaries, who would be allowed to choose their own primary care providers. Amendment 69 does not address the level of payment to providers under ColoradoCare, although it authorizes the board to establish procedures for ensuring financial sustainability “by adjusting payments and benefits.” Proponents have said they anticipate that payment rates would be higher than the rates paid by the federal Medicare program in order to retain health care providers in the state. However, ColoradoCare, as the largest health care payer in the state, would have leverage in paying hospitals. CHI has projected it could save \$802 million annually in hospital costs.

Employers

Businesses could choose to continue offering non-

ColoradoCare insurance, but they would not be exempt from paying the premium tax.

One possibility worth noting: A legal analysis prepared for the Colorado Health Foundation warns that ColoradoCare could conflict with the federal Employee Retirement Income Security Act (ERISA), which governs self-insured employers. Many larger businesses are self-insured. ERISA contains a strong preemption of state law, so employers could argue in court that they are not subject to the premium tax, according to the legal analysis.²

Some businesses would save money under ColoradoCare. Employers would have to pay a 6.67 percent payroll tax (with employees paying 3.33 percent). For businesses that currently pay more than 6.67 percent of payroll for their employees’ health insurance, ColoradoCare would be financially

ColoradoCare Would Create a Separate Voting System for Itself

ColoradoCare would create two distinct classes of voters: the current registered voters of the state and members of ColoradoCare. Most adults would be in both groups, but some would be included in one group but not the other.

For example, undocumented adults and legal non-citizen residents cannot vote in political elections, but Amendment 69 would allow them to vote on matters pertaining to ColoradoCare. And some Coloradans who moved to the state within the past year would be eligible to vote in regular elections, but not in ColoradoCare elections.

ColoradoCare would conduct its own elections. Its voters would have to be at least 18 years old and beneficiaries of ColoradoCare for at least a year. Amendment 69 contains no citizenship requirement to vote for the ColoradoCare Board of Trustees or for taxes to fund ColoradoCare.

ColoradoCare would not change eligibility to vote in elections ranging from school board to president of the United States.

Table 1. Current Elections Law Compared With Proposed ColoradoCare Voting System

	Current	ColoradoCare
Age	18 and up	18 and up
Residency	Lived in Colorado at least 22 days before the election	Lived in Colorado at least one year before the election
Citizenship	U.S. citizen	No citizenship requirements; elections open to all residents, regardless of citizenship
Registration	Registered to vote before or on Election Day	No registration process specified in Amendment 69
Type of election	Applies to elections for political office (president, state legislature, etc.) and ballot issues	Applies to elections for ColoradoCare board and tax increases to fund ColoradoCare

beneficial. But for businesses that do not offer insurance, ColoradoCare would add to their expenses. Businesses with highly paid employees also could pay more, because their ColoradoCare taxes — which are based on their employees' salaries — might exceed the amount they currently spend on health insurance. CHI has not modeled the effects of ColoradoCare on businesses, because payroll and benefit information is not public.

Beneficiaries

Beneficiaries would see reduced choices in health insurance plans, but costs for many could go down. Consumers could choose to buy private insurance under ColoradoCare, but they still would be subject to ColoradoCare's 3.33 percent payroll tax and the 10 percent tax on non-payroll income. As a result, most people would probably opt for ColoradoCare, prompting insurance companies to leave the state.

The tax burden would fall more heavily on people who earn non-payroll income, such as freelancers, rental property owners, investors and certain business owners. These people would have to pay the full 10 percent of the income tax. But employees who currently spend more than 3.33 percent of their incomes on insurance would save money.

Medicare beneficiaries would also have to pay the tax, even though Medicare would remain their primary insurance. Some retirement income would be exempt from the tax.

The estimated 350,000 uninsured Coloradans would gain coverage. CHI estimates one fifth of uninsured Coloradans are immigrants without documentation who are ineligible for current coverage programs.³ ColoradoCare would extend coverage to this population, which currently either pays out of pocket or relies on charity care by health care providers.

The ColoradoCare Board: A Closer Look

Because the ColoradoCare board would wield so much influence, it merits a closer look. Many questions about the details of ColoradoCare's operations can only be answered by saying, "It's up to the board."

Amendment 69 envisions a powerful Board of Trustees that is answerable only to ColoradoCare members, not the legislature or the governor. This type of authority isn't unusual among political subdivisions. City councils and school boards don't answer to the legislature or governor, either. However, members of those bodies are subject to voter recall, while the ColoradoCare board would not be subject to recall by voters. Other board members could vote to remove a member from the board.

The following section highlights CHI's analysis of the board's authority and its most significant tasks.

Authority of the Board

Running elections. The interim board would set up an election system for ColoradoCare. It would establish boundaries for the seven trustee districts and adopt rules for conducting elections. The permanent board could alter or repeal any rule made by the interim board.

Analysis: ColoradoCare's election system would exist outside the regular state election system, which is run by county clerks and the secretary of state. Amendment 69 gives the Board of Trustees broad authority to run all aspects of a new system — campaign finance, the way trustee candidates qualify for the ballot, the date of the election and more.

Hiring an executive team. Amendment 69 directs the board to hire three top executives: the chief executive officer, chief financial officer and chief medical officer.

Analysis: Hiring these three would be a crucial decision for the board. They would oversee the day-to-day operations of ColoradoCare, an enterprise with projected annual revenues of more than \$36 billion. They would be among the most powerful executives in the state, in both the private and public sectors.

Adopting budgets. Approval of ColoradoCare's annual budget would be up to the board. Amendment 69 says little else about budgeting, other than a requirement to fund ombudsman offices in the state's Division of Insurance and to set procedures to handle surpluses or issue refunds. The board would be allowed to ask

ColoradoCare voters for a tax increase no more than once a year.

Analysis: Maintaining a balanced budget would be one of the board's most important tasks. According to CHI's fiscal analysis, it is unlikely that ColoradoCare would have a surplus in any year. Therefore, the revenue side of the budget will likely be limited to the funds received from the state and taxes.

Setting and changing benefits. Amendment 69 includes 11 categories of health care services that must

be covered. It also forbids ColoradoCare from charging annual deductibles and allows the board to set or waive copayments. Beyond that, the details on benefits would be up to the board.

Analysis: Amendment 69 does not offer specific direction to the board on exactly how to cover the essential health benefits the amendment requires. For example, the amendment requires coverage for prescription drugs, but it's not clear whether all prescriptions would have to be covered in the same way. The board might wrestle with how to cover expensive specialty drugs, such as

Checks and Balances on the Board of Trustees

Amendment 69 includes various checks on the board's authority:

- **Open records requirement.** Amendment 69 requires the board to adopt an open records policy with at least as much public access as spelled out in the Colorado Open Records Act, which requires public documents to be provided for public inspection, with limited exceptions for personnel records, legal counsel and contract negotiations.
- **DOI ombudsman.** The ColoradoCare board would be required to fund ombudsmans' offices for beneficiaries and providers at the Division of Insurance. The offices will have the power to investigate and respond to complaints, but Amendment 69 does not give the DOI regulatory power over ColoradoCare.
- **Federal waiver requirements.** ColoradoCare would not be able to launch unless it received federal waivers to take over the state's Medicaid program and Connect for Health Colorado. The waivers have strict requirements that would maintain existing coverage levels for beneficiaries at no additional cost.
- **Voter approval of tax increases.** Although Amendment 69 exempts ColoradoCare from TABOR, it includes its own TABOR-like provision that requires voter approval for tax increases. The board could propose a tax increase no more than once a year.
- **Term limits.** Board members would serve four-year terms, with a limit of two terms. Seven of the initial 21 board members would serve two-year terms at first in order to make board elections happen every other year. Other elected officials in the state are subject to recall by voters, but Amendment 69 exempts ColoradoCare trustees from recall. This would insulate the board from the potential distraction of recall campaigns, but it also decreases the power of voters.
- **Voter repeal of Amendment 69.** The ultimate authority over ColoradoCare is the state constitution. If voters approve, ColoradoCare would be created by a state constitutional amendment. In future years, voters could choose to repeal or change that amendment. The voters in a repeal election would be the registered voters of Colorado, not the membership of ColoradoCare (see box on page 7 for the difference).



Harvoni, which can cure Hepatitis C but costs around \$80,000 for a course of treatment. If ColoradoCare runs into budget problems, the most immediate way for the board to respond would be to increase out-of-pocket costs for ColoradoCare beneficiaries.

Setting and changing payment rates. The board would enter into contracts with medical providers to serve ColoradoCare beneficiaries. Providers could opt out, but with a projected 83 percent of the state population in ColoradoCare, they would have a powerful incentive to accept ColoradoCare’s payments. The board could decide to peg its reimbursement rates to an existing benchmark, such as Medicare, or it could establish its own rates.

Analysis: ColoradoCare supporters say they intend for providers to be paid well, but nothing in Amendment 69 establishes a minimum rate for provider reimbursement. Reduction of provider rates would be another tool for the board to deal with a budget shortfall. However, providers might leave the state if their reimbursements were cut too much.

Removing trustees. Amendment 69 gives the board the power to remove individual trustees by a majority vote. This is the only way a trustee could be forced off the board between elections. The amendment also gives the board sole authority to fill vacancies between elections.

Analysis: This provision could guard against an anti-ColoradoCare trustee’s ability to interfere with the

board’s work. However, it could allow a majority bloc on the board to remove its political opponents and replace them with friendly members, according to a legal memo prepared for the Colorado Health Foundation.⁴

Tasks Assigned to the Board

Establish a payment model and unified billing system. The amendment gives wide latitude to the board in deciding how much to pay health care providers and hospitals. It calls for the board to use payment models that provide value, quality and healthy outcomes for all beneficiaries.

Analysis: Reforming payment models is tricky. Numerous initiatives have attempted to reform the current fee-for-service system, which provides incentives for volume of care but less so for quality. These reforms have met with varying degrees of success. Reforms so far have been slow because private insurers and government agencies have different payment models. ColoradoCare’s size could potentially work in its favor in this regard.

Set up a central purchasing authority. The amendment tells the board to set up a purchasing authority “responsible for negotiating favorable prices for prescription drugs, medical equipment and other products and services.”

Analysis: At the national level, ColoradoCare would be a small fish in a big pond with roughly 4.4 million members, so its ability to save money with bulk purchases may be more limited than proponents hope.

Previous CHI Analysis

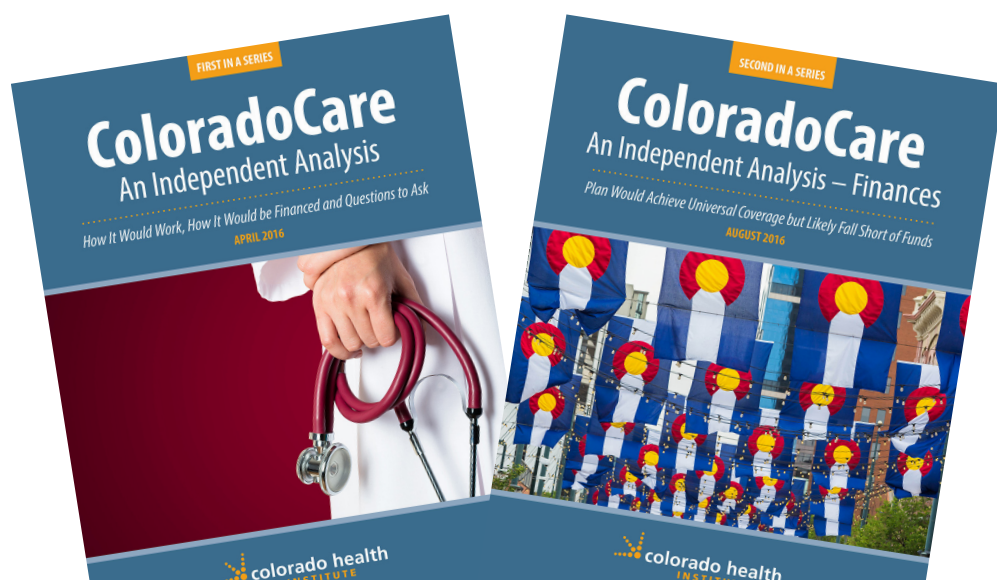
Two previous reports on ColoradoCare are available for download at www.coloradohealthinstitute.org

Overview: This report provides an introduction to ColoradoCare, with explanations of key concepts and questions to examine.

APRIL 2016

Finances: CHI built an economic model to study ColoradoCare’s potential to reduce spending and be sustainable.

AUGUST 2016



It could realize savings on locally focused services, such as hospital care.

Create a medical record system. The amendment requires ColoradoCare to create an overarching health records system that is easily accessible, includes a central database for management and research and keeps personal medical records confidential.

Analysis: This requirement would be a big technological lift, entailing a first-of-its-kind system in the United States. The American Recovery and Reinvestment Act of 2009 called for a national transition to electronic medical records, but progress has been slow. Here again, though, ColoradoCare's dominant position in the state's market could help it succeed where others have not.

Seek federal waivers. Two waivers from federal programs would be needed in order to operate ColoradoCare. Section 1332 of the ACA lets states apply for "State Innovation Waivers" that allow them to develop new health care delivery reforms. Amendment 69 specifically calls for a 1332 waiver to shut down Connect for Health Colorado and transfer its functions, funding and tax credits to ColoradoCare. A 1332 waiver prohibits the new system from costing the federal government any more than the current system. Separately, Section 1115 of the Social Security Act allows states to apply for a waiver that enables them to use Medicaid funding in new ways. States that receive a Medicaid waiver must continue to provide comparable coverage and benefits to their Medicaid-eligible populations. Amendment 69 does not specifically mention 1115 waivers, but it is clear that one would be needed to transfer Medicaid funding to ColoradoCare.

Analysis: This is one of the larger unknowns about ColoradoCare. Would the waivers be granted and, if so, would the state continue to receive the funding it currently expects? It is likely that approval of the waivers would depend on the disposition of the new presidential administration.

Conclusion

It's clear that ColoradoCare would be a major undertaking. If successful, it would bring universal coverage and establish a system that no other state has come close to doing.

Win or lose, the debate over Amendment 69 has been worthwhile, because it presents a real-world case study of what it takes to overhaul a health system. The discussion about ColoradoCare can be instructive for other states, as well as Colorado policymakers and voters.

Endnotes

- 1 Colorado Division of Insurance. "Health Insurance Cost Report to the Colorado General Assembly for Calendar Year 2013." December 8, 2014.
- 2 Niederman, Gerald A., and Evans, Jennifer L. "ColoradoCare: Analysis of Legal Issue." Memo to the Colorado Health Foundation. April 26, 2016.
- 3 Colorado Health Institute. *Health Insurance Status of Coloradans*. 2015. www.coloradohealthinstitute.org/uploads/downloads/2015_EBNE_Fact_Sheet.pdf
- 4 Niederman and Evans, 2016.



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