Communities have the right to know the safety record of nuclear energy plants. We’re proud to share it. Professionals like Norman Tison work every day to exceed stringent federal safety standards at America’s nuclear energy facilities.

Every U.S. nuclear energy facility has fully integrated emergency response plans that are developed with federal, state and local officials and response organizations. These plans are continuously updated and tested every two years, including graded exercises with participating organizations that are overseen by the independent Nuclear Regulatory Commission.

American energy companies are the world leaders in nuclear energy, with 104 reactors producing one-fifth of our electricity. Providing affordable electricity and ending our dependence on foreign energy sources simply cannot be achieved without nuclear energy playing a significant role in a balanced energy portfolio.

For more information on safe nuclear energy facilities, go to safetyfirst.nei.org
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**THEN & NOW**

**25 YEARS AGO**

Articles from the October 1986 issue of *State Legislatures*:

**FISCAL FORECAST: STORMS AHEAD**

“The picture that emerged from a recent NCSL survey is one of fiscal deterioration. During fiscal year 1989, most states spent more dollars than they took in.”

**PACS AND POLITICS**

“The cost of American elections may well top the $2 billion mark this year. Political action committees bankroll much of the expense, and their influence and money are fast becoming a campaign issue.”

**LEGALIZE THE CULTIVATION OF POT?**

“Oregon voters will decide this fall whether they want their state to legalize the cultivation and use of marijuana in small amounts. Alaska passed similar legislation in 1975.”

**DID YOU KNOW ...**

Randolph Rogers, an American living in Rome, created a bronze statue for the Connecticut Capitol and in 1878, the 6,600 lb. winged figure was fastened atop the dome. But after several years and a major hurricane, it became wobbly, leading to a heated discussion over what to do about it. The local newspaper editor joined the debate, writing, “The question facing Connecticut is whether it wants a loose woman on the roof or a fallen woman in the streets.” The statue was eventually removed in 1938 and placed in the basement. In 1942, it was donated to the federal government, which melted it down for ammunition and machine parts. Today, its original plaster model is on display in the north lobby of the Capitol.


**WHOSE CAPITOL IS IT?**

To find out, go to: www.ncsl.org/magazine

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Quotes and cartoons from the states.

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**SL ONLINE**

www.ncsl.org/magazine

This month find:

◆ More about voting centers and how they’ve developed.

◆ An earlier State Legislatures story about the problem of nuclear waste disposal.

◆ Background on the battle over collective bargaining rights that sparked the Wisconsin recall elections.

◆ A look at the role of high technology in health care.
Editor:
We here in Louisiana, like our fellow citizens on the Gulf and Atlantic coasts, stay closely attuned to all news of hurricanes. Your short piece on tropical storms in the July/August 2011 issue was quite interesting and timely. However, the feature states that five hurricane names have been retired. As a lifelong resident of Louisiana, I knew that your list did not include the first hurricane I experienced and knew was on the list of retired names: Audrey, which killed some 500 people in Southwest Louisiana in 1957. The five listed in your article are only the ones retired after the record 2005 season. The list of all 75 or so retired names can be found on the National Hurricane Center website.

Anne Dunn
Louisiana House Legislative Services

Editor’s note: You’re absolutely right. The “in 2005” was inadvertently left off the retired hurricane names listed in the July/August issue. Here is an alphabetical list of ALL retired Atlantic hurricane names.

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Mason’s Manual of Legislative Procedure is the only parliamentary manual designed specifically for state legislatures.

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More than 40 percent of offenders return to prison within three years of getting out, either for committing new crimes or violating the terms of their release, according to a new report by the Pew Center on the States, “State of Recidivism: The Revolving Door of America’s Prisons.”

The recidivism rate has remained relatively stable for the country as a whole between 1999 and 2004. Rates in Kansas, Louisiana, Michigan, New Jersey, Oregon and Utah, however, decreased by more than 10 percent (Oregon by almost 32 percent), while rates in Massachusetts, Minnesota, Mississippi, Missouri, Nebraska and South Carolina increased by more than 10 percent (South Dakota and Washington by more than 30 percent).

Differences in rates vary widely from state to state and are a result of policy choices that affect which offenders are sentenced to prison, how inmates are selected for release, and what happens when offenders break the rules of parole. States also vary in how they track recidivism, making state-to-state comparisons difficult. Policymakers can benefit most from analysis of how rates within their state change over time.

By the Numbers

$52 BILLION
Total annual state spending on corrections, mostly on prison costs.

705%
The rate at which the nation’s prison population grew between 1973 and 2009, resulting in more than one in 100 adults behind bars.

$78.95
The average cost per day to keep an inmate in prison.

$7.47
The average cost per day to supervise an offender on parole.

$3.42
The average cost per day to supervise an offender on probation.

$635 MILLION
What the country would save in prison costs a year if every state reduced their recidivism rate by 10 percent.

State Rates

DECREASED
Less than 10%
Between 10% and 20%
More than 20%
No Data

INCREASED
Less than 10%
Between 10% and 20%
More than 20%
No Data

Potential Savings

If these states—Alaska, California, Connecticut, Illinois, Missouri, New Jersey, New York, North Carolina, Ohio and Texas—reduced their recidivism rates by 10 percent, they could collectively save more than $470 million a year.

Note: Potential saving were calculated by multiplying states’ annual operating costs per inmate by 1/10 of the number of offenders who return to prison, based on data from 2004-2007, from the Pew Center on the States.

CARL LEWIS WON NINE OLYMPIC GOLD MEDALS for his legendary running prowess. Although he gave up running years ago, he had to give up another race in September when a three-judge federal appeals panel ruled him ineligible to run for the New Jersey Senate. They said he couldn’t have lived in New Jersey for the required four years since he voted in California in 2008 and 2009. The ballots will be printed without Lewis’ name, and Democrats are not sure whether they will replace him. Lewis may write a book about the experience, and promised to remain active in New Jersey politics. Alas, readers will be spared no end of sports analogies in coverage of the race. And, at this point at least, incumbent Senator Dawn Marie Addiego, who was appointed to the seat initially to fill a vacancy, looks like a shoo-in.

TWO VETERAN NORTH CAROLINA LAWMAKERS are resigning their seats to become lobbyists. Representative Jeff Barnhart, in his 11th year in the House, was one of the key lawmakers writing the budget this year. Senator Debbie Clary served seven terms in the House before moving to the Senate. Successors to the two Republicans will be chosen by their county GOP executive committees. In North Carolina there is a six-month “cooling off” period before a lawmaker can register as a lobbyist. Both must wait until the next session after they have served to begin lobbying. North Carolina is losing a third Republican to retirement. Representative Johnathan Rhyne also announced he is leaving after three years in the House. He previously served in the House from 1985-1993.

NEVADA’S VETERAN DIRECTOR OF THE LEGISLATIVE COUNSEL BUREAU is leaving the agency in which he has served since 1981. Lorne Malkiewich gave notice that he intends to retire before the legislative session in 2013. Malkiewich, who has directed the agency for the past 18 years, said he wanted to inform legislators early that they need to find someone to fill his shoes. “I have loved working with the fantastic people here and after 18 years it’s time for a change,” he said. Malkiewich has his feelers out for a job that “can perhaps make use of some of my knowledge and skills and yet can be a new challenge for me.” Senator Steven Horsford, chair of the Legislative Commission, thanked Malkiewich “on behalf of the entire Legislature for his phenomenal work.” The commission is responsible for finding his replacement.

IN THE 1930S, SALLY GORDON WATCHED THE STATE CAPITOL IN LINCOLN BEING BUILT. In 1984, she made history by becoming the Nebraska Senate’s first woman sergeant-at-arms. She was 75. And this year, after a career spanning 84 years—27 of them as sergeant—Sally Gordon retired. She is 102. Honored as America’s “Outstanding Oldest Worker” by Experience Works, and featured in People magazine, Gordon is “a little too young to retire,” according to Governor Dave Heineman, who said she is the example of how much people can contribute even after the usual retirement years. “Some things come up,” Gordon said. “I just decided it was time to do it.” Commenting on her long career, which included working for three governors, she said, “I’ve worked for 84 years and I like work better than I do housework.”

ILLINOIS REPRESENTATIVE RON STEPHENS ANNOUNCED HIS IMMEDIATE RESIGNATION from the Illinois General Assembly in August. He was the GOP assistant minority leader. Stephens, a decorated Vietnam veteran and pharmacist who battled substance abuse in the past and was arrested last year for driving under the influence of alcohol, said his personal problems did not determine his decision. The new redistricting map put Stephens in the same district as fellow Republican Representative John Cavaletto. “That made the decision a little bit easier,” he said. Stephens was known as one of the most vocal conservatives in the legislature.

NEW MEXICO’S LONG-TIME CHIEF CLERK, Margaret Larragoite, died at 84 following a public service career that spanned some 40 years. After a stint as deputy clerk in the House, she took a job at the state Bureau of Revenue and later managed the Santa Fe office of the late U.S. Senator Joseph Montoya. She was Senate clerk from 1991 through 2007. “She just did a fantastic job as clerk of the Senate,” said Senate President Pro Tem Tim Jennings. “She really understood politics,” said Senator Nancy Rodriguez. “She always had great resolve in getting things done.” An annual tradition in the Legislature honored her with a mariachi band serenading her with the song “Margarita.”
Deficit Reduction: the States’ Priorities

What’s at stake here to me is the future of our country,” said Colorado Senator Ellen Roberts. With states already having to cope with balanced budget requirements, they don’t need Congress exporting national budget issues and tough policy choices to them, she said.

“The federal government is going to have to reduce the deficit, and we all know where that typically lands—on the states.”

Legislators and staff, members of NCSL’s bipartisan Budget Deficit Reduction Task Force, came to the nation’s Capitol in September to lay out the states’ priorities and urge members of the congressional “super committee” working to find $1.5 trillion in savings not to merely shift the financial burden to the states.

“We’re here on Capitol Hill to articulate the perspective of state legislators. This is serious business with tremendously negative consequences if we don’t succeed,” said New Hampshire Representative Terie Norelli, co-chair of the task force. “Everything has to be on the table.”

The NCSL delegation urged members of the Joint Select Committee on Deficit Reduction to examine all possible areas—discretionary spending, entitlements and revenues—for help in reducing the deficit.

Former U.S. Senator Alan Simpson, who co-chaired the president’s Commission on Fiscal Responsibility and Reform, shared his insights on achieving comprehensive federal fiscal reform with the task force before its congressional meetings. He offered advice on how states can be an effective and recognized voice in the debate.

States’ priorities include no new unfunded federal mandates, relief from Medicaid maintenance of effort requirements along with more flexibility, and passage of the Main Street Fairness Act.

“It’s perhaps the easiest thing the federal government could do for us,” said Massachusetts Representative Jay Kaufman. “The Main Street Fairness Act will allow us to collect the revenue states are already owed, but don’t currently have authority to collect. We’re talking millions and millions of dollars, which, in these times, would be extremely helpful.”

“The Main Street Fairness Act and Medicaid countercyclical assistance would be the real gets for us,” said Wyoming Representative Rosie Berger, co-chair of the task force. “These are two things Congress could do to help states.”

The task force also met with Jack Lew, director of the White House Office of Management and Budget, to discuss the administration’s plans to address both deficit reduction and job creation.

“He understood our message and appreciated our recognition of the fiscal realities federal policymakers are up against,” said Michael Bird, NCSL’s federal affairs counsel.

NCSL’s task force is made up of 23 state legislators and five legislative staffers from 21 states.
Vote Centers Come of Age

Vote centers are cropping up all over the country. Arizona, Colorado, Indiana, New Mexico, North Dakota, South Dakota, Tennessee, Texas and Utah now permit counties or jurisdictions to use or experiment with them.

What are they? They are an Election Day alternative to neighborhood-based polling places. Unlike a traditional precinct polling place, voters can choose which vote center they’d like to use, regardless of where they live.

Scott Doyle, county clerk in Larimer County, Colo., came up with the idea and the term in 2000, when legally registered voters showed up at the wrong precincts, and were directed to the courthouse as a last recourse. A line formed, and police barred the door at 7 p.m., leaving motivated voters without a ballot.

Doyle, on behalf of the Colorado County Clerks Association, went to the legislature, explained the new concept, and got the innovative idea passed in 2002. The next year, the inaugural 31 vote centers replaced the traditional 143 precincts in Larimer County. By most accounts, the new system worked. Voters didn’t need to know their precinct location; fewer poll workers (and thus fewer dollars) were required; and no one was turned away and sent to the courthouse.

Now, eight years after that first experiment in Colorado, many states are embracing the concept. In the world of election policy, that’s lightning-fast acceptance.

Why are vote centers so popular? Because they offer these advantages: “convenience, convenience, convenience,” says Senator Ron Alting of Indiana, who sponsored successful legislation this year to permit all Indiana counties to use them. Besides convenience, Alting adds that, for local government, “it offers them huge savings.”

Among the various election reforms—voter ID requirements, pre-Election Day voting, same-day registration—vote centers seem to be the only nonpartisan reform. “Vote centers have been a huge success,” says Alting. “We had unanimous support with Democrats and Republicans. … It was somewhat of a shock to the General Assembly that something could be so good on both sides.”

In addition to greater convenience and significant savings, Rice University political scientist Robert Stein says his research has shown centers increase voter turnout. “Of all the election reforms that have been adopted, this is the only one anybody’s been able to find that has an effect on both turnout and cost,” he says.

For vote centers to work, counties must have networked electronic poll books that allow workers to look up a voter’s registration, get the proper ballot and enter data. And that can add costs. When the right equipment and technology are on hand, however, costs should go down.

The Indiana Fiscal Policy Institute conducted a county-by-county economic analysis of vote centers and found that, compared with precinct voting, vote centers are expected to be cheaper by 29 percent to 54 percent, depending on the county.

Learn more about vote centers at www.ncsl.org/magazine.
Commission Tackles Nuclear Waste

Tens of thousands of tons of spent nuclear fuel are stored at more than 70 sites throughout the country. What to do with this fuel, and other highly radioactive waste, is a question that a recently released draft report from the Blue Ribbon Commission on America’s Nuclear Future attempts to answer.

The report—requested by President Obama in 2010 and set to be finished early next year—calls for a new, independent corporation to carry out a permanent nuclear waste disposal strategy. This would include the development of underground disposal areas and interim storage facilities to collect and house the waste until ready for permanent disposal.

The report recommends that the federal government work closely with state governments and local communities to decide where to build these facilities. To pay for this work, the report calls on Congress to release the $24 billion now sitting in the Nuclear Waste Fund. This money comes from contributions by state utility ratepayers over the last couple of decades, which has yet to be tapped for waste storage or disposal.

In September, Maryland Delegate Sally Jameson praised the draft report’s recommendation that states be involved in all crucial stages of nuclear waste management. Jameson urged the federal government to develop a program for the long-term treatment and disposal of radioactive waste and highlighted the important role state legislatures can and do play in developing nuclear energy policy.

The commission will conduct public meetings on the draft report in October in Boston, Atlanta, Washington, D.C., and Minneapolis, and will accept public comments on the draft report through October.

Should I Stay or Should I Roll?

Have you ever waited at a red light while on a motorcycle or bicycle wondering if the traffic signal will ever change or if it even knows you’re there? This is a common problem for two and three-wheelers, since traffic signals need a fair amount of metal to detect the need to switch.

Since 2002, when Minnesota passed a law allowing bicycles and motorcycles to proceed through stoplights if the traffic control signal is not detecting their presence, grass-roots groups have championed legislation to clarify what can be an unsafe and confusing situation for riders.

Eight states—Idaho, Kansas, Missouri, Oklahoma, South Carolina, Tennessee, Virginia and Wisconsin—have followed Minnesota’s lead and now have similar laws that allow a motorcycle, bicycle, scooter, moped or three-wheeled vehicle to go through a red light after a certain amount of time if the intersection is clear. Kansas and Virginia passed their laws this year. North Carolina’s law covers only motorcycles. Illinois will become the 10th state if the bill, which has passed both chambers, is signed by the governor.

California and Washington have taken a different route by requiring that traffic signals be able to detect bicycles and motorcycles. The Washington law applies to all future signals, and encourages intersections to mark where riders need to stop to be detected. California’s law is similar.

In Ohio, officials at the state Department of Transportation felt the issue did not need to be addressed legislatively, concerned that seeing a two- or three-wheeled vehicle go through a red light would confuse other motorists. They created a hotline to field calls from riders sitting at lights that were not registering their presence.
Wisconsin Votes

The push to recall the largest number of state legislators in the nation’s history—special Wisconsin elections that forced six Republicans and three Democratic senators to face voters back home—cost two Republicans their seats. The midsummer political drama cost more than $40 million, but it didn’t realign Capitol power. Republicans still control the governor’s office and both houses of the Legislature.

Public- and private-sector unions spent millions of dollars on ads and get-out-the-vote efforts to oust the six Republican senators who voted for GOP Governor Scott Walker’s legislation. It stripped most public employees of the ability to bargain collectively for anything but pay raises tied to inflation, made payment of union dues optional, and increased what all public employees must pay for pensions and health care.

The four Republican senators who survived the Aug. 9 recalls won by an average margin of 54 percent. The three Democratic senators, targeted for recalls because they blocked a vote on Walker’s changes by fleeing to Illinois, won recalls by an average margin of 57 percent.

One of those Democratic senators, Jim Holperin, made history. He became the only Wisconsin lawmaker to survive two recalls. He was targeted as a state assemblyman in 1990 in a dispute over tribal spear fishing rights in northern Wisconsin.

The Wisconsin Democracy Campaign, a nonprofit group that monitors campaign spending, estimated $44 million was spent by all sides, including candidates. They said their messages were drowned out by the tidal wave of negative third-party radio, TV and direct-mail ads, many of which tried to link Republicans to Walker.

The outcome had both parties meekly claiming victory: Democrats claimed angry middle-class voters recalled the two Republicans—Dan Kapanke of La Crosse and Randy Hopper of Fond du Lac. Republicans said the “silent majority” kept them in control of the Senate, although by a slim 17-16 margin.

For his part, Walker vowed to work with Democrats on a fall legislative agenda. But Democratic leaders said the first-term Republican governor hasn’t compromised on any of the major changes he pushed through since taking office on Jan. 3. Walker is trying to avoid his own possible recall election next year, something that would occur if 540,208 signatures are filed after the required one-year waiting period.

Meanwhile, up to 50 anti-Walker protesters—dubbed the “Solidarity Singers”—form a noon circle in the Capitol’s famed rotunda on weekdays. Their first song? “We Shall Overcome.”

Read State Legislatures’ earlier story about the battle in Wisconsin over collective bargaining at www.ncsl.org/magazine.
SICK AND HIRED

In what was called both a “real win-win” and a “bad precedent,” Connecticut became the first state to mandate paid sick leave. The new law requires service businesses with at least 50 employees to provide at least one hour of paid sick leave for each 40 hours worked. The controversial measure—a scaled down version of earlier proposals—applies only to service workers, and exempts manufacturing firms and some nonprofits. San Francisco, Seattle and the District of Columbia have similar requirements.

QUIET TRAFFIC

Virginia lawmakers have OK’d a pilot program to test “quiet-pavement” technology. Five areas around the state will see if a new kind of asphalt called “porous friction course” can really soften traffic noise and survive Virginia weather. Producers say it reduces sounds from tires, lessening the need to build sound walls, decreases spray kick-up from rainstorms and costs less. Delegate Joe May promoted the pilot after talking with the developers during the NCSL Legislative Summit a couple of years ago. “Instead of creating the noise when tires pass over the road, it simply minimizes it,” May told the Leesburg Today. “The theory is if you don’t generate the sound in the first place, you don’t have to mitigate it. And it is laughably inexpensive in comparison to the sound walls.”

TERMED TROUBLE

Term limits in California have failed to lower the number of “professional legislators” and bring in more “citizen legislators,” according to a new study by the Center for Governmental Studies. Although termed out of the Legislature, most lawmakers stay in government jobs, often running for other elected offices, just as they did before term limits were enacted. “The bulk of the evidence suggests repealing term limits altogether would improve the effectiveness of the Legislature,” the study says. The public’s strong support for term limits, however, makes this unlikely. So the authors of the study recommend the total number of years a member can serve be reduced from 14 years to 12, but that members be allowed to serve that entire 12 years in either chamber. “This revision would allow members to acquire more policy expertise and increase the institutional memory of the Legislature, but it would continue the goal of term limits by maintaining a limit on legislative tenure.”

BIPARTISAN PRACTICAL JOKE

Who said lawmakers from both parties don’t know how to have fun together? Oregon representatives pulled off a political prank during a special session last year like no other. Representative Jefferson Smith got all his colleagues, except one, to say part of the lyrics to the ’80s song “Never Gonna Give You Up” concealed in regular floor speech, without tipping off the clerk or others. Since floor speech is always videotaped, recordings of lawmakers’ saying the lyrics one word or phrase at a time were then pieced together to make the entire song. Posted on YouTube, the two-minute video went viral. The production ends with this disclaimer: “No bills were harmed in the making of this video. No public dollars were spent.”

THE UN-STATE?

Give an 82-year-old former teacher and history buff time on his hands, and what does he discover? North Dakota isn’t really a state. Well, kind of. But don’t panic, voters have the opportunity to correct the error next year. Back in 1995, John Rolcynski was eating dinner while reading the state constitution when he noticed the writers in 1889 forgot to include the word “executive” to the list of those who must take an oath of office, putting it at odds with Article VI of the U.S. Constitution. No one really was interested in his concerns until Senator Tim Mathern came along. “I really didn’t believe that this was an issue that was going to place our status as a state or our decisions in jeopardy,” he told the Grand Forks Herald. “But John is passionate, John is convinced that this is a fatal flaw, and I think sometimes as legislators it behooves us to give people a vehicle to express their citizenship.”
**FOUR ODD OUT**

Why are Louisiana, Mississippi, New Jersey and Virginia the only states to hold legislative elections in odd-numbered years? According to NCSL’s blog, The Thicket, it mostly reflects when their new constitutions were adopted and, consequently, when they held their first elections. For Virginia that was 1851, for Louisiana it was 1879. New Jersey’s case is a little different. While it did adopt a new constitution in 1947, the governor also expressed a desire that state elections not be overshadowed by the national contest for president. The origins of Mississippi’s odd-year elections are unclear, since its constitution was passed in 1890. Elections in Kentucky took place in odd-numbered years until 1984, when the state moved the legislative elections to even-numbered years but kept the governor and other statewide elections in odd years. Kentucky is the only state that separates the election of the governor from that of the Legislature.

**THE PRICE OF NICE**

Here’s something for unemployed people to ponder. A new study found that “agreeable” workers earn a lot less than “disagreeable” ones, and that men who were described as “highly agreeable” after interviewing for jobs were less likely to be hired. The researchers, according to the Wall Street Journal, looked at data on 10,000 workers with a wide range of jobs, salaries and ages over a 20-year span. Other research, however, shows rudeness by employees is bad for business.

**HOW MANY WHAT?**

Missouri transportation officials have developed an app that estimates a person’s blood alcohol concentration. They hope to focus attention on the importance of designating drivers who won’t be drinking. Download “Show Me My Buzz” and by putting in how many drinks you’ve had, how long you’ve been drinking, your weight and your sex, it will estimate your BAC. A double tap gives you the local cab company’s phone number. And it’s free. Question: Do you really think, if you’ve been drinking, you can trust your answers?

**DONATIONS TO DIG**

In just 17 hours, Arizona’s fund-raising website to build a fence along the 2,000 mile long U.S.-Mexico border had collected $39,085. The website, www.buildtheborderfence.com, launched on July 20, and by Sept. 29, donations had hit $174,709. The idea came from Senator Steven Smith. He also sponsored the bill authorizing the fence. His goal is to raise $50 million. Inmates will provide the labor to build the fence.

**ALL A-TWITTER OVER TWEETING**

A state judge in August issued an injunction blocking a Missouri law from taking effect that would have barred teachers from using social media sites such as Facebook and Twitter to communicate with their students. The judge said the law “would have a chilling effect on speech.” Lawmakers passed the law as part of a larger package of legislation to protect children from sexual abuse in schools. Teacher unions challenged the prohibition, arguing that social networking is used widely and effectively among educators. Lawmakers responded in September by passing a bill that repeals the social media ban but requires local school districts to revise their policies to “prevent improper communications between staff members and students.”
The 800-Pound Gorilla

State lawmakers are trying to cut costs so the program will survive, even when millions more are added to the rolls.

A

lthough many of the headlines in the debate over federal spending and the deficit focus on Medicare and Social Security, the program of greatest concern to states is Medicaid.

The 46-year-old program, which cost state and federal governments nearly $400 billion in 2009, eats about 16 cents of every dollar in state general funds. It’s been growing two or three times faster than state budgets because of the rising costs of health care and the increasing number of people enrolling because of the stagnant economy.

Meanwhile, state lawmakers are looking down the road three years to when an additional 16 million people will go onto the Medicaid rolls under federal health care reform.

And while Congress debates possible modifications in how it funds the program, any changes remain uncertain.

“It’s a budget killer, but it’s a philosophy,” says Florida Representative Mark Pafford. “[Because of Medicaid] you will not see babies dying in the gutter. You don’t see old people dying of heat exhaustion, or homeless dying on the street.”

But for state lawmakers, Medicaid is decidedly on the table for reform.

“We can no longer have an 800-pound gorilla eat up so much of our budgets,” says Washington Senator Linda Parlette. “Any time you’re short of money, it forces you to make policy decisions that are different.”

State policymakers are asking the federal government for more flexibility to change the Medicaid program without a lot of red tape. They want to expand managed care, experiment with new payment models, create medical homes, and streamline services for those eligible for both Medicaid and Medicare. They want to tether provider payments to patients’ health results and link Medicaid funding to general fund rev-

Rachel Brand is a freelance writer in Denver and a frequent contributor to State Legislatures.
They even are looking at asking patients to pay a portion of their care.

The goal: a less expensive, better, more “sustainable” health care system for the poor and disabled.

“This wave of change is motivated by the desire to cut costs,” says Alan Weil, executive director of the National Academy for State Health Policy. “It’s also responsive to an intuitive sense that we’re not doing a very good job in terms of outcomes in a fragmented system.”

Time for Change

The federal government pays about 57 percent of the annual cost—$366 billion in fiscal year 2009—though the exact split with each state varies based on per capita income.

Federal rules govern who qualifies for medical care and the basic services that must be covered. All states, however, cover more than the basic services. The rules also bar enrollees from paying more than a few dollars for services. If a state wants to experiment with a program that covers more of the uninsured through Medicaid, make managed care mandatory, or create new financial incentives, it must request an 1115 waiver and negotiate with federal administrators.

Medicaid spending has grown, on average, at 7 percent a year for the past 10 years, somewhat less than the growth in the private sector but still a big financial burden for states. Four states weighed dropping the program in recent years, but study commissions recommended against it, in part, because of the challenges of providing long-term care. Long-term care and other services for the severely disabled and elderly consume 67 cents of every dollar spent on Medicaid.

Even before federal health reform moves millions of people into the program in 2014, it has dealt a blow to state Medicaid budgets.

Health care reform contains a provision known as “maintenance of effort.” It requires states to continue covering anyone who was enrolled in the program as of March 2010 when the federal health reform legislation was signed into law, in essence tying states’ budgetary hands and limiting tools to con-

“It’s a budget killer, but it’s a philosophy. [Because of Medicaid] you will not see babies dying in the gutter. You don’t see old people dying of heat exhaustion, or homeless dying on the street.”

—Florida Representative Mark Pafford.
Changing the Model

Over the years, states have tried to limit doctor visits, procedures, payments and drugs. They also have tried to better manage patients with chronic diseases and promote managed care—anything to rein in costs. Still, the program grows because Medicaid is countercyclical—enrollment climbs when the economy stagnates and because Medicaid shoulders much of the long-term care cost in this country.

Lawmakers in Florida, Utah and Washington are trying different approaches to controlling Medicaid costs. Each state is proposing a program that allows more budget certainty by setting a fixed payment for each patient as opposed to payments for every service that’s provided.

This means determining ahead of time how much a Medicaid enrollee should cost. A pregnant mom might cost $3,000 a year; a disabled senior $25,000. The state will contract with a health insurer or group of doctors to deliver a year’s worth of care at that price.

“The only certain way to reduce Medicaid costs is to allow the Legislature to set a specific capped amount to be spent on Medicaid each year, the same way we set spending levels in other areas of the budget,” says Florida Senator Joe Negron, who wrote the bill to enroll most of Florida’s 3 million Medicaid patients into managed care.

The waivers also push for flexibility in benefits for groups of patients.

“We’re not going to micromanage every office visit you do, and how you provide care,” says Utah’s Liljenquist, whose state’s proposed waiver would put 80 percent of the state’s Medicaid patients into accountable care organizations, networks of providers who agree to share cost savings based on outcomes.

“We’re going to send you the money, and we want you to change how you practice medicine.”

“We can no longer have an 800-pound gorilla eat up so much of our budgets.”
—Washington Senator Linda Parlette

Senator Joe Negron
Florida
Limiting Growth, Sharing Costs

Utah’s Medicaid reforms, intended to save $770 million over 10 years, stem growth in another way. With unanimous legislative support, the requested waiver would tie per patient Medicaid cost growth to general fund growth.

If the state budget grows by 10 percent, then Medicaid per patient spending can grow that much. But if the budget stands still, or drops, the budget will need to be cut, starting with a list of benefits on a pre-determined schedule.

Likewise, Florida’s legislation calls for a 5 percent, across-the-board reduction in costs.

Patients also would pay more under Florida’s proposed waiver, which still must be approved by the federal government. Medicaid co-pays would jump to as much as $100 for the wrongful use of the emergency room. There are annual deductibles and cost-sharing for drugs.

“Sometimes patients can be demanding and want a drug that, perhaps, [private] insurance wouldn’t cover,” says Parlette, a registered pharmacist. “Maybe you can take a generic drug, but...
Taking the Long View

Although Medicaid is often described as a health care program for the poor, it also plays a crucial role in covering long-term care for millions of people. In fact, it is the single largest payer of long-term care covering the needs of daily life, such as eating, dressing and bathing, for at least 8 million Americans. Long-term care can be expensive, with median costs ranging from $39,135 to $77,745 per year depending on the type of care needed.

It’s been difficult for states to contain costs for the growing population of the elderly and people with disabilities, so state legislators have played a key role in reforming long-term care systems.

In particular, many states have reformed their Medicaid-funded systems by moving away from costly institutional care, which few people want, toward popular and often less costly home- and community-based services.

The focus on “rebalancing” allows for more patient choice and the active engagement of the patient’s family and local support network. The Affordable Care Act provisions encourage states to “rebalance” long-term care systems. For example, federal Medicaid matching rates will rise for states that increase access to noninstitutional services.

Another creative financing program is being expanded with federal health reform. Money Follows the Person is a Medicaid initiative that allows flexible financing for long-term care services. People using this program can use the money in the way they see fit. Thirteen states received grants to operate or improve upon this initiative.

States are doing the same thing with their elderly and people with disabilities as they are doing with other Medicaid populations—moving them to managed care. The expectation is that managed care can better coordinate care and increase efficiency for people with multiple conditions who receive long-term care services.

—Katherine Mason, NCSL

Quality, Access Concerns

No one denies Medicaid is imperfect and expensive. But some say handing delicate, vulnerable patients over to HMOs is a bad idea.

Florida’s proposed program builds on a five-county managed care pilot program started in 2005.

“The HMO model in Florida has never proven that it has improved access or quality of care,” says Ted Fisher, executive director of the Florida Academy of Family Physicians. “To the contrary, anecdotally, in Broward County, there have been a lot of problems with access.”

In Florida, the proposed waiver emphasizes saving the state 5 percent a year on total Medicaid costs. It also gives for-profit HMO contractors 5 percent of any further savings.

However, some lawmakers are concerned about what they see as the focus of the proposed waiver.

“The total emphasis [of the new requested waiver] is on cutting costs, with no consideration to quality and access,” says Pafford.

What’s more, he says, the introduction of insurance companies will disrupt finely tuned, hard-won relationships between medically needy patients and their doctors.

“You have networks that have developed over 40 to 45 years, largely made up of nonprofits, health care districts,” says Pafford. “When you move toward what will be private managed care—with guaranteed profits—you’re going to dismantle, or starve to death, the system that is in place. You may kill the back up plan, which is the current system.”

Is It Legal?

In its proposal for a Medicaid waiver, Utah officials called the restrictions in the Medicaid limits or caps on charging patients co-pays and deductibles “archaic.” But the Medicaid law may bar Utah from imposing higher cost sharing fees on patients, as is proposed.

Some also see it as a barrier to care for some patients.

“The annual per family $40 deductible can be a great hardship for clients,” wrote Judi Hillman for the Utah Health Policy Project. “A family could easily be priced out of access to medically
The only certain way to reduce Medicaid costs is to allow the Legislature to set a specific capped amount to be spent on Medicaid each year.” —Florida Senator Joe Negron

Medicaid Block Grants: All About the Details

When U.S. Representative Paul Ryan’s budget plan passed the U.S. House of Representatives in April, it included a provision that pleased some state lawmakers and gave others heartburn: block grants for Medicaid.

Block grants traditionally have been a way for the federal government to consolidate a group of discretionary programs, usually under a broad common topic, and to reduce the overall funding in exchange for giving states considerable freedom in how the money is spent. That’s the theory anyway.

Determining how that theory will work in practice is a tough call, and one not aided by Ryan’s budget proposal, which offers few details on how the block grants would be handled.

And “the devil is in the details,” said Joy Johnson Wilson, senior federal affairs counsel for the National Conference of State Legislatures.

Medicaid currently is a state-federal partnership under which the federal government pays about 57 percent of the annual cost—$366 billion in fiscal year 2009—though the exact split with each state varies based on per capita income.

Unlike typical block grant programs that include a number of discretionary programs, Medicaid is an entitlement program. Everyone who is eligible is entitled to coverage. The federal government also imposes a variety of rules on how the money can be spent, who is eligible, what services are provided and more. The most similar existing state-federal program is Temporary Assistance for Needy Families or TANF. That program was changed from individual entitlement to an entitlement to states in the form of a block grant during the Clinton administration.

Medicaid has never been financed with block grants, though Congress did pass such a plan during the Clinton administration, which was vetoed. At a session during NCSL’s Legislative Summit in San Antonio in August, Wilson laid out what is known about the possibility of Medicaid block grants.

“Ryan’s budget assumes certain savings will result from block grants, but there is no specific proposal,” she said. “But it may be considered as part of this new ‘committee of 12’ that is supposed to come up with a plan to cut $1.5 trillion from the federal budget by Thanksgiving.

If that committee does consider Medicaid block grants as one way to trim the federal budget, there are a few questions key to states.

◆ Entitlements. Would every eligible citizen continue to be “entitled” to receive all services? Block grants could switch that entitlement to the state, where policymakers would decide on the rules of eligibility and services. Who gets to choose “is a huge decision that needs to be made,” Wilson said.

◆ Maintenance. Will states be required to maintain their current Medicaid eligibility standards? If so, it would reduce the flexibility available to states in using block grants.

◆ Elderly and disabled. With about 67 percent of all Medicaid spending going to care for severely disabled people and the elderly, lawmakers will want to know how these people would be treated in terms of federal vs. state responsibility and funding under block grants. The answer would help determine whether block grants would be a good deal for states.

◆ Bad economy. How would block grants address the countercyclical nature of Medicaid? As the economy worsens, state budgets shrinks and the demand for services, especially Medicaid, increases. A block grant approach that does not account for this could leave states in very serious fiscal distress every time the national economy falters.

—Edward Smith, NCSL

Reforms in other states are often hampered by the long period states wait to hear back from the federal government about their waivers, killing momentum behind reform, says policy analyst Nina Owcharenko of the Heritage Foundation. This time, policymakers are asking the Obama administration to decide on waivers related to new health reform requirements by 2012.

“The waiver process can be very long,” Owcharenko says. “That’s one reason why many states advocate for additional flexibility [under the law]. It will be telling to see what happens.”

SL ONLINE

Learn more about Medicaid and its role in federal health reform at www.ncsl.org/magazine.
Health information technology (HIT), advocates say, will revolutionize the health care system; make hospitals, clinics and doctors’ offices more efficient and effective; save billions of dollars; improve patient safety and health; and increase the availability of health care in rural areas.

“The ability to securely share and store patients’ medical information will help doctors diagnose problems sooner, reduce errors and better coordinate care among several providers,” says Massachusetts Senator Dick Moore, a key player in the effort to create universal health care in his state and the immediate past president of NCSL.

Two key pieces of federal legislation support a high-tech transformation. Under the 2009 Health Information Technology for Economic and Clinical Health (HITECH) Act, health care providers can qualify for Medicare and Medicaid incentive payments when they adopt certified health record technology. Additional incentives are available for professionals who provide these services in an area that has a shortage of health professionals. As of July 31, more than 13,000 Medicaid eligible professionals were registered for the program, and Medicaid agencies throughout the states had paid more than $165 million to providers. The Affordable Care Act also supports adoption of new technology, especially for accountable care organizations and patient-centered medical homes.

If most hospitals and doctors’ offices adopted HIT, the potential savings for the country could reach more than $513 billion over 15 years, according to a 2006 report published in the Journal of Health Affairs. Another study performed by Rand Corporation in 2006 estimated that, if all hospitals had a HIT system, about 200,000 adverse drug events could be eliminated each year, which, according to the Institute of Medicine, kill between 44,000 and 98,000 patients every year.

Studies have found electronic health records can reduce duplication of tests and hospital readmissions, help providers and patients better manage chronic conditions, and reduce unnecessary emergency room visits. The Veterans Affairs Administration, for example, found that adopting electronic health records in more than 1,400 of its hospitals, clinics and nursing homes has reduced costs and improved the quality of care received by nearly 6 million patients.

There are real concerns, others point out, that need to be addressed if a revolution in health care technology is going to occur. Reluctance on the part of providers, costs and privacy are key issues.

Lawmakers were promoting HIT even before the recent federal push. Since 2007, NCSL has tracked more than 620 HIT-related bills in all 50 states, with 235 bills in 2011 alone. As of Aug. 1, 74 had been enacted.

Most state laws address high costs and privacy concerns. At least 19 legislatures have passed laws stipulating privacy and security standards to be followed as new technology is adopted.
Challenges

Reluctance by health care providers to adopt new technology is a key concern. A recent survey conducted by Dell Inc. reported 79 percent of hospital executives are concerned about clinician participation and training in electronic health record technology. Nonetheless, since January 2011, nearly 35,000 health care providers have registered to take part in an electronic health records incentive program.

A new electronic system for maintaining and sharing health records can cost as much as $50,000. Although eligible providers may receive $44,000 from Medicare or $63,750 from Medicaid, the money is available for only five or six years. Maintaining the systems and connecting them to statewide health information exchanges can also be expensive. Temporary federal grants are available, but the ongoing costs of maintaining the systems are a major concern to doctors and hospital officials.

And then there are concerns about the safety and integrity of patients’ personal information. Consumer advocates want to be sure private health information is not shared with insurers, employers or anyone else without the person’s consent.

To address many of these concerns, the HITECH Act recently was updated with new regulations, not yet final, that set out strict guidelines for managing medical records and impose hefty penalties for violations and breaches.

One Electronic Experience

As a leading health care provider to Connecticut’s underserved population since 1972, Community Health Center Inc. knows what it takes to convert to electronic health records. In 2006, it became one of the first safety-net providers to make the change, and, according to CEO Mark Masselli, it’s been a great success.

“We are committed to transforming the way health care is delivered,” he says, by focusing on what works best to improve patients’ health, “which ultimately helps contain costs.”

He believes using electronic health records helps providers respond to patients’ needs like never before. The advantages include:

◆ A patient’s complete medical record is available to an entire care team, regardless of where he or she is.
◆ Safety improves because every prescribed medication is automatically checked for potentially harmful interactions.
◆ New tools are available for providers to remind them when patients are due for important screenings.
◆ Trends can be tracked to evaluate what works, allowing changes to be made often, when necessary.

Although the benefits are clear, adopting an electronic system is not always easy. “It takes commitment from the entire agency,” says Margaret Flinter, senior vice president of the Connecticut provider. Difficulties include:

◆ The upfront costs.
◆ Maintaining the privacy of medical information.
◆ Giving health care providers support as they change their practice habits.
◆ Understanding the current workflow in order to create procedures that work in the exam rooms.

Masselli believes, however, the challenges should not deter providers from going electronic. “There is no doubt that EHR technology improves the quality of care at our center. Never before have we had access to data across our entire system that we can use to drive improvements.”

—Melissa Hansen, NCSL

NCSL Launches New Project

NCSL launched a new project, Transforming Health Care Through Technology, in January 2011, to study the latest health care technologies and their policy implications. The project includes state legislators, legislative staff, NCSL staff, and members of the Foundation for State Legislatures. It will provide a way for public and private members to collaborate on health IT issues. Meetings, publications and webinars will follow.
Increasing Latinos’ success in college not only benefits lives, but can also be an economic boon for the entire nation.

By far the biggest story from the recent 2010 Census is the significant and fast-paced growth of the Latino population. The U.S. population increases by four people each minute, with two of the four being Latino.

States have a lot of work to do to deal with this growth and prepare for this new generation of Americans. Right now, Latinos lag significantly behind Anglo students on every indicator of educational achievement—a trend that if allowed to continue will hamper state economic development for the next decade and beyond.

By 2020, about one in four college-age adults will be Latino. Many will be first generation college students who may need special assistance to be successful. Young Latinos often don’t consider higher education a real possibility for themselves and don’t know that they may qualify for financial aid. Family and work obligations often prevent them from enrolling in or finishing college.

Former Texas state demographer Steve Murdoch puts it best: “The future of America is tied to the minority population. How well they do is how well America will do.” Murdoch, now a professor at Rice University, says his experience in Texas prepared him well for understanding the changing American demographics. “The Texas of today is the U.S. of tomorrow. If you think Hispanic growth is a Texas, California or Florida issue, you’re wrong. Even in the suburbs and rural areas, most of the population growth is Hispanic.”

In short, the Latino population is growing everywhere, making college completion issues important for all states.

Murdoch explains that most of the growth in the United States is because of more births than deaths. This natural phenomenon accounts for 62 percent of the growth, while immigration...
accounts for 38 percent. The United States would actually be declining in population if not for minorities, he says.

“Diversity has been the key to growth in states for the last two decades,” Murdoch says. “If you weren’t diverse, you weren’t growing.”

Because the under-18 Anglo population is decreasing, while the under-18 Latino population is growing rapidly, “the aging Anglo population needs the growing younger minority population to help pay for Social Security and Medicare,” he says. “And the younger minorities need the aging Anglos to help them get the education they need to be competitive.”

Return on Investment

The challenge for states is to identify what works to ensure these new citizens succeed. The payoff is potentially significant, with more choices, higher incomes and promising futures for these first generation students. College-educated workers reap on average an extra $1 million in earnings over a 40-year career.

According to CEOs for Cities, a group of urban leaders who promote city development, if the nation’s top 51 metropolitan areas increased the percentage of adults with a college degree by just 1 percent, the nation would see an increase in per capita income of $124 billion a year.

Higher incomes, of course, mean higher tax revenues for states. College graduates pay more in income and sales taxes and depend less on social service programs such as food stamps and Medicaid than people without degrees. States save an average of $1,377 annually in Medicaid costs alone for every person with a college degree, according to the National Center for Higher Education Management Systems. States also spend less on unemployment benefits for college graduates.

What Works?

◆ Accommodate Latino students, who tend to be more nontraditional—older, with families and jobs.
◆ Support community colleges and technical schools, which have high rates of Latino enrollment.
◆ Improve the quality of K-12 education by increasing its rigor and teachers’ effectiveness.
◆ Offer early testing in high school to assess college readiness.
◆ Augment college advising and counseling in high schools.
◆ Inform Latino families about college opportunities, the application process and financial aid.

Nothing is more important to future economic success than education. Income is closely tied to education—the richer you are, the more likely you are to have a college degree. But Latinos are more likely to be poorer and less educated than any other population group. Currently, only 19 percent have a college degree, compared with 42 percent of Anglos.

Murdoch predicts that if Texas does nothing to improve the education of Latino students, by 2040, Texas households will make an average of $6,500 less per year (in 2000 constant dollars), the poverty level will increase by 2 percent, and 30 percent of the state’s labor force will have less than a high school education. But if the gap between Latino and Anglo student achievement is closed, aggregate household income would increase by more than $300 billion a year, resulting in an increase of $224 billion in consumer expenditures.

Latino Education Gaps

Latinos lag behind Anglo students at every point along the education pipeline. Raymund Paredes, commissioner of Higher Education in Texas, stresses that “access without preparation is not opportunity. If you’re not well-prepared, your chances of succeeding in college are very, very low.” Of 100 ninth grade Latino students, only 55 will graduate from high school and only 13 will graduate from college within six years.

“We can’t reach national completion goals of having 55 [percent] to 60 percent of our population with a college degree without a plan to improve Latino college completion,” says Deborah Santiago, vice president for policy and research at Excelencia in Education, an advocacy organization based in Washington, D.C. “While it might cost a state some extra dollars to support a first generation family’s education success, the returns for future generations are significant.”

Santiago explains that, while the controversy over undocumented students often dominates the political discourse, only 7
percent of students in K-12 and 2 percent of college students are undocumented. She urges legislators to look carefully at their student data to ensure policy discussions focus on the actual circumstances and experiences of their students.

**Models of Success**

The University of Texas at El Paso is a national success story of an institution with high enrollment growth of first generation students, especially Latinos. Much of its success can be attributed to its president, Diana Natalicio. “The key to increasing the total number of degrees is eliminating the gap between whites and minorities,” Natalicio says. “Students have the right to expect the same quality of education as their peers in other institutions. People believe you are either an ‘access’ or an ‘excellence’ university. I don’t believe that. You have to do both. Talent is everywhere, and pathways need to be created to cultivate that talent,” Natalicio says.

The university is committed to serving students in its community, which is largely poor and Latino. In fact, 83 percent of its student body comes from El Paso county, almost 80 percent are Latino, and 30 percent report family income under $20,000. Over the last 10 years, the school’s enrollment increased by 38 percent, and the number of degrees awarded increased by 79 percent. More than 75 percent of undergraduate degrees in 2009 were awarded to Latino students.

To help students succeed, Natalicio says, you must do the following: Raise aspirations; prepare students for academic success in college; make sure education is affordable; allow students to participate on their own terms—such as on weekends, evenings and online; and ensure everyone can participate, regardless of family and work obligations. The university works closely with high schools and community colleges in the area to coordinate a supportive pathway for success.

**Successful State Policies**

Texas Representative Joaquin Castro represents San Antonio, and when he talks with other legislators and community and education groups, he stresses the importance of making two key changes: improve student counseling in high schools and reduce the need for remedial education in college. “What makes our country unique is the infrastructure of opportunity that makes the American dream possible—that people can realize their potential. Education and higher education are central to that infrastructure.”

Texas has one counselor for every 420 high school students, while the professional recommendation is one counselor for every 250 students, Castro says. He helped establish Advise TX College Advising Corps, which, through funding from the College Access Challenge Grant, places recent college graduates in high schools to counsel low-income and minority students on the college process, from college applications to the federal financial aid form.

Developmental or remedial education is “the graveyard of higher education, where many dreams die,” Castro says. He believes states need to focus resources on reducing the need for developmental education by identifying students who need extra help before they go to college—at least by their junior year of high school—so they can develop the skills they need their senior year to succeed.

Castro sponsored a bill requiring colleges to offer students who need developmental education a range of options based on their proven effectiveness. For example, colleges could offer online courses, integrate technology into classes, pair developmental courses with credit courses, or offer academic support to students outside the classroom. The bill, which had a zero-dollar fiscal note, passed the Legislature and was signed by the governor in June.

Castro knows there’s no single solution. But, he says, “the problem isn’t that we don’t have solutions. There are best practices.” He believes state legislators are key to promoting these proven practices and continuing the discussion on the link between Latinos’ college completion rates and state economic stability.

“If we can systematically move the needle on these issues, we will greatly improve the outcomes for Latinos and all students.”

—Deborah Santiago

Excelsior in Education
Awareness of the health benefits and cost savings of breastfeeding continues to spread.

Breastfed babies have fewer cases of diarrhea, ear infections and pneumonia, and are less likely to develop asthma or die from sudden infant death syndrome. Recent research also shows children who are breastfed are less likely to become obese. Mothers benefit as well, with lower risks of developing breast and ovarian cancers.

Although 75 percent of babies in the United States begin life being breastfed, only 31 percent are by the time they reach 9 months. The American Academy of Pediatrics recommends babies be breastfed for their first year of life.

Lowering babies’ rates of illnesses and infections, of course, also lowers health care costs for both families and states. This has large implications for Medicaid programs, which cover approximately 40 percent of births.

A 2010 study reported in the journal Pediatrics estimated that, if 90 percent of mothers exclusively breastfed for the first six months of their babies’ lives, the country would save $13 billion a year and prevent hundreds of infant deaths.

Another study reported in Pediatrics found that for every 1,000 babies who are not breastfed, there are 2,033 more medical office visits, 212 extra days of hospitalizations and 609 excess prescriptions in babies’ first years of life. This costs managed care health systems between $331 and $475 for each infant.

All these are reasons why the federal government included elements in the Affordable Care Act to reduce some of the barriers breastfeeding mothers face.

The act requires most employers to provide reasonable break time and a place (other than a bathroom) for mothers to express milk. Also, health insurance plans issued or renewed after Aug. 1, 2012, must cover, without cost-sharing, breastfeeding support, counseling and equipment, when needed.

In addition, the surgeon general has issued a “Call to Action to Support Breastfeeding” with 20 steps to help make breastfeeding easier.

Most state legislatures also have tried to reduce the barriers to breastfeeding. Forty-five states, the District of Columbia and the Virgin Islands have laws that allow women to breastfeed in any public or private location. Twenty-eight states, the District of Columbia and the Virgin Islands exclude breastfeeding from public indecency laws. Twenty-four states, the District of Columbia and Puerto Rico have laws related to breastfeeding mothers in the workplace. And 12 states and Puerto Rico exempt breastfeeding mothers from jury duty.

The decision whether to breastfeed is a personal decision and, under some circumstances, may not be the best choice. While some lawmakers feel this is an area in which government has no role, given the benefits of breastfeeding, many policymakers continue to raise awareness about the issue and consider policies to reduce the obstacles.
The Reach of Free Speech

Recent rulings make it tough to nail down the boundaries of protected speech and other thorny state-federal issues.

BY DAVID G. SAVAGE

As the Supreme Court begins a new term, a look at the decisions the justices handed down last term shows, as is often the case, a mixed bag for states.

Although the court upheld state laws to control immigration and help parents send their children to religious schools, it invalidated others passed to protect doctors’ prescription records and restrict children from buying violent video games. Several of the decisions turn on what constitutes “free speech” protected by the First Amendment, and the justices came to some surprising conclusions.

They struck down a Vermont law, initiated by physicians, that barred the sale of doctors’ prescription records to drug makers to use in their marketing activities. The court’s opinion in Sorrell v. IMS Health described prescription data as “speech” fully protected by the First Amendment.

A legislator’s vote for and advocacy of a bill, however, is not “protected speech,” concluded Justice Antonin Scalia in a Nevada case involving a conflict of interests. All this might be puzzling to state lawmakers who think they know what real speech is when heard on the floor of a legislature.

“How can it be that restrictions upon legislators’ voting are not restrictions upon legislators’ protected speech?” Scalia asked. “The answer is a legislator’s vote is the commitment of his apportioned share of the legislature’s power. … [It] is not personal to the legislator, but belongs to the people,” he said in Nevada Commission on Ethics v. Carrigan. In that case, Michael Carrigan, an elected city councilman from Sparks, Nev., was charged with a state ethics violation for voting to approve a development project that was backed by his longtime friend and campaign manager. He appealed and won a ruling from the state Supreme Court, which said the ethics charge violated the First Amendment. However, in a unanimous decision, the U.S. Supreme Court said legislators cannot use free speech as a defense to a charge they violated a conflict-of-interest rule.

Candidates’ Free Speech

The free-speech rights of candidates came into play when the conservative bloc, led by Chief Justice John G. Roberts, struck down part of an Arizona voter initiative that offers public funding to candidates who agree to forego private fund-raising and abide by spending limits. To keep pace with a well-funded opponent relying on private money, the law allowed a candidate to obtain matching public funds once the spending limit was crossed by his opponent.

Roberts said the matching funds impose “a substantial burden” on the free-speech rights of the privately funded candidates. “It is not legitimate for the government to attempt to equalize electoral opportunities in this manner,” he said for the 5-4 majority in Arizona Free Enterprise Club v. Bennett. “Leveling the playing field can sound like a good thing. But in a democracy, campaigning for office is not a game. It is a critically important form of speech.”

The newest justice, Elena Kagan, spoke for the liberal bloc, saying Arizona’s law would encourage more political speech, not less. “Except in a world gone topsy-turvy, additional campaign speech and electoral competition is not a First Amendment injury,” she said.

Legal experts differ on whether the ruling will deal a death blow or a minor punch to public financing of campaigns. Roberts said his opinion should not be read to “call into question the wisdom of public financing.” Laws that provide a fixed amount to candidates, he said, would not be threatened.
The decision striking down California’s law on violent video games on First Amendment grounds came as no surprise. Before this year, a half dozen states had tried to restrict violent video games and had lost. California’s law met the same fate in a 7-2 decision in Brown v. Entertainment Merchants Association handed down in June. This time, the justices did not split along the usual ideological lines. Justice Scalia called California’s law “the latest episode in a long series of failed attempts to censor violent entertainment for minors.” Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Kagan agreed.

Although Roberts and Justice Samuel A. Alito spoke approvingly of California’s law as a “pioneering effort to address … a potentially serious social problem,” in the end they said the law was vague in its definition of violence and could not stand. Justices Clarence Thomas and Stephen G. Breyer dissented separately.

These contrasting opinions on protected speech, if nothing else, should provide a warning to anyone who seeks to set out a simple, reliable rule for understanding or predicting the Supreme Court’s decisions affecting states and state laws.

**Congressional Intent**

In recent years, states have won some and lost some in cases testing whether a state law is preempted by federal law. The justices say the results depend on a close examination of the purpose of the federal law. Did Congress, for example, intend federal regulation to dominate the area to the exclusion of conflicting state laws, or did it leave a role for the states as well?

That is the crucial question in the area of immigration. Frustrated by Washington’s failure to deal with the estimated 11 million illegal immigrants in this country, several states, led by Arizona, have passed their own enforcement measures. This year, the Supreme Court upheld one targeted at employers who hire illegal workers. Passed in 2007, and signed by then-Governor Janet Napolitano, the Legal Arizona Workers Act requires employers to check the immigration status of new hires through the federal E-Verify program. Napolitano predicted it would impose a “business death penalty” on employers who knowingly hire illegal workers, because if convicted, companies could lose their business licenses.

A broad coalition of groups—including civil rights and immigrant rights advocates and the U.S. Chamber of Commerce—challenged the law. When Chamber of Commerce v. Whiting reached the Supreme Court, the plaintiffs were joined by the Obama administration, whose chief immigration enforcement officer is now, ironically, Homeland Security Secretary Janet Napolitano.

The challengers contended the Arizona law conflicts with a confusing provision in federal immigration law that preempts “any state or local law imposing civil or criminal sanctions [other than through licensing and similar laws] upon those who employ unauthorized aliens.” Citing the ban on “sanctions,” they argued Congress intended to prevent the states from imposing their own punishments on employers who hired illegal workers.

But in a 5-3 decision, the court disagreed. Chief Justice Roberts said Arizona’s use of its licensing authority “falls well within the confines of the authority Congress chose to leave to the states.”

So, too, is the mandate for businesses to use E-Verify, he said. “That requirement is entirely consistent with the federal law,” he said. Roberts cited in a footnote that similar licensing laws exist in Colorado, Mississippi, Missouri, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia, and that four states—Mississippi, South Carolina, Utah and Virginia—also require the use of E-Verify. Scalia, Kennedy, Thomas and Alito concurred with Roberts.

**More to Come on Immigration**

The chief justice’s opinion offered clues on how the court may view the next and even bigger upcoming immigration question: Can states authorize their police to question and arrest illegal immigrants? A federal judge in Phoenix and the U.S. 9th Circuit Court of Appeals have blocked enforcement of Arizona’s SB 1070, which calls on the police to check the immigration status of people they “reasonably” suspect of being in the country illegally. The judges said immigration enforcement is the exclusive duty of the federal government, which, by implication, means Arizona’s law is preempted.
But Roberts, in the earlier *Whiting* case, appeared to suggest a state law is not preempted unless Congress says so expressly or a clear conflict between the two is apparent. “Implied preemption analysis does not justify a ‘free-wheeling judicial inquiry into whether a state statute is in tension with federal objectives,’ ” he wrote. “Our precedents establish a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal act.”

In August, Arizona Governor Jan Brewer filed a petition urging the court to review the 9th Circuit’s ruling and to revive the state’s law. If justices grant Brewer’s appeal, it figures to be one of the premier cases this term, which began Oct. 3.

**Key School Decision**

Another Arizona case also could be far-reaching. Since the 1970s, the court often has reviewed and struck down state laws that sent taxpayers’ money to religious schools. But this year, a 5-4 decision in *Arizona Christian School Tuition Organization v. Winn* upheld the state’s use of tax credits to fund religious schools.

Arizona’s law offers a dollar-for-dollar tax credit—up to $500 for individuals and $1,000 for a married couple—for donations to special school tuition organizations that then pay for students’ costs to attend private schools, even when these organizations limit their scholarships to particular religious denominations. The ACLU sued, claiming the law was only a ruse to divert taxpayers’ money into church school coffers.

Justice Kennedy, speaking for the court, said no objecting taxpayer could prove his taxes were being diverted. “When Arizona taxpayers choose to contribute to STOs, they spend their own money, not money the state has collected from … other taxpayers,” he said. The majority in the case was the same as in the immigration case: Roberts, Scalia, Kennedy, Thomas and Alito.

Kagan, who sat out in the immigration case, wrote her first dissent in this case, calling the decision a break with precedent that will open the door to unconstitutional government funding of religion. “Appropriations and tax subsidies are readily interchangeable; what is a cash grant today can be a tax break tomorrow,” she wrote. “The court’s opinion thus offers a roadmap—more truly, just a one-step instruction—to any government that wishes to insulate its financing of religious activity from legal challenge.” Justices Ginsburg, Breyer and Sotomayor agreed with her.

**Prisons and Consumers**

Another decision sounded a note of warning for states with prisons teeming with inmates.

Since 1991, California has fought a class-action lawsuit contending it was not providing decent health care for inmates. A three-judge panel concluded overcrowding was the root of problem, and ordered the state to reduce its inmate population by as many as 40,000. To the surprise of many, the Supreme Court affirmed that order with a 5-4 decision in *Brown v. Plata*.

“For years the medical and mental health care provided by California’s prisons has fallen short of minimum constitutional requirements,” said Kennedy, a native of Sacramento, who joined the court’s liberal bloc in this case. California officials responded they plan to transfer inmates to county jails, hoping to avoid setting prisoners free.

In areas of tort suits and liability claims, state laws suffered two setbacks. The court shielded the makers of generic drugs from being sued for failing to warn patients of new dangers. The 5-4 ruling held that, because federal law requires generics to mimic brand-name drugs, their makers cannot be sued under state liability laws for failing to warn patients of any newly revealed problems. The dissenters said the ruling in *PLIVA v. Mensing* will leave millions of Americans with no legal remedy if they suffer an injury from a generic drug.
Consumer class-action claims were also dealt a blow in AT&T Mobility v. Concepcion. Several states have prohibited consumer contracts that forbid class-actions claims. In another 5-4 decision, the court ruled the Federal Arbitration Act preempts these state laws. Under the decision, companies can avoid class-action claims by including an arbitration clause in their purchase agreements.

In product liability claims involving motor vehicles, the court made it easier for consumers to sue. In Williamson v. Mazda, the court said a man whose wife died in a car crash can sue the automaker for failing to install lap-belts in the rear seats, even though federal safety regulations don’t require them. Breyer said the federal rules set only “minimum standards,” and lawsuits can play a “continued meaningful role” in identifying safety problems.

The states, however, were shut out of suing the major power producers in federal court for contributing to global warming. Four years ago, the court said carbon pollution could be regulated under the Clean Air Act in a suit brought by a dozen states. Based on that conclusion, the court this June unanimously threw out American Electric Power v. Connecticut (and seven other states) that urged a judge to set new restrictions on carbon pollution. Ginsburg said that because the Environmental Protection Agency has the authority to restrict these emissions, “we see no room for a parallel track” in the courts.

Health Care Looms

This term could be a momentous one for health care. Justices on the first day of the new session heard a California case on whether states can be sued for reducing Medicaid reimbursement rates. The California Legislature approved a series of cutbacks, but hospitals, doctors and pharmacies went to court and won rulings blocking the reductions.

In Douglas v. Independent Living Center, the state argues these private plaintiffs have no legal right to sue under the Medicaid Act. The Obama administration and the attorneys general for 30 states, the National Conference of State Legislatures and the National Governors Association have filed briefs supporting California’s position.

The court also has before it appeals challenging the constitutionality of the health insurance mandate in the Affordable Care Act. Lawyers for 27 states have joined suits arguing Congress exceeded its authority by imposing this controversial mandate. The Supreme Court will have the final word.
FOUR LEADERS ON HARLEYS, HUMOR

REPRESENTATIVE ROBERT GILLIGAN
Delaware Speaker of the House

State Legislatures: What was your top budget priority this year?
Gilligan: After trimming several “nice to have” expenditures the past few years, we knew we were facing some serious decisions about our budget. The biggest decision we made was to reform our pension and health-care systems. Pensions for newly hired state workers were overhauled and our health-care plans were revised, saving taxpayers more than $500 million during the next 15 years and solidifying our financial future.

SL: Have new members made your job easier or more difficult?
Gilligan: The Delaware House has seen a steady rotation of new members into the 41-member chamber the last few election cycles. Losing members with institutional knowledge always hurts, but the energy many newcomers bring has helped us tremendously. Several of our newer members bring different perspectives to the chamber—small-business owners, health-care professionals, educators, law enforcement officers and trade workers.

SL: How do you work with the other party?
Busch: I have respect for the minority leader and the job that he has to do. We meet weekly during the legislative session. I think we have had the benefit of not taking political arguments too personally, so we are able to work together on a number of policy areas without the same level of acrimony seen at the national level. Often, through debate with our own party and the other party, legislation is strengthened, for a better end product.

SL: In your spare time, what do you read, what are your hobbies?
Busch: I enjoy coaching my daughters’ recreational basketball and lacrosse teams. I’m able to unplug from political life and interact with moms and dads in the community who also enjoy time with their kids. I also read biographies, primarily about American history and sports history. Both can be very informative to my role as speaker. I am currently reading “Washington: A Life,” by Ron Chernow.

SL: What advice would you give to the next leader?
Busch: We very often find common ground on legislation. We were all elected to serve the people of our communities and of our state, and I believe it is a responsibility we all take seriously.

REPRESENTATIVE MICHAEL BUSCH
Maryland Speaker of the House

State Legislatures: In working on the budget, what was your top priority?
Busch: In Maryland, we have had to cut services and raise taxes to balance the budget and protect education funding—our top priority. This year, we focused on addressing the state’s structural deficit, ensuring the long-term viability of the retiree benefit system and funding education programs to ensure a strong future for the state’s knowledge-based economy. As a result of our work, the state’s structural deficit has been reduced by more than 42 percent. Maryland now has over $730 million in cash reserves, including the rainy day fund. We eliminated over $6.5 billion in long-term retiree health care liability over the next 10 years and fully funded education programs.

SL: Has the influx of new members to your chamber made your job easier or more difficult?
Busch: In 2010, Democrats lost six delegates. While this may not seem like a significant shift, the House Democratic Caucus is made up of a wide spectrum of views, from very conservative to very progressive. This made some social issues more difficult to pass out of the House during the first year of this four-year term.

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“We very often find common ground on legislation. We were all elected to serve the people of our communities and of our state, and I believe it is a responsibility we all take seriously.”
Four Leaders on Harleys, Humor and Hobbies

“The collective talent in the new class actually made the transition easier and the learning curve flatter than expected, much to my delight. They are an impressive class and great to work with.”

Iowa Senate President Jack Kibbie: I tried to make the case for our community colleges. While not entirely successful, I kept it as my No. 1 priority and was able to fend off deeper cuts than were originally proposed.

SL: Have new members made your job easier or more difficult?
Kibbie: In the last election, six new Republicans were elected to the Iowa Senate. Only one had previous legislative experience, and none of the others had served in any elective office before. Like many new legislators across the country, they rode the anti-incumbency, anti-government wave into office. They all carried a strong ideology focused on cutting spending and were averse to compromise, making it very difficult to find common ground.

SL: Were you surprised by the challenges you faced this year?
Kibbie: I think all of us who are Democrats could see where most of the energy was in the 2010 election cycle. We were prepared for losses, but I am not sure we realized just how well our opponents would turn out voters and how depressed our own turnout would be. In session, once we saw the new members in action, we realized this new group was very different from previous members. We were surprised at how deep their feelings were against government and compromise.

SL: How do you facilitate working with the other party?
Kibbie: As president of the Senate, I am elected by my Democratic colleagues. However, as the presiding officer, I firmly believe I must be fair and impartial in my rulings. One of the best ways to have chaos in a chamber is to not give the minority an opportunity to be part of the process. I also let all members, particularly the minority, know that my office is always open to them. They are welcome to come to me with any concerns about the administration of the Senate. I would like to think that our minority members would say I have done my best to give them a fair shake. One thing you can’t buy is integrity. That has to be earned, and I have done my best not to abuse the privilege of my office.

SL: What are you doing to promote a respect for and participation in our democracy?
Kibbie: I am always amazed at the public’s lack of knowledge of the legislative process. I view part of my job to be helping them understand how the government works and what they can do to make their voices and opinions heard. I participate in a lot of town meetings and respond to a large number of constituent concerns. I not only try to explain the system, but also encourage voters and young people approaching voting age to consider the importance of not getting locked in to one point of view. They need many sources of opinion to make an informed choice on what is the best policy to solve the hard problems state governments face. The enemy of a vibrant democracy is rigid ideology. I think elected officials bear an important responsibility to educate and inform voters that finding answers is not as simple as they may think.

Kansas Speaker Mike O’Neal: Facing a $500 million-plus deficit going into the 2011 session, my main goal was to bring spending in line with revenues and end the session with a healthy balance. Another top priority was to end the cycle of politically motivated spending amendments that have bogged down the budget process in the past. I was successful in getting a “pay-go” House rule passed that kept the budget debate focused on our true budget priorities and the bottom line.

SL: What will be the greatest challenge facing you in 2012?
O’Neal: Continuing to bring spending in line with revenues, particularly as federal funding diminishes. Turning the recession lemon into tax reform and job growth lemonade. And, finally, coming to grips with our unfunded public retirement system liability.

SL: Have new members in your chamber made your job easier or more difficult?
O’Neal: The 2010 elections brought 33 new members to my Republican caucus alone and, while this would normally be a very challenging scenario, the collective talent in the new class actually made the transition easier and the learning curve flatter than expected, much to my delight. They are an impressive class and great to work with.

SL: What’s the greatest asset you bring to the job?
O’Neal: Communication and negotiation skills developed during 30-plus years of practicing law, but probably more important, a sense of humor, optimism and passion for Kansas that are, hopefully, infectious.

SL: What would you be doing if you weren’t in the Legislature?
O’Neal: Getting two new Lab puppies, visiting our kids, exploring the lakes and back roads of Kansas on my Harley with my wife, and working on public policy initiatives for Kansas in some capacity.
The casual and lightning-fast nature of social media makes it an easy and inexpensive tool for public officials. Despite the many advantages these new technologies bring, there also are thorny ethical considerations, such as blurring the lines between personal and public information and privacy. How can new communications technologies be used effectively but ethically to engage citizens? Consider these two hypothetical cases, based on real experiences.

**Facebook**

When Shirley ran for the legislature, her campaign advisers set up a website, Facebook and Twitter accounts, and a blog. The cost of creating and maintaining her web presence was borne by her campaign. The content was devoted to policy statements, endorsements, media clips, a calendar of personal appearances, and photos and videos with the public.

Her greatest exposure came through Facebook. By the end of the campaign, her Facebook page had thousands of “friends” and hundreds of postings about her campaign.

Shirley shut down the campaign website but decided to keep the popular Facebook account, and began to post legislative messages and constituent polls. The task of maintaining her Facebook page was assigned to a staff member, who worked on it during regular office hours. A “push” was organized to add key lobbyists, government contractors and others as “friends.”

Several ethical issues arose after the election.

◆ Can a government official use Facebook as a way to discuss public issues?
◆ If so, can an official limit access to such a Facebook page in any way?
◆ Do all members of the public have a right to see what is on a publicly maintained Facebook page? What about a completely personal one?
◆ Can an officeholder “unfriend” certain individuals or remove selected posts on a publicly maintained Facebook page?
◆ If a Facebook page is completely personal, must the official confine all comments to personal rather than public matters?

**Blogs**

Lance was an assemblyman representing a high-technology district and was an early adopter of social media. His primary means of communicating with his constituents was his blog. A Twitter account was mostly for fun, and he used it to chat about his family and to share banter with many of his friends and followers.

As chair of the Assembly Budget Committee, Lance found himself in the middle of a fierce lobbying effort from employee unions, social service agencies, and the state school system, among others. In his daily blog posts, he tried to explain the complexity of the issues, discuss the difficult choices facing the state, and encourage input from the public through the comment feature of the blog.

His attempts at civil discourse were shattered when an increasing number of anonymous comments were very critical of his position on the issues, and often misquoted or misrepresented his proposals or voting record. At one point, the negative comments outweighed the positive two to one—and several were nothing more than personal attacks.

The social media experts he consulted suggested a system requiring stricter guidelines—registration requiring a valid name and email address—but he was concerned the extra steps would dissuade the legitimate dialogue he was seeking. A good friend offered to monitor the blog comments and remove all that disagreed with the assemblyman’s positions.

This experience, too, raised ethical issues.

◆ What ethical guidelines should Lance use in maintaining his blog?
◆ Is the use of social media itself an obstacle for constituents who do not have access to technology?
◆ Does the anonymity of the comments and tone suggest he should eliminate the blog, or are these posts part of the “rough-and-tumble” world of a legislator?
◆ What problems might be solved if his friend monitored the
blog and made it more positive? What problems might be created?

Does the public have a right to see all blog and Twitter postings by a legislator?

**General Principles**

Access is a fundamental ethical principle in government. New media can improve access to and from citizens by expanding the number and variety of channels of communication, but these same media can simultaneously restrict access or favor certain constituencies. The medium will change over time, so we should develop principles that can guide us on whatever platform develops in the future. Open access is an ethical starting point.

The Facebook page in the first example opens the potential for restricting or favoring access for particular groups. If the site is restricted to “friends” only, then it could run afoul of principles of open government. This is particularly of concern if the site is maintained with public funds. It can also be improper if it is promoted only to a narrow group of interests before the legislature.

Access to a purely personal Facebook page can probably be restricted to a few real friends, but the officeholder needs to be very cautious that the “friends” and the talk on that page are indeed personal and not political.

A second critical ethical principle is the public’s right to know. An officeholder’s blog or Facebook site are particularly vulnerable to the extreme rhetoric often seen at public meetings and rallies, only with greater anonymity and distance.

Any officeholder would be wise to establish both a registration process to tone down the most extreme rhetoric and a set of clear guidelines about the kind of inflammatory language that is banned from the site. The credibility of the site as a vehicle for public dialogue would suffer if all critical comments about the office holder were excised. The public’s right to know probably requires that a determined reporter or citizen be permitted to view even the most vile, profane and racist comments if they wish to do so—perhaps by visiting the legislator’s office in person.

A third principle is the obligation to choose one’s own words prudently. The immediate nature of social media places a special obligation on the officeholder to use them with caution. Great damage can be done to others, often inadvertently, by a comment posted with little thought and based on early and possibly erroneous information.

Old-fashioned vetting and review by a legislator’s staff may be missing if the officeholder tweets or blogs directly. And an officeholder’s “tweet” is much more likely to be passed on or quoted in other media.
Staff:
Ethics in the Virtual World

BY NATAILIE O’DONNELL WOOD

Be it via Facebook profiles, Twitter accounts, blogs or even texting, legislative staff seem to agree that social media, while important outreach and networking tools, can be confusing and tough to monitor, and can raise more questions than answers.

Staff members discussed the ethical challenges they’ve encountered as state legislatures move rapidly into the area of social media with NCSL’s Center for Ethics in Government at the Legislative Summit in August. A few common concerns and questions emerged from the discussion.

Public vs. Private

The first concern is the difficulty in discerning what kinds of communication are “public” when social media are thrown into the mix. If a caucus staffer tweets from the chamber floor about a partisan strategy prior to a vote, should that information become part of the public record? What if legislators are relaying tweets, believing they are private?

When statements are made using social media they cannot be retracted. They are, essentially, public. Facebook status updates or blog postings can be deleted, but once you say it, you can’t take it back.

It also can be difficult to know whether someone is using social media for a personal or public purpose. If a legislative employee uses a Facebook page mainly for personal reasons, yet lists the legislature as his employer, should that affect how people look at statements he makes on the page? Should the “friends” he has be scrutinized? Or should he steer clear of any reference to the legislature? If a legislature tries to limit what an employee says on Facebook, might that be a violation of free speech?

From an ethical standpoint, perhaps responsibility for things said on these media belongs with the person saying them. “A good purpose does not make it a legislative purpose,” said one participant. And, even though it’s legal, it may not be ethical or, at the very least, prudent.

Lack of Control

A second concern voiced by staff centered on the ability, or inability, of the legislature to control the use of social media.

Natalie O’Donnell Wood is a program principal in NCSL’s Center for Ethics in Government.
There was a shared feeling that the institution can control only certain aspects of virtual conversations. If a legislator or staff member is using a state-owned laptop or smartphone, should the legislature have oversight on how they are used? Or should personal communications on state-owned equipment remain private, with legislators and staff being “custodians of their own records,” so to speak.

Rules and guidelines can help, staff said, but legislatures should craft policies only on what they can control—official state legislative websites or caucus blogs, for example. Action beyond this scope could lead to trouble.

Although social media can be valuable tools for outreach and communication for public officials, some staffers believe social media don’t belong under a legislature’s purview since they don’t “belong” to the legislature.

Too Fast?

A third difficulty expressed was the tension between social media’s fast-paced nature and the deliberation that public speaking and constituent communication, even virtually, requires.

Tweeting in real time can give an issue an air of authenticity, when, in fact, the tweet was just an interpretation of the issue. Problems can occur in situations where reporters use tweets as facts.

In the interest of immediacy, common sense is often overlooked when using social media. Staffers agreed there is a general lack of thought as to how these sites affect the way people interact. People can be anonymous or even falsely represent themselves. You can never know for sure who you are actually communicating with. And there’s no way to know who will eventually receive and read your messages. Ethically speaking, staff participants in the discussion agreed with one staffer’s closing thought: What matters is not the medium, but the content. “Take the technology out of it—it is behavior and language that matter.”

When it comes to making ethical decisions in the context of social media, those serving and working in state legislatures still should conduct themselves in ways that maintain the public’s confidence, uphold the institution, and demonstrate sound judgment.

In less than 140 characters, this may be a message worth tweeting.

Learn more about ethics and the legislature at NCSL’s Center for Ethics in Government at www.ncsl.org/magazine.

Optometry

Doctors on the Frontline of Eye and Vision Care

Doctors of optometry are the nation’s largest eye care profession, serving patients in nearly 6,500 communities across the country. In more than 3,500 of these communities, they are the only eye doctors. As primary eye care providers, optometrists perform nearly 70 percent of all first-time eye examinations for Americans.

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Learn more about ethics and the legislature at NCSL’s Center for Ethics in Government at www.ncsl.org/magazine.

American Optometric Association

The American Optometric Association

1505 Prince St. Suite 300, Alexandria, VA 22314
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The ideas are sometimes quirky, sometimes innovative, and they’re coming from every direction.

Confronting the most stubbornly enduring national economic downturn since the Great Depression, state legislators have cutting on their minds.

“They’re doing budget cutting by bits and pieces,” says Alan Rosenthal, a professor of public policy and political science at Rutgers University’s Eagleton Institute of Politics.

Asked if the many varied budget-reducing and efficiency-promoting ideas signal either legislative innovation or desperation, Rosenthal is quick to reply: “Desperation.”

“But it’s a desperation formed by two perfect storms,” he says. “One is the recession, which has had enormous consequences for the federal government and most of the states. The other is the instant gratification binge we’ve been on of spending money and cutting taxes.”

Symbolic of the new way of thinking, lawmakers in Pennsylvania, Mississippi, Vermont and Virginia have revisited their states’ long-standing and cherished alcohol control policies. While they haven’t changed anything yet, they have at least raised the question of whether their states can afford to be in the beer, wine and distilled spirits business, while at the same time shrugging off increased state revenue through privatization in the process.

“The demand for cost-savings and budget-balancing measures, for new and effective ways of delivering state services, tends to peak, grow and mushroom during times of fiscal stress on the state budgets,” says Arturo Pérez, fiscal affairs director at the National Conference of State Legislatures.

“It comes down to the basic element of trying to do the same or even more with less,” Pérez says. “And more means trying to deliver services to more Medicaid recipients as a result of high unemployment.”

Legislators also have been wondering about decades-old expensive programs that were not questioned in the past, such as maintaining highway rest stops. In at least one state, Georgia, where the annual bill for such responsibilities has come to more than $4 million, the legislature approved a measure calling for the privatization—or retail development—of those same spaces.

Lawmakers in Arizona even wondered about the expense of operating their big, marble state office buildings, signing off on selling two legislative structures, a slender tower and even the state Supreme Court building last year in two separate sales that netted the state more than $1 billion.

“In the kind of economy we’ve been dealing with for the last three years,” says Rosenthal, “everything, every program, every way of doing business, is being rethought.”

And then there are the ideas to save money by altering the actual structure of the legislatures themselves.

In Connecticut, Representative Linda Schofield has noted her state currently has more legislators than California, even though the Golden State has eight times more people. She proposed cutting the size of the state General Assembly in half, saying a smaller membership could save the state upward of $28 million.

Maine Representative Linda Valentino took it a step further. She’d like to do away with the Maine House altogether, contending such a move would mean up to $11 million less in costs for her state every two years.

Welcome to the era of attacking budget deficits and making government more efficient through creative thinking.

“Crisis brings reform,” says Bob Stern, the president of the Center for Governmental Studies in Los Angeles. “When times are good there is no incentive to reform things because reform also means pain, reform imposes on people’s turf and reform changes things. People down deep don’t really want change.”
But in bad times, he says, “reform suddenly seems like a good idea, primarily because the old way of doing things obviously isn’t working.”

Even when reform moves fall short, or cut expenses and increase efficiencies only at the margins, they are still symbolically potent.

Stern points to policies spearheaded this year by California Governor Jerry Brown to reduce the state’s car fleet, limit the handing out of state employee cell phones and restrict state employee travel. “In terms of money, these things haven’t really amounted to that much,” he says, “but in terms of the symbolism, they mean a lot.

“In a down economy where people have been feeling bad, making people feel better about their government is important.”

Rosenthal agrees: “There is nothing wrong with the legislatures trying these different things.”

Likening such moves to what happens when a patient sees a therapist, Rosenthal adds: “The first things you have to do is acknowledge the issues you are facing, and then you have to try to figure out how you are going to deal with them.”

The fact that so many legislators today are thinking about deficits and better service, says Rosenthal, means one thing for sure: “At the very least, we are confronting our issues.”

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Cutting Close to Home

When Maine Representative Linda Valentino thinks about her fellow legislators, she imagines a day when nearly a fifth of them will be gone.

“In a time when we’ve been cutting welfare, special education, disability and senior programs, it’s unconscionable for us to spend this kind of money,” says Valentino of the at least $11 million that Maine pays every two years for having a 35-member Senate and 151-member House of Representatives.

Valentino has proposed fusing the two Maine chambers into a unicameral Legislature and eliminating 35 seats in the process.

“We would go with 151 in the unicameral,” says Valentino, “which would not reduce the ratio of representation per population.”

Valentino’s bill was not the only one calling for reducing the Maine Legislature, but she may have come to the issue the earliest. Her idea passed in the House during the last legislative session, before dying in the Maine Senate.

This spring, Valentino’s bill received attention from the media as well as constituent support, encouraging her to believe that she might ultimately be able to win the required supermajority vote in both chambers before her proposal would be listed on a statewide ballot as a constitutional amendment.

Noting Maine currently has the 10th largest lawmakers in the country even though the state is only 41st in population, Valentino asks: “Can we really continue to afford the luxury of having two people to represent every one person in Maine—especially when you factor in the additional cost of staff?”

Ultimately, Valentino’s proposal, as well as two other bills calling for a smaller Legislature, died in the joint State and Local Government Committee.

Valentino earlier predicted the going might prove rough for her legislation, before adding: “In a time of economic difficulty, we should be willing to try new things.”
Looking a Gift Horse in the Mouth

As soon as North Carolina Representative Ric Killian heard about his state’s plans to accept money from the feds for a high-speed rail service, he saw trouble. “Sure, everyone says they are for this sort of thing,” says Killian, who is chairman of the Appropriations Subcommittee on Transportation. “But they rarely think about the costs involved to the state.”

“A lot of people think this kind of federal money is just free. But there is no free lunch,” he says. “My concern has been about the long-term fiscal liability that our taxpayers incur whenever they agree to accept federal money.”

This spring, Killian introduced legislation to prohibit North Carolina from accepting all high-speed rail money coming out of Washington unless it was first specifically approved by the legislature. Killian’s legislation failed, but another bill passed requiring the state’s transportation department to consult with a legislative commission when the state portion of any federal rail grant exceeds $3 million.

“Legislators here want to be involved in the process,” says Killian. “They want to have the ability to weigh in on the part of their constituents and make certain that they are not obligating those constituents indefinitely for something that might not be in their best interest.”

The $460 million in federal rail funds targeted for North Carolina is designed to, among other things, build 12 new bridges and get rid of dozens of highway-rail crossings, thereby allowing for the high-speed trains to go as fast as 90 miles per hour.

Looking back on his legislation, Killian says he realizes he was flying in the face of popular sentiment. “There are those out there who simply believe you have to have alternative sources of transportation or alternative modes of transportation, regardless of the cost.”

Noting that governors of three other states recently declined similar high-speed rail federal funding because they were also wary of future operating costs, Killian adds: “This is the new normal—we have to focus on core services, provide them to the best of our ability, and move on from there.”

Sometimes Less Is Less

It undoubtedly seemed like a good idea at the time.

In 2008, in response to a sharp spike in gas prices, the state government of Utah—under the direction of then-Governor Jon Huntsman Jr.—launched a new policy for its employees: Fridays would be off days in return for 10-hour shifts, four days a week.

The concept was simple: By keeping state offices closed one more day per week, Utah could save $3 million in energy costs, not to mention the not entirely quantifiable savings in gasoline for state workers commuting to work on that extra day.

But a 2010 state audit of the program indicated the energy to be saved from a four-day week had been greatly overestimated. According to the report, the program cut the state’s energy bill by only about $502,000 in its first 12 months.

Even more, closing state offices on that one day proved to be an inconvenience for some state agencies. “The courts remained open,” says Utah Representative Michael Noel. “But when they needed to interact with, say, child protective services, they ran into all kinds of problems because that agency was closed.”

Noel also argued that shutting down state offices on Friday adversely affected low-income people applying for food stamps and businesses seeking permits. “It really became a matter of government efficiency—and how having this one day off negatively affected that.”

This winter, Noel introduced a bill that would move Utah away from the four-week schedule by requiring that all state agencies must be open at least five days per week.

“There turned out to be so many problems with this program,” says Noel, who also wondered whether it was even legal for the executive branch to alter a five-day work week as so described in the Utah constitution.

The Legislature approved Noel’s bill this spring, and then, after it was vetoed by current Utah governor Gary Herbert, overrode the veto.

“It’s great to have a program up and running that is designed to save the taxpayers money,” Noel reflects. “But when we do that, we need to make sure there really is a savings and that you are not unnecessarily inconveniencing people.”

Printers to Purchasing to Privatization

Most legislatures have changed some aspect of how state government works to try to save money. Some efforts are truly original, but not necessarily complicated. Consider these.

◆ The Ohio Department of Administrative Services Office of Procurement Services transformed agency printing services in the spring of 2010. The state previously had used several single-function devices—printers, scanners and fax machines—but thanks to evolving technology and a suggestion from a staff member, the state now uses machines that can perform all those services. Sounds pretty simple, but the change is expected to produce about $40,000 in annual savings by reducing maintenance charges, electricity and toner. Making similar changes in government offices throughout the state could save agencies about $5 million a year, according to the Ohio Office of Budget and Management.

◆ Minnesota and Wisconsin have a collaboration effort, dubbed “Minnesconsin,” that includes a cooperative purchasing program. It allows most Wisconsin state and local government agencies to purchase goods, from copiers to road salt, and services using one of the 900 contracts already established by Minnesota. For contracts greater than $25,000, a Minnesota city must first consider offers from the cooperative venture
Too Much of a Good Thing

Illinois Senator Donne Trotter says allowing those over age 65 to use Chicago’s bus lines for free seemed like a good way “to give older people who were locked in the inner city opportunities to get around, go downtown, and spend money that would go into the economy.”

But then the Regional Transportation Authority said it was losing up to $38 million on the program (during a time of cutbacks) and for one reason: Although the program was targeted for those on fixed incomes, seniors of all income levels were using the service.

“We found out that a lot of people who didn’t need the subsidy were the biggest users of it,” says Trotter. “There were those who were taking trains from our richest suburbs—like Winnetka, the gold coast—downtown to the opera.” Because the RTA is subsidized by the state, that meant lost revenue to Illinois.

“We weren’t talking about the kind of money that would balance our budget,” says Trotter. “But in this economy, every little bit makes a difference.”

In response, lawmakers in Illinois this year passed a bill specifically allowing only low-income seniors, age 65 or older, to ride the buses for free, with income caps per individual at $27,600. The legislation further stipulated that eligibility requirements for who can ride the buses for free would be determined by the Circuit Break program, a state effort providing low-income seniors with help paying for property taxes and prescription drugs.

Even with the new requirements, the free senior bus ride program is expected to remain highly popular. Last year, more than 431,000 people took advantage of it, and Trotter predicts the numbers most likely won’t decrease significantly in the coming year.

“It’s a good program,” Trotter says. “We just felt that it needed to be ratcheted back.”

program first, before purchasing through another source.

◆ Virginia recently switched to a Web-based purchasing system that allows state agencies, colleges, universities and local government agencies to announce bids, receive quotes, and place orders for goods and services. Vendors can submit bids with any state agency once registered on the site, and they also can receive and respond to bid solicitations electronically. At least 33 states now have some form of e-procurement. It saves state or local agencies money by eliminating the need for more expensive and slower paper-based ordering systems.

◆ At least seven states—Arizona, Iowa, Kansas, New York, North Carolina, South Carolina and Wisconsin—offer programs that encourage state employees to submit ideas for reducing costs by improving efficiency. A Wisconsin employee suggested using older CPR mannequins that cost almost nothing for suicide prevention courses rather than the new $1,000 mannequins manufactured for this purpose. Employees can earn as much as $1,000 in Arizona and $10,000 in Iowa for coming up with a winning idea. Other states give winning employees a certificate of recognition or an award such as a coffee mug, sweatshirt or umbrella.

◆ As part of a one-time program, Montanans suggested more than 1,000 money-saving ideas to Governor Brian Schweitzer. The most frequent suggestions included cutting printing costs by making more information available online, cutting state travel costs and holding more teleconferences.

◆ Privatization is the process of shifting some or all aspects of service delivery from state government to private-sector providers. Advocates see it as a strategy to lower the costs of government and get more out of each tax dollar. Under the provisions of a new Illinois law passed this year, for example, the Illinois State Toll Highway Authority may enter into public-private partnership agreements to develop, finance and operate new toll highways.

Most of the “low-hanging fruit” and innovative ideas to redesign and improve government have been tried and tested. State lawmakers now face the task of finding unique and effective solutions to remedy the current state of economic distress.

Over the next several years, state legislators will be grappling with difficult policy choices concerning the role of government and how to most effectively redesign it. Strategies to cut costs mentioned here are only a few examples that not only save money but make government more innovative and responsive to citizens and legislators.

—Bob Boerner and Jonathan Griffin, NCSL
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Grover Norquist is president of Americans for Tax Reform, an advocacy group that supports making taxes “simpler, flatter, more visible, and lower than they are today.” He has been described as one of the most powerful conservative voices in Washington, D.C., and was considered highly influential in the debate over raising the debt ceiling that played out in August. His Taxpayer Protection Pledge to oppose any and all tax increases has been signed by 1,263 state legislators, 236 members of the U.S. House and 41 U.S. senators.

Norquist spoke with State Legislatures about state budgets, taxes and public education.

State Legislatures: Do you think there is a situation where states would need more revenue?

Grover Norquist: Need, no. Want, yes. And by states, we mean politicians who are in power in a particular state. The spending interests always want more money.

SL: Does keeping up with education funding justify a tax increase?

Norquist: The goal is not to see how much money you can spend on something. The goal is to actually get education. The one thing we know from the last 30 years is that spending more money and calling it education, when you are just keeping the teachers’ union happy, obviously has nothing to do with education. I live in D.C. We spend a lot of money, and they write education over the top of the check, but it doesn’t have anything to do with anyone learning how to read. People who want to measure how much you are spending—rather than what you are doing—have created the mess we are in. Throwing more money at failed systems doesn’t make any sense. There isn’t a state in this nation that isn’t spending a lot more money compared to what it is getting and compared to what its taxpayers want. Certainly, we should have full school choice. Parents should have complete control of where their kids go to school. Public, private, Jewish day schools, whatever parents want. The state could give them some sort of stipend and let people make their own decisions. There is no reason not to. We don’t have Soviet collective farming, but we do have the mentality of collective farming in state-run education, and it doesn’t work much better.

SL: How successful do you think your organization has been in terms of preventing tax increases?

Norquist: We’ve had a great deal of success, but not as much as we’d like. Some states, such as Illinois, had very few pledge takers. They just raised the income tax. On the other hand, this year we stopped a $12 billion tax increase that Governor [Jerry] Brown was lusting after in California. The governors of Pennsylvania, Ohio, Wisconsin, Michigan, New Jersey, Texas, Florida, South Carolina, Georgia, Oklahoma are people who’ve committed never to raise taxes and who are, as a result, reforming government.

SL: We hear lawmakers say again and again that they’ve cut the fat, they’ve cut into the bone, they’ve found all the efficiencies they can.

Norquist: Anyone who says that is delusional or
lying to you. That is obscene that any elected official in any state would tell you they are spending all the money efficiently. They wouldn’t pass the laugh test. State and local government gets less effective and less productive each year. That is not very reasonable.

SL: Are you concerned federal spending cuts will shift costs and responsibilities to states?

Norquist: Certainly the Ryan plan gives states more resources and more control. Competent governors want that control and want the resources. Incompetent governors want the federal government to run their lives for them. The Medicaid block grant and that effort, for example, is tremendous. That is a win/win. It costs less per total taxpayers, and it gives the states the capacity to make those decisions. Everything that is means-tested we should do that way. Just like welfare reform.

SL: What would the ideal state government look like to you?

Norquist: Anyone with get up and go is going to get up and go to states with jobs, opportunities, right-to-work laws and pro-growth policies. And retirees with assets will do the same thing. The ideal state government would have lower taxes, no income tax, and provide those limited services only the state can provide and other people can’t.

Editor’s note: This interview is one in a series of conversations with opinion leaders. It has been edited for length and clarity. The opinions expressed are those of the interviewee and not of NCSL. You can read previous interviews at www.ncsl.org/magazine with:

U.S. House Speaker John Boehner
Former Florida Governor Jeb Bush
Planned Parenthood President Cecile Richards

Next month: Richard Ravitch, former lieutenant governor of New York, talks about the new Task Force on the State Budget Crisis that he is co-chairing with Paul Volcker, former chairman of the Federal Reserve.

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“We’ve been blessedly boring all session.”
—Oregon Representative Vicki Berger, at the end of the session, to the Oregonian.

“We were just looking at virtually every option and trying to decide what was absolutely urgent now. I think 99 percent of it was completely economic.”
—Colorado Senator Kent Lambert, to the Associated Press, about the state’s decision to save $186,500 a year by no longer covering circumcisions under Medicaid.

“Government isn’t shoving this bad food down our throats. It’s a lack of self-discipline many times, and even if we, say, limited a hamburger to being no more than 200 calories, it doesn’t mean I won’t choose to eat four of them.”
—Alabama Representative Ken Johnson, to the New York Times, about efforts to lower expanding obesity rates with new regulations on restaurants.

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