



# Colorado Radiological Society 2019 Legislative Session Wrap-Up

May 6, 2019

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Coming out of the 2018 election with control of the governor's office and both chambers of the legislature, Democrats started the session with an aggressive list of policy proposals on health care, the environment, firearms safety, election reform, middle class economic security and more.

The majority party achieved significant success in all those areas, although several key bills were amended to meet opponents' concerns or to make them more affordable. The highest profile measures were oil and gas regulation (SB 19-181), the "red flag" gun bill (HB 19-1177), the national popular vote bill (SB 19-042) and the climate action plan (HB 19-1261).

Democrats weren't unified all the time, although they weren't as fractious as some predicted before the session kicked off. Some significant failures were due to Democratic divisions, including the withdrawn measure to abolish the death penalty (SB 19-182) and defeat of the nicotine tax plan pushed by Gov. Jared Polis late in the session (HB 19-1333). And faced with heavy criticism before a bill even was introduced, the idea of allowing supervised drug injections sites was dropped by Democrats.

Republican comments about overbearing Democrats and the media narrative about partisan conflict ignore very real and significant bipartisan accomplishments in several areas, including school finance, other important education issues like full-day kindergarten, reform of the criminal justice system and transportation funding.

## **Colorado Radiological Society Priority Issues**

Colorado Radiological Society was involved at the Capitol this year in a very big way! Beginning with a legislative reception at Cooper Lounge, many of our members were at the Capitol to participate in discussions and hearings on quite a few issues.

**Medicaid Radiology** codes were reviewed this past summer (2018) by the Medicaid Provider Rate Review Committee and there was no recommendation in the report for any increase or decrease in the new budget. However, based on lobbying efforts from provider community, radiology will still receive a 1% across the board provider increase for all codes effective July 1, 2019.

**Genetic Counselor Licensure (SB 133) -win** This year CRS again offered support and testimony to pass SB19-133 that would license these professionals that work with radiologists across the state. Dr. Taj joined the other physicians testifying. The bill resonated well this year and passed with bi-partisan support.

**Breast Diagnostics Imaging (HB 1301) – win** CRS provided clinical guidance, research and lobbying efforts to support and pass legislation that would help make diagnostic imaging a first line of coverage for women needing screening over and above mammography imaging. This could include 3-D imaging with tomosyntheses or what physician feels is medically necessary. This does not include any invasive diagnostic procedures. Our partners were Susan B. Komen organization.

**Reinsurance (HB 19-1168) — win.** The reinsurance bill was one of several bills presented this year ostensibly aimed at reducing the cost of healthcare. It would have introduced total cost caps for services. This was a Governor Polis agenda legislative bill to try and solve a rural health care problem and address geographic insurance rating. The bill was introduced with funding for the supplemental premiums on the back of physicians and hospitals. The policy idea manifested from the executive branch, however rural counties and legislators were trying to address the issues in their part of the state. The legislation was heavily lobbied for changes and amended to continue to study this issue and passed with bipartisan support. There is no financial impact to the physician community.

**Peer Review Protection (SB19-234)— win.** Trial attorneys fought hard to remove protection from peer review and make it discoverable in civil suits, which would have been devastating for patient safety. The house of medicine strongly opposed, and we participated in extensive lobbying. We were able to block this move and peer review retained its privileged status.

**Out of Network — significantly mitigated loss. (HB 19-1174 and SB19-134)** The Out of Network bill was a huge fight for anesthesia and other specialties. Two bills were presented, both of which we were continually engaged in attempting to shape and influence. From the outset of this session, we knew that an out of network bill would overwhelmingly pass, due to very strong public support and a large push from the governor's office. Unfortunately, the bill introduced in the House, which was far less favorable to us, won the day.

Despite this disappointing outcome, through our exhaustive efforts and the continued and dedicated efforts of Colorado Radiological Society. Shout out to all the CRS physicians who attended the hearing and testified in committee. We were able to modify the final bill in several ways which we believe will significantly lessen the damage caused by the legislation passing. Most importantly, we were able to introduce a relatively strong arbitration component to the bill, which was our number one priority in addressing this, as similar provisions in other states have been successful in lessening the financial impact of these bills. We also were able to raise the benchmarks for out of network payment, exclude government payers from the benchmarks, and include language excluding patients who deliberately choose to go out of network.

This bill remains unfavorable to us, but it was devastating as introduced. Colorado radiologists led the charge on the important alterations to this bill, and we recruited many allies from other specialties to continue this fight in the future. Most disappointing were past allies to CRS who agreed to vote against all physicians. Here are the main points we will need to continue to the legislative fight to correct or add to statute.

- Strong Network Adequacy Statute
- Bundling of claims that are submitted in Arbitration
- Medicare Rates greater than 300% to be used as a Benchmark
- Increase the Percentile Benchmark if possible
- Access to the Data for providers so there is knowledge about the arbitration.

Lastly, the **Medical Practice Act** passed (**SB 19-193**) without trial attorneys working to undermine the direction of the licensure requirements.

## **General Legislative Overview**

### **A look at the big issues**

Democrats offered batches of bills in several policy areas, ranging from big omnibus measures to narrow bills targeted on smaller issues. These issue summaries highlight the most significant bills in each area.

### Economic security

Democrats have long pushed for measures to improve middle class economic security, and this session saw bills on tenants' rights, affordable housing, wages and more.

The majority party had mixed success in this area, as exemplified by the family leave proposal, SB 19-188. As introduced, it would have created a massive state insurance program funded by employers and workers, a fund that participants could have tapped to support themselves while taking time off to care for new babies, aging relatives and the like. Concerns about how to pay for the plan and business worries led to the bill being reduced to a series of studies on the idea's feasibility.

There also will be a study done on the feasibility of creating a state-run retirement savings plan for private-sector workers (SB 19-173).

Compromise and downsizing also changed HB 19-1210, which would have allowed local governments to set their own minimum wages. The final version of the bill puts lots of guardrails around that and limits the number of local governments that can make the change.

A cherished Democratic goal was achieved with passage of SB 19-085, intended to reduce gender gaps and promote equal pay for equal work by creating new wage discrimination standards and transparency requirements.

### Education and youth

Work in this area was largely bipartisan, and Polis played a big role in pushing the session's biggest education accomplishment, state financial support of universal full-day kindergarten.

Lawmakers also moved to make the state literacy program for K-3 students more effective (SB 19-199), reduce the use of expulsion and suspension for early-grades students (HB 19-1194) and expand opportunities for students to take college classes while still in high school (SB 19-176).

Concerning school finance, a combination of bills reduced the size of the Budget Stabilization factor, provided extra funding for rural districts and special education and raised spending limits for the Building Excellent Schools Today construction program.

But an effort to reduce the weighting of student test results in educator evaluation failed to gain traction.

### Energy and environment

One of the most significant bills on 2019 was SB 19-181, which puts tighter controls on oil and gas development, requires state regulators to give greater priority to public health and safety and allows local governments some regulatory control over drilling and production.

There was tough opposition and supporters did make some amendments, but the measure still represents a major policy change.

Another major environmental measure was HB 19-1261, which lays out a multi-year regulatory plan for reducing greenhouse gas emissions. A bill that started out as a renewal of the Public Utilities Commission, SB 19-236, gained some amendments in the session's closing days that require additional emissions reductions by utilities. Democrats also pushed through measures intended to encourage greater use of electric vehicles.

### Health issues

Controlling health-care costs and expanding access to care are longstanding Democratic priorities. They made some progress on this issue, but this was another area where compromises had to be made

Major measures included requirements for greater financial transparency by hospitals (HB 19-1001), studying the possibility of the state offering a health insurance option to the public (HB 19-1004), creation of a state reinsurance program to help cover high-cost cases (HB 19-1168) and a proposal to study future health care financing options for the state (HB 19-1176).

On consumer issues, lawmakers passed measures to require greater disclosure about out-of-network charges (HB 19-1174), cap patient payments for insulin (HB 19-1216) and take the first steps toward allowing importation of Canadian prescription drugs into Colorado.

Two health-related issues provided some of the 2019 session's hottest controversies, sparking committee hearings that lasted into the early-morning hours and thousands of emails to members.

HB 19-1032 will set additional requirements for school districts that offer comprehensive sex education, including a ban on offering just abstinence-only programs and a new requirement for offering information about consent. Often lost in the controversy was the fact that districts aren't required to offer comprehensive sex ed.

HB 19-1312 didn't fare as well and was allowed to die on the last day of session in order to avoid delaying other bills. It would have required parents who want exemptions from school immunization requirements to file forms with state or local health offices rather than turn in notes at schools.

### Justice and public safety

The hottest issue in this area, of course, was HB 19-1170, the so-called red flag bill that will court orders to remove weapons from people deemed a threat to themselves. In the wake of legislative passage it's already facing one lawsuit.

Another high-profile proposal, SB 19-182 to repeal the death penalty, was withdrawn for lack of majority support.

Other criminal justice bills were less controversial and, in many instances, pushed by bipartisan sponsors. Those include elimination of cash bail for some lower-level charges (HB 19-1225), restoration of voting rights to parolees (HB 19-1266), the "ban the box" bill to prevent employers from asking about criminal records on initial job applications (HB 19-1025) and a measure to speed pre-trial release for some people accused of crimes (SB 19-191).

Lawmakers also took steps to fix the state's broken system of evaluating and restoring the mental competency of criminal defendants (SB 19-223) and agreed to pay the costs of a recent lawsuit settlement on that issue.

### Marijuana regulation

State laws regulating both medical and recreational marijuana were up for sunset review this year, and they were renewed.

Lawmakers also approved use of medical marijuana to treat autism (HB 19-1028) and for conditions that opioids could be prescribed (SB 19-013), loosened some current restrictions of ownership of marijuana companies (HB 19-1090), authorized marijuana "hospitality establishments" (HB 19-1230) and created a licensing system for marijuana delivery (HB 19-1234).

## State government

The most controversial issue here was Colorado's participation in the national popular vote movement, passed as SB 19-042. This may face legal challenges later.

Lawmakers also approved measures to expand access to voting and improve enforcement of campaign-finance laws (HB 19-1278 and SB 19-232), proposals that were unsuccessfully opposed by Republicans.

Legislators referred two financial decisions to voters in November. HB 19-1257 asks if voters want to remove the state's annual revenue and spending cap, which would end taxpayer refunds under the Taxpayer's Bill of Rights. And HB 19-1327 asks voters if they want to legalize sports betting, with revenues used to fund the state water plan.

But lawmakers killed a Polis-backed plan to raise taxes on tobacco and to tax e-cigarettes, with proceeds going to preschool and after-school programs (HB 19-1333).

Following last year's debates over workplace sexual harassment, lawmakers this year approved SB 19-244 and related resolutions to refine legislature procedures for handling complaints of harassment.

Reasonably strong state revenues allowed lawmakers to pass a state budget with full continuation funding for state programs and a 3 percent raise for state workers. An early Democratic-Republican transportation compromise generated an additional \$100 million transfer from the state's General Fund to the Department of Transportation, but lawmakers delayed a previously scheduled November ballot measure that would have asked voter approval for a transportation bonding plan.

## Substance abuse

A legislative study committee has been working for two years on proposals to combat the opioid epidemic and other substance abuse problems.

That panel has had some difficulty gaining attention – and funding – from the rest of the legislature.

But some progress was made during the 2019 session, including passage of measures to expand housing options for people with substance abuse disorders (HB 19-1009), create a database of treatment facilities (HB 19-1287), broaden a medication-assisted treatment pilot program (SB 19-001), require electronic prescribing of controlled drugs (SB 19-079), promote wider availability of drugs that reverse overdoses (SB 19-227) and take steps to better prevent substance abuse (SB 19-228).

## **The box scores**

There were 598 bills introduced this session. That was well under the 721 introduced in 2018, when divided partisan control and an election year generated lots of bills intended to make political statements but not necessarily pass.

A lower percentage of bills were killed this year, and long committee hearings (one lasted 14 hours) and prolonged floor debates contributed to what seemed like a more intense session than a year ago.

## **FY 19-20 Budget Overview**

### **State budget grows again, buoyed by continued strong revenues**

Colorado lawmakers enacted a 2019-20 state budget that maintains current state programs, avoids tuition increases for resident college students, gives state employees a 3 percent raise, targets additional funding to workers in some critical jobs and provides modest increases for companies and non-profits that provide medical and other care, corrections and other services to the state.

The main budget bill, SB 19-207, pays for state programs authorized by previously passed laws. But in addition to crafting that plan, traditionally called the long bill, the Joint Budget Committee also recommends new spending to the full legislature. Key new initiatives approved this year include:

**Full-day kindergarten** – Gov. Jared Polis made it clear from the start that state funding of universal full-day kindergarten was a top priority. After some pushing and shoving about how much should be spent, lawmakers allocated \$174 million for next year to replace the patchwork of local funds and parent tuition that now covers full-day kindergarten. Another \$25 million was taken from a school construction grant fund to help districts cover the costs of implementing expanded kindergarten.

**K-12 funding** – Legislators also found enough money to provide overall school funding of about \$7.39 billion in 2019-20. That includes a \$100 million reduction in the Budget Stabilization Factor, down to about \$572 million. HB 19-1262, the school finance act that's a companion to the main budget bill, also contains \$20 million for per-pupil distribution to rural school districts (the third year in row for this targeted support) and \$22 million for Tier B special education funding.

**Transportation transfers** – Democrats and Republicans this year revived their annual fight over how much money to shift from the state's main General Fund to the Department of Transportation. Republicans made an increase a priority for the session, and they launched their first slowdown over this issue in March. The two parties agreed to a transportation increase of \$100 million, and the JBC cobbled the money together from five different parts of the budget. That funding is on top of a scheduled \$200 million transfer set up by a previous legislative session.

**New spending** – After everything else, there was \$40 million left over for the new programs proposed by scores of bills, many of which were still in play during the session's final week. The dust won't clear on this spending until summer, after the JBC staff has totaled up the cost of the bills that survived. Some of the new spending will build the state budget's base and become a factor in building the 2020-21 budget.

All the spending decisions were made in the last six weeks of the session, after updated revenue forecasts were issued in late March. Those projections estimated there would be \$250 million less available for 2019-20 spending that was forecast in December.

That news trimmed lawmakers' spending hopes. But the blow was softened a bit in April, when new forecasts of local property tax revenues indicated that the state would have to spend about \$99 million less in basic school support that had been expected. That allowed for the spending on the Budget Stabilization Factor, rural schools and special education.

### **Voters will have say on other revenue issues**

Finally, lawmakers tossed two other spending decisions to voters next November, including:

**State revenue cap** – This ballot measure, proposed by HB 19-1257, would allow the state to retain and spend revenues collected in excess of the annual cap set by the Taxpayer's Bill of Rights. The impact on future budgets would be variable and uncertain because in many years revenues don't exceed the cap. Companion measure HB 19-1258 would divide any excess revenues among K-12, transportation and higher education.

**Sports gambling** – Surfacing late in the session was HB 19-1327, which would allow sports gambling at casinos in Blackhawk, Central City and Cripple Creek and through online services run by those casinos. If voters say yes, taxes on the gaming would generate about \$6.5 million in the first year, to be divided among state enforcement costs, programs to treat gambling addiction and for implementation of the state water plan.

## **Budget dynamics and snapshots**

In contrast to some other issues this session, JBC decision making on the long bill and budget set asides was relatively non-contentious. Part of that is attributable to having money to play with and having 4-2 Democratic control of the JBC. But another reason for relatively smooth JBC deliberations was the fact that four of the six members were brand new to the committee and, quite frankly, didn't yet know enough about the process to make waves.

Here are some key facts and figures about the 2019-20 main budget bill:

- Proposed budget package appropriations (all funds) - \$32.3 billion (4.8%)
- General Fund proposed appropriations - \$12.2 billion (7.2%)

### Corrections

\$993 million all funds (7%)

\$890 million General Fund (7.4%)

Increases of note include \$27.3 million for pay increases to retain staff, \$17.1 million for medical caseload changes, \$10.4 million for prison capacity and \$7.9 million for parole caseload.

### Health Care Policy and Financing

\$10.6 billion all funds (2.8%)

\$3.1 billion General Fund (6.2%)

Among the net increase of \$114.1 million in medical services premiums are a \$49.8 million increase for behavioral health and a \$44.9 million increase to Office of Community Living. The budget includes a \$46.2 million overall increase in community provider rates. Targeted rate increases cost \$15.5 million. And there are increases of \$13.9 million for eligibility and benefits changes, including reduction in the IDD wait list.

The budget also includes a \$7.6 million increase in spending authority for County Administration, plus \$3.1 million for three programs intended to improve county administration.

Also included is a net increase of \$2.3 million for the all-payer claims database, \$1.6 million total funds for the Colorado Health IT Roadmap and \$1.3 million for initiatives to improve governance of Office of Community Living.

### Higher Education

\$4.8 billion all funds (6.2%)

\$1.1 billion General Fund (10.5%)

The main elements of this budget are an increase of \$120.8 million for governing boards and an increase in cash funds spending authority of \$80.4 million, which has the effect of keeping undergraduate resident tuition rates flat.

### Human Services

\$2.3 billion all funds (6%)

\$1 billion General Fund (7.8%)

Items of note included \$15.6 million to increase direct-care salaries in for veterans living centers and DYS facilities, \$10.3 million to increase child welfare provider rates, a \$9.1 million community provider rate increase, \$6.2 million to increase county child welfare staffing, \$2 million for facility realignment in DYS, \$3.8 million in various community provider rate increases, and \$5.1 million for bed expansion at the Pueblo mental health institute.

### Public Health and Environment

\$599.1 million all funds (1.3%)

\$54.6 million General Fund (4.9%)

Increases were approved for various health divisions, none larger than \$1 million apiece.

### Public Safety

\$526.2million all funds (2.1%)

\$167.6 million General Fund (9.3%)

An increase of \$7.7 million is included for community corrections, down from the \$9.9 million proposed in the original bill.

## **Looking Ahead**

### **Interim Committees**

The General Assembly created eight (8) new committees will meet over the interim:

- Committee on PTSD Support for Peace Officers
- Committee on Zero Waste
- Committee on Tax Expenditure Evaluation
- Committee on Investor Owned Utilities Energy Choices
- Committee on Affordable Health Care
- Committee on Making Higher Education Attainable
- Committee on Prison Population Management
- Committee on Health Care Market Competition

Additionally, eight (8) standing interim committees were reapproved:

- Sales and Use Tax Simplification Task Force
- Early Childhood and School Readiness Commission
- Transportation Legislation Review Committee
- Opioid & Other Substance Use Disorders Study Committee
- Wildfire Matters Review Committee
- Committee on Water Resources
- Committee on Wildfire Matters
- Committee on School Finance

Each interim committee will meet 5-6 times over the coming months, and each has been authorized to propose 2-3 bills to the General Assembly for the 2020 session.