

2019 Legislation in Review

Analyzing Key Health Policy Trends

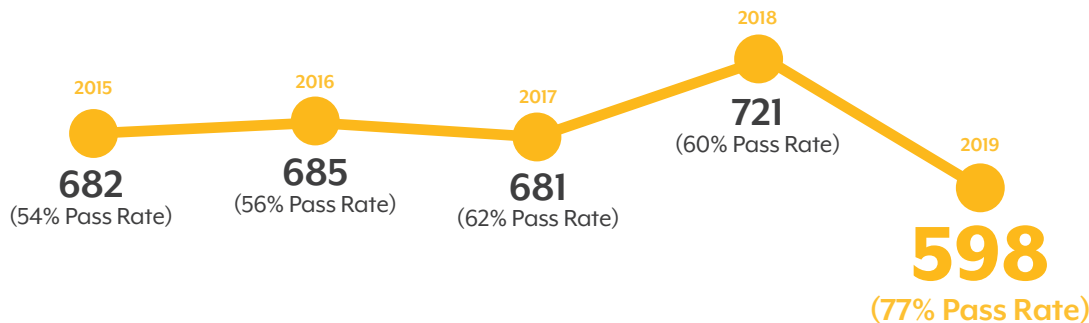
MAY 2019





2019 Legislation by the Numbers

Number of bills introduced:



Number of bills still in progress on the last Monday of the session:



Number of health bills tracked on CHI's watch list:



138
(80% Pass Rate)

In 2018:
146 (48%)

Top categories on CHI's watch list, by number of bills:



Hospitals and Health Care Providers



Behavioral Health
(includes Substance Use)



Energy, Environment,
and Health

Party sponsorship of bills in their first chamber:

- Bipartisan: 176 bills**
(29 percent of total)
- Democrat-only: 324 bills**
(54 percent of total)
- Republican-only: 98 bills**
(16 percent of total)



2019 will be remembered as the year Colorado's legislature finally addressed high health care prices.

Democrats began the year in a commanding position, with an active new governor and majorities in the House and Senate — a shift from 2018, when Republicans had a one-seat edge in the Senate. They found willing partners among Republicans, mostly from rural districts, who shared the goal of reducing consumer costs in health care.

Together, they put Colorado on the path to be among the first states to try a Medicaid-based public option for health insurance. They created a reinsurance program that aims to lower premium prices by up to 30 percent. And they cracked down on surprise medical billing, an issue that has languished for years at the Capitol without resolution.

Gov. Jared Polis emphasized his focus on lowering health costs by creating a state office dedicated to that goal. Polis also secured a win on his top campaign promise — funding for full-day kindergarten in every Colorado school district. Early childhood education is a key determinant of lifelong health.

But not every health-related bill succeeded.

Colorado ranks near the bottom nationally on two measures of public health: rates of childhood vaccinations and teen vaping. Bills to increase the vaccination rate and raise nicotine taxes both failed. Legislators also failed to create a family and medical leave program, one of Democrats' top priorities the past several years.

The 2019 session also will be remembered for its toxic political atmosphere.

Polis and Democrats pushed through bills to impose tighter health and environmental rules on oil and gas production, and to allow courts to temporarily separate gun owners from their firearms if they are deemed at risk of harming themselves or others.

Those two bills were highly controversial and opened the door to political maneuvering. Democrats hastily scheduled hearings, and Republicans backed recall campaigns and used procedural delay tactics that routinely kept legislators in session well past midnight. As a result, there was a crunch of bills in the final weeks of the session.

Despite the disruptive politics, the 2019 session was heavy on substantial health policy. These policies can be grouped into five themes:



Gov. Jared Polis speaks at the Capitol prior to signing HB 1001: Hospital Transparency Measures to Analyze Efficacy.

- 1. Sizable Steps Toward Saving People Money**
- 2. Hospitals: Bruised but not Broken**
- 3. Oil and Gas Takes a Back Seat to Health**
- 4. A Run for the Money in Behavioral Health**
- 5. A Roller Coaster for Community Health**

This report examines each theme in detail and analyzes what the session means for the rest of 2019 and for 2020.

In 2019, a class of fledgling Democratic legislators initially struggled to take flight, although their party controlled the House (41 Democrats; 24 Republicans), Senate (19 Democrats; 16 Republicans) and the governor's mansion.

Their agenda included bills that had passed the Democrat-controlled House in previous sessions. But many of those same bills took much longer to introduce, debate, and pass in 2019. At the mid-point of the 2019 session, 397 bills had been introduced; at that time the year before, legislators had introduced 488 bills. Lobbyists and legislators spent more time on the details because bills were more likely to become law than in recent years, when many Democratic bills were certain to die in the GOP-controlled Senate.

And that, of course, led to a sprint to the finish line.

With two weeks left in the session, stacks of major bills were still on the table. Mental health and SUD parity, reinsurance, public option, and vaccine requirements were just a few of the health policy measures whose fate was still undecided as representatives and senators prepared to go home. Of the 31 major health policy bills CHI identified, only two had been decided before the last week of the session.

Despite their majorities in both houses, Democrats had to compromise on some key bills. A bill to create a reinsurance



program struggled to find funding, and substance use disorder (SUD) bills saw major amendments late in the session that cut their budgets. Other bills were left behind. Priorities that didn't make the cut this year included a new paid family and parental leave program, though there will be a feasibility study; more stringent vaccine requirements; local rent control options; broad pharmaceutical transparency requirements; and a repeal of the death penalty.

Sen. Jeff Bridges (D-Greenwood Village) summed up legislators' actions in a tweet: "Most bills were introduced in their Cadillac form, but we amended them to a Chevy — still gets the job done, but costs less and is more in line with what Coloradans want."

Democrats will learn from this session's slow start and fast finish. Look for the party to frontload more bills next year.

Democrats' election victories in 2018 meant that contentious policy changes involving issues such as gun control and the Taxpayer's Bill of Rights (TABOR) were on the table, and that Republicans would be determined to stay relevant and influence the session. Democrats expected the opposition to try to derail items on their agenda. But the extent to which the Republican minority was able to stifle bills in both chambers seemed to catch Democrats off guard.

The majority party put a slate of controversial policy changes front and center that exacerbated the bad blood. The list included Extreme Risk Protection Orders (the "red flag" bill), ballot measures to reform TABOR, new requirements for sex education, adding Colorado to the National Popular Vote compact, and automatically registering people to vote when they sign up for Medicaid and other social services.

Republicans chafed at what they called overreach and vowed to fight back; Democrats argued that they ran on these issues and accused their colleagues across the aisle of obstructionism.

The back and forth involved multiple late-night debates over politically thorny issues, a Republican walkout on a Friday, a controversial decision by Senate President Leroy Garcia (D-Pueblo) to keep working during the "bomb cyclone" weather event, and numerous requests by Republicans to have bills read at length — including one 2,000-page measure, which could have taken up to 60 hours. Democrats called

the motions, which have historically been uncommon, a delay tactic and responded by using multiple computers to simultaneously speed read the bill. That led to a lawsuit that was ultimately decided in Republicans' favor.

Republicans also threatened recall efforts, including one directed at Polis. Recalls targeting Democrats who supported bills such as the red flag law, new oil and gas restrictions, and the National Popular Vote movement look increasingly likely in some districts. The effort against Rep. Tom Sullivan (D-Centennial) in House District 37 is the furthest along, and a strong recall push in Weld County's House District 50, held by Democrat Rochelle Galindo, ground to a halt after Galindo resigned her seat in May amid allegations of sexual misconduct.

With four days left to go, *Westword* ran an article titled: "It's Crunch Time for Colorado Lawmakers, and Things Are Getting Weird." The story details lawmakers attacking each other on Twitter and posting photos of their colleagues sleeping at their desks and watching movies on their cell phones.

Despite the finger-pointing, lost time, and a few high-profile defeats, Democrats were unequivocal after the session that it had been a major success for their party and their constituents, touting wins for the environment, public safety, working families, health care consumers, and civil rights.

Gov. Jared Polis swept into office with an ambitious agenda for the legislature.

He got much of what he wanted, including full-day kindergarten and an overhaul of oil and gas laws to favor health and environmental protection.

In health policy, Polis signed into law bills that addressed his top five priorities: hospital financial transparency, reinsurance, a Medicaid public option, importation of prescription drugs from Canada, and a crackdown on surprise out-of-network billing.

But his late push to raise taxes on nicotine fell flat. It would have put heavy taxes on e-cigarettes, which currently are taxed at a much lower rate than tobacco. According to the latest data from the Colorado Department of Public Health and Environment (CDPHE), more than a quarter (26 percent) of high school students engage in the behavior — more than any other state.

Polis is still in the first months of his administration, but the 2019 session gave some clues about how he will govern in the coming years. Here are five things to watch:



A singular aim at costs: Many health reform advocates embrace the Triple Aim — the intertwined goals of improving health care, promoting better population health, and reducing costs. Polis has made clear that his focus is on costs. He calls his health reform initiative the Office of Saving People Money on Health Care, and the health agenda for his first term is called the Roadmap to Saving Coloradans Money on Health Care.

An active and powerful cabinet: Polis' executive agencies gained power over the course of the session. Legislators entrusted the Division of Insurance (DOI) and the Department of Health Care Policy and Financing (HCPF) to design and operate major new programs like the public option, reinsurance, and drug imports from Canada. The Colorado Oil and Gas Conservation Commission (COGCC) will play a more active role as an industry regulator that keeps a close eye on public health concerns. Rulemaking hearings and stakeholder groups will keep the health policy world busy for the rest of the year.

Painting the state green: One of Polis' biggest breaks with his predecessor, John Hickenlooper, comes in environmental policy. Hickenlooper, a former petroleum geologist, sought

peace with the oil and gas industry and promoted environmental regulation that businesses could support. Polis, in contrast, wants to phase out fossil fuels. This won't be popular in communities that depend on mining and drilling for jobs and economic health.

Mixed messages on vaccines: Polis set a goal of improving Colorado's low vaccination rate in his health policy roadmap. But he refused to support a bill to tighten the state's lax requirements for vaccine exemptions, saying that stricter rules could increase public skepticism about vaccines. Colorado makes it easier to get an exemption for childhood immunizations than most other states. As long as such exemptions are easily available, it will be difficult to get Colorado out of the basement when it comes to protecting its children against vaccine-preventable diseases.

The wonk-in-chief: Finally, Polis takes a much different approach to day-to-day governing and legislating than Hickenlooper, who had a hands-off style. Polis, a former member of Congress, engages deeply in the details of bills as they make their way through the legislature. His involvement was on display during the push to fund full-day kindergarten. The *Colorado Sun* reported that Polis made personal appeals to members of the budget committee and coordinated witnesses to speak in favor of the proposal at public hearings. This can help legislators — especially fellow Democrats — clearly understand how to get his support, but some complained about heavy involvement from the governor's office. It also means Polis owns the success or failure of bills much more than Hickenlooper did.

Action Steps from Polis' Roadmap to Saving Coloradans Money on Health Care



Here are 12 health policy goals that Polis set for Colorado in his roadmap. A check mark shows where substantial progress was made during the legislative session.

- ✓ Increase hospital price transparency
- ✓ Establish a reinsurance pool to reduce premiums
- ✓ Negotiate to drive down the cost of health insurance
 - Lower hospital prices, reduce out-of-pocket costs
- ✓ Lower the cost of prescription drugs
- ✓ Launch a state-backed health insurance option
- ✓ Reward preventive and primary care
 - Expand the health care workforce
 - Increase access to healthy food
 - Improve vaccination rates
- ✓ Reform the behavioral health system
 - Support innovative health care delivery and reform models

Prior to this year's session, legislative analysts thought the finite budget would be the major limit on Democrats' ambitious suite of policy goals.

Legislators did have to make tradeoffs and were forced to contend with projections suggesting that Colorado's economy is slowing — but compared to the rest of the session, the budget process was relatively drama-free thanks to a show of bipartisanship and an important concession from Democrats on transportation funding. Health care funding remained stable, and for the third year in a row, there were no major efforts to cut public health programs and funds. (In previous sessions, Republicans challenged public health initiatives such as long-acting reversible contraception and the Healthy Kids Colorado Survey.)

Polis signed **Senate Bill (SB) 207**, the 2019-20 Long Bill, into law on his 100th day in office. The budget plan included \$175 million for one of his top priorities — free full-day kindergarten. An additional \$25 million to support capital construction needs for expanded full-day K was appropriated through another bill.

Other big-ticket items included \$77 million towards public schools to begin restoring cuts the legislature has made every year since the Great Recession that began in 2008, and \$121 million to negate potential increases in tuition at the state's public colleges and universities.

Republicans and Democrats reached a \$70 million compromise on transportation. Republicans had threatened to slow debate over the Long Bill if it didn't include extra funding for roads. The Department of Transportation will now have \$300 million to spend towards projects, up from \$230 million already set aside by the Joint Budget Committee (JBC) and by last year's SB 1.

HCPF, which oversees Health First Colorado (the state's Medicaid program), will have a budget of \$10.7 billion. HCPF is the largest state agency, though most of its funding comes from the federal government. It projects very low growth in Medicaid enrollment, but higher costs per enrollee caused a 3 percent increase in the department's budget. Colorado's strong economy contributes to this dynamic, because people who are healthy enough to work are likely to find a job and move off Medicaid.

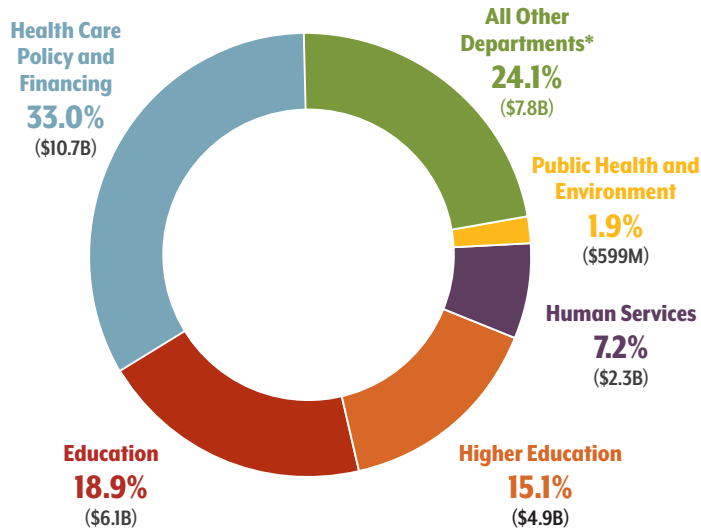
HCPF attributes most of the higher per capita costs to increases in the use and price of long-term care by multiple categories of the population, including all age ranges and those with disabilities. Less than five percent of Medicaid members incur more than half the program's costs.

The JBC also sponsored a bill to examine the way the state funds a program for aging Coloradans. **SB 209** addresses the Program of All-Inclusive Care for the Elderly (PACE), which provides social services and medical care to eligible Coloradans who are 55 years of age and older. The bill requires HCPF and PACE leadership to meet during the summer and fall to consider the appropriate funding methods for PACE.

Fiscal Year 2019-20 Budget

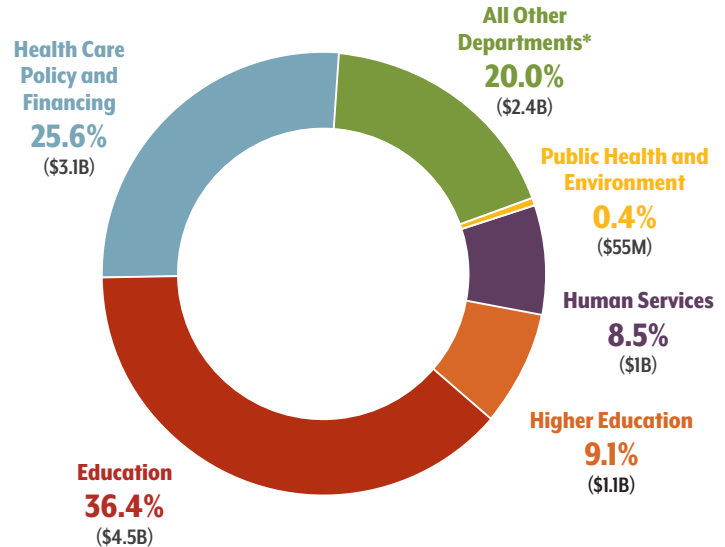
FY 2019-20 Total Funds

Total: \$32.3 Billion



FY 2019-20 General Fund

Total: \$12.2 Billion



Source: FY 2019-20 Long Bill (Senate Bill 207) and Long Bill Narrative.

*Includes the following departments: Treasury, Public Safety, Local Affairs, Revenue, Natural Resources, Military and Veterans Affairs, Judicial, Corrections, Transportation, Governor, Personnel and Administration, Labor and Employment, Regulatory Agencies, Law, Agriculture, Legislature and State.

THEME 1

Sizable Steps Toward Saving People Money

The cost of health care was a focal point for Polis and legislators on both sides of the aisle. This session could be the first of many where the legislature asserts control over the prices Coloradans pay for health care. After the Hickenlooper administration and Democratic leadership had struggled to get most cost-control measures through the legislature in recent years, 2019 was a watershed session for both new options and new regulations to save people money.

SPOTLIGHT

✓ House Bill (HB) 1004: Public Insurance Option

Allows Coloradans to buy insurance through a state program, possibly Medicaid. The bill directs HCPF and DOI to develop a proposal that explains the design, costs, benefits, and how the option would be implemented to be submitted for federal approval. Legislators will get a look at the plan this fall before it's sent to the federal government, but it does not require further approval from the legislature.



✗ HB 1296: Prescription Drug Cost Reduction Measures

Would have made substantial changes to Colorado's pharmaceutical market. HB 1296 would have required various new reports, including financial information from insurance carriers and Pharmacy Benefit Managers (PBMs), and disclosures from other organizations about gifts from pharma manufacturers, PBMs, and insurers. Using the published information, insurers would have had to reduce pharmaceutical cost sharing for enrollees through passing on all savings from rebates.

✔ SB 5: Import Prescription Drugs from Canada

Named for a physician and former legislator, the Dr. Irene Aguilar Canadian Prescription Drug Importation Act directs HCPF to request federal approval to bring in prescription medications from Canada. HCPF would contract with a vendor to import wholesale drugs and distribute them to licensed Colorado pharmacies. Big questions remain unanswered, including how to ensure safety and quality and whether President Donald Trump's administration will approve such a request.

SPOTLIGHT

✔ HB 1168: Reinsurance Program

Requires DOI to establish a reinsurance program, which aims to reduce premiums on the individual market by covering the highest-cost claims for insurers. Like the public option and Canadian drug importation program, it will need a federal waiver. Initially, the bill sought to lower rates on most hospital services for expensive patients in order to pay for the reinsurance fund, but it was revised to draw funding from a fee on hospitals, existing taxes on insurance policies, and support from the General Fund. The program is authorized to run for two years instead of the original five-year request.

✔ HB 1216: Reduce Insulin Prices

Prohibits insurance carriers from charging copays or coinsurance above \$100 for a 30-day supply of insulin, a drug that has seen exponential cost increases and is vital for people with diabetes. Critics say this bill is helpful for consumers but doesn't address reasons why insulin prices have risen so much.

✔ SB 4: Address High-Cost Health Insurance

Permits health care cooperatives in Colorado. Through these co-ops, people in a region can band together to negotiate rates with providers and mandate protections such as coverage for preexisting conditions. Summit County's new Peak Health Alliance plans to do just that beginning in 2020; if the model succeeds, it could be replicated in other high-cost parts of the state.

✔ HB 1038: Dental Services for Pregnant Women on CHP+

Expands access to dental services. Currently, children who are qualified and enrolled in Child Health Plan *Plus* (CHP+) can receive dental services, but pregnant women temporarily covered by CHP+ cannot. This bill allows pregnant women to receive dental benefits at an important time for their oral health.

THEME 2

Hospitals: Bruised but Not Broken

Hospitals aren't new to the hot seat at the Capitol, but things seemed to heat up during the 2019 session. While legislators largely praise hospitals in their communities, hospitals are also under the microscope as a major driver of health costs. In particular, recent media stories focused on higher-than-average capital expenses, administrative costs, and profits. After realizing Democrats had the votes to pass measures targeting hospitals this session, hospital leadership came to the table and offered amendments. They played defense with some success. Hospital lobbyists helped craft a financial transparency bill their clients could live with and rebuffed a plan to reduce hospital reimbursement rates for high-cost patients to fund a reinsurance program. (For more on the latter, see **HB 1168** on page 13.)

✓ **HB 1010: Freestanding Emergency Departments Licensure**

CDPHE will create a new health facility license for freestanding emergency departments (FSEDs), which will need the license to operate beginning in July 2022 and will have to abide by new rules. Among them: a prohibition on FSEDs delaying an exam or treatment by first asking about patients' insurance status or ability to pay. FSEDs in rural communities and ski towns are excluded.



Chris Schneider/Special to CHI

SPOTLIGHT

✓ **HB 1001: Hospital Transparency Measures to Analyze Efficacy**

In previous years, the GOP-led Senate voted down financial transparency bills, but HB 1001 passed easily and was one of the early wins for Polis. It requires HCPF and the board that manages the Hospital Provider Fee to prepare an annual report on hospitals' spending and uncompensated costs. The disclosure will include items such as financial statements, operating expenses, and staffing information.

Provider-Focused Legislation

Health care providers, and especially their interactions with insurance carriers and the legal system, were also a hot topic at the Capitol.

✓ SB 201: Open Discussions About Adverse Health Care Incidents

Creates the Colorado Candor Act to improve communication following a patient injury or death. The act establishes a confidential channel for discussion that can't be used in court between health providers or facilities and patients and their families. Providers can discuss results of investigations and whether they feel compensation for the patient is warranted.

✓ SB 234: Sunset Professional Review Committees

Extends until 2030 the state's professional review committees, which evaluate state-licensed physicians, physician assistants, and advanced practice nurses for competence and quality, and clarifies expectations for the committees' governing boards.

✗ HB 1241: University of Colorado (CU) Training and Scholarships for Rural Physicians

Would have required CU's medical school to provide scholarships of at least \$10,000 per year to students who demonstrate financial need, are completing their residency in a rural or frontier part of Colorado, and commit to practicing in a rural professional shortage area for at least four years. The estimated \$900,000 price tag derailed the bill.

✓ HB 1174: Out-of-Network Health Care Services

Health care facilities and insurance carriers must now provide better disclosures about possible out-of-network billing situations. HB 1174 also sets reimbursement amounts for out-of-network providers working at in-network facilities or in emergency departments and creates an arbitration process for addressing billing disputes. The issue of surprise medical billing has long been a topic of conversation at the Capitol, and many stakeholders view this bill as a breakthrough.

✓ HB 1320: Hospital Community Benefit Accountability

This bill, introduced late in the session, requires nonprofit hospitals to engage annually with multisector representatives regarding their local community health needs assessment and implementation plans. Additionally, it requires the submission of data on community benefit activities to the state instead of just the IRS, which rarely acts on this information.

THEME 3

Oil and Gas Takes a Back Seat to Health

It's not the Green New Deal being floated in Congress, but a package of bills passed in the 2019 session will set targets for reduced greenhouse gas emissions, regulate oil and gas development, and gather data on climate change. Polis' approach to this topic might be the biggest change from the Hickenlooper administration, which sought a balance between environmental protection and the business interests of the oil and gas industry. It's also notable coming on the heels of the defeat of Proposition 112, a statewide ballot initiative that sought to substantially increase the setback distance for new oil and gas development from homes and schools.

✗ **HB 1313: Electric Utility Plans to Further Reduce Carbon Dioxide Emissions**

Would have established ambitious targets for reducing carbon dioxide emissions generated by the state's large utility companies. Although the bill did not pass, the requirements it proposed were included in **SB 236** (focused on the Public Utilities Commission) when the two bills were essentially combined at the end of the session.

SPOTLIGHT

✓ **SB 181: Protect Public Welfare in Oil and Gas Operations**

Imposes new requirements on oil and gas operators, gives local governments additional control over oil and gas operations, and directs the COGCC to prioritize public health, welfare, and the environment over fostering the industry. This was a major victory for Polis and Front Range Democrats, who have been pushing for greater local control over the industry for many years.



✓ **HB 1314: Just Transition from Coal-based Electrical Energy Economy**

Beginning in 2025, the Just Transition Office created by HB 1314 will award benefits, such as wage compensation and employment and training opportunities, to laid-off coal workers and provide grants to eligible communities affected by the shift away from coal mining and power plants.

✓ **HB 1188: Greenhouse Gas Pollution Impact in Fiscal Notes**

Legislation that may cause a net change in greenhouse gases must include more details about estimated impacts in the bill's fiscal note, which is written by the legislature's nonpartisan staff. New sources of emissions and changes in existing sources of emissions will be included, but estimating the magnitude of their impact is not required.

✓ **SB 96: Collect Long-term Climate Change Data**

Directs CDPHE to collect emissions data from greenhouse gas-emitting facilities. By July 1, 2020, CDPHE will release a report on the data, forecast future emissions, and propose rules to achieve Colorado's greenhouse gas reduction goals as outlined in HB 1261.



SPOTLIGHT

✓ **HB 1261: Climate Action Plan to Reduce Pollution**

Requires the state to reduce greenhouse gas emissions by at least 26 percent by 2025, by at least 50 percent by 2030, and by at least 90 percent by 2050, using emissions in 2005 as the baseline. The Air Quality Control Commission will write rules to meet the goals.

THEME 4

A Run for the Money in Behavioral Health

A slate of bills related to behavioral health was signed into law. Legislators approved a law to boost parity for mental health and Substance Use Disorders (SUD) services, and a trio of SUD bills recommended by an interim committee (HB 1287, SB 227, and SB 228) passed despite travelling a bumpy road and being scaled back significantly. While there were several victories for advocates in this area, the funding that was ultimately approved did not live up to their initial hopes.

SPOTLIGHT

✓ HB 1269: Mental Health Parity in Private Insurance and Medicaid

The Behavioral Health Care Coverage Modernization Act aims to ensure that private insurance companies and Medicaid provide coverage for mental health and SUD services at the same level as physical care. Insurers will have to file annual reports showing how they are complying with existing laws.

✓ SB 1: Expand Medication-Assisted Treatment Pilot Program

In 2017, the legislature created a two-year pilot program to expand access to Medication-Assisted Treatment (MAT) for opioids in Pueblo and Routt counties. SB 1 expands the pilot program to the San Luis Valley and up to two more counties, increases the budget to \$2.5 million per year, and extends the program through the 2021 fiscal year.

✓ HB 1120: Youth Mental Health Education and Suicide Prevention

Allows children age 12 and older to talk to a licensed mental health professional without notifying their parents, lowering the age requirement from 15. The Department of Education will also create and maintain a mental health resource bank for public use.

✓ SB 227: SUD Harm Reduction

Aims to reduce harm caused by SUD by equipping some public buildings with overdose reversal medication, allowing hospitals to serve as clean syringe exchange sites, and expanding medication take-back and other programs. Proponents hoped for \$8 million toward prevention efforts, the amount in the first version of the bill, but had to settle for about \$750,000. The bill is notable for what was not in it — a much-anticipated measure that would have allowed supervised injection sites.



SPOTLIGHT

✓ **HB 1287: Treatment for Opioids and SUD**

One of the bills developed in the Opioid and Other Substance Use Disorders Study Committee, HB 1287 requires the Department of Human Services to improve access to behavioral health facilities and MAT through an online treatment tracker, care navigation program, and grants to expand services in rural areas. It includes nearly \$6 million for the efforts.

✓ **SB 228: SUD Prevention Measures**

Sets aside more than \$4 million in funding — down from an initial ask of \$14 million — for SUD prevention and treatment programs. The bill also requires providers to take SUD training before they can renew their licenses, prevents providers from accepting benefits for prescribing a specific medication, and requires warning labels on opioid prescriptions.

✓ **SB 211: Mental Health Criminal Diversion Program**

Extends the mental health criminal justice diversion pilot program, which legislators created last year, until 2022. The pilots operate in Boulder, Larimer, and several rural counties, and they take low-level offenders with mental health needs out of the justice system and divert them to community mental health treatment.

✓ **SB 8: SUD Treatment in the Criminal Justice System**

Reforms how the Department of Corrections delivers MAT. Also, county jails that accept state funding for behavioral health services will have to create a policy for administering MAT to people involved with the criminal justice system by January 1, 2020. SB 8 also creates a simplified process for sealing convictions for some drug felonies and all drug misdemeanors.

THEME 5

A Roller Coaster for Community Health

The session featured numerous discussions on community health and social determinants of health, such as public safety, affordable housing, wages, and funding for health programs. There were notable successes in this area, headlined by the red flag bill, but other bills were scaled back or defeated altogether. At the far end of the spectrum, some expected bills, such as the proposal to allow a supervised injection site, were not introduced at all. Ultimately, many bills to support public health and social programs lacked both available cash and political capital.

SPOTLIGHT

✓ HB 1177: Extreme Risk Protection Orders

The red flag bill enables courts to take custody of a person's firearms for up to a year if the person is found to pose a significant risk of hurting themselves or others. Some counties and sheriff's departments objected to the bill, saying it infringes on gun owners' rights. One of the sponsors, first-term Rep. Tom Sullivan (D-Centennial), lost his son in the 2012 movie theater shooting.

✓ HB 1032: Comprehensive Sexuality Education

HB 1032 passed, though it was at the center of fiery debate and was ultimately scaled back from its original version. The bill does not mandate sex education in public schools, but in those that have a curriculum, it adds new requirements to teach definitions of consent and healthy relationships in culturally sensitive ways that do not promote gender stereotypes. It also prevents sex education programs from excluding the health needs of LGBT people or emphasizing abstinence as the sole or primary method to prevent pregnancy.

✓ HB 1322: Expand Affordable Housing Supply

One of several bills related to housing access and tenants' rights, HB 1322 transfers up to \$30 million (down from an original request of \$40 million) from the Unclaimed Property Trust Fund to provide affordable housing support, such as down payment assistance, loans, programs for homeless families, and repair or replacement of mobile homes.

✓ HB 1239: Census Outreach Grant Program

Provides \$6 million for outreach to hard-to-reach populations to promote an accurate U.S. Census count in 2020, which affects federal funding and congressional representation. Bill sponsors originally requested \$12 million.

✓ **SB 188: Family and Medical Leave Insurance (FAMLI) Program**

Although the bill passed, it did not create the intended program. Sponsors wanted partial wage replacement for people who take time off work for an illness or to care for a baby or sick family member. SB 188 had proposed funding the estimated annual \$1 billion cost through premium payments from both employers and employees. Amid opposition by various employer groups, the bill was ultimately reduced to a study of what such a program could look like.

✗ **HB 1333: Cigarette Tobacco and Nicotine Products Tax**

Introduced with fewer than 10 days left in the session, the bill would have asked voters to increase the tax on cigarettes and other tobacco products and create an additional nicotine tax, which would cover vaping products. Colorado ranks number one in the country for its teenage vaping rate. HB 1333 was a major priority for the governor but fell flat in the Senate when only nine Democrats and no Republicans supported it.



Brian Clark/CHI

SPOTLIGHT

✗ **HB 1312: School Immunization Requirements**

Would have made it harder to get personal and religious exemptions from vaccines for school children. HB 1312 was an attempt to increase Colorado's last-place-in-the-U.S. kindergarten vaccination rate. It was pulled from consideration after being weakened by rounds of amendments and facing opposition by anti-vaccination advocates and the governor. Polis said the bill would be overly burdensome on parents and ineffective in moving the needle on vaccination rates.

Grab Bag

Not all the session's high-profile health-related bills — of which there were many — fit under one of the themes above, and some themes had prominent legislation that did not fit on the preceding pages. Here are additional bills of note from 2019. Nearly all of them passed.

SPOTLIGHT

✓ **HB 1176: Health Care Cost Savings Act of 2019**

Creates a health cost task force made up of four legislators, four gubernatorial appointees, and various department directors to study the current health care financing system and single-payer and multipayer universal health care systems. The final report is due September 2021.

✓ **HB 1184: Demographic Notes for Certain Legislative Bills**

Requires Legislative Council, the legislature's nonpartisan research staff, to assess potential effects of a bill on different populations and whether the bill is likely to increase or decrease disparities. The Speaker of the House, Senate president, and minority leadership in each chamber can each select up to five bills for the notes.

✓ **SB 79: Electronic Prescribing of Controlled Substances**

Makes electronic prescribing of most controlled substances (such as oxycontin and fentanyl) mandatory, instead of optional. SB 79 applies to a wide variety of providers, from dentists and podiatrists to optometrists and advance practice nurses.

✓ **SB 235: Automatic Voter Registration**

Automatically registers people to vote when they apply for a driver's license or sign up for public assistance programs. Currently, people are given the option to register when renewing their driver's license.

✗ **SB 225: Authorize Local Governments to Stabilize Rent**

Would have removed a prohibition on the ability of local governments to enact ordinances or regulations to control rent on private residential property.

SPOTLIGHT

✓ **HB 1233: Investments in Primary Care**

The Commissioner of Insurance will set targets for insurance carriers' level of investment in primary care services, and HCPF and carriers will set their own targets for paying for primary care. The commissioner is also charged with establishing affordability standards for premiums. The argument: that a more comprehensive primary care system will provide quality care while reducing costs.

✓ **HB 1122: CDPHE Maternal Mortality Review Committee**

Codifies a committee to study the issue of maternal deaths and disparities in Colorado with the goal of preventing deaths during or after childbirth. The 11-member committee will present recommendations related to legislation, rules, and best practices.

✓ **SB 15: Create Statewide Health Care Review Committee**

Creates an interim committee that includes up to 10 members of the legislature's three health committees that will meet between sessions, including up to two field trips, to study how health care issues affect people throughout the state.

✓ **SB 73: Statewide System of Advance Medical Directives**

Tasks CDPHE with creating and administering a statewide system that will allow Coloradans to upload and access their advance medical directives if they choose. It also establishes legal protections for health care providers who comply with patients' instructions via the new system.

✓ **HB 1077: Pharmacist Dispense Drug Without Prescription in Emergency**

Allows people with chronic conditions to get an emergency supply of their necessary medication from a pharmacy without a prescription if they find themselves in a dire situation. The act was named "Kevin's Law" in memory of a man who died after he was unable to refill his insulin prescription over the holidays.

✓ **HB 1230: Marijuana Hospitality Establishments**

Allows for public consumption through the operation of marijuana hospitality establishments, such as clubs, hotels, and restaurants, beginning in 2020. Other successful pot-focused bills allowed medical marijuana to be prescribed for autism spectrum disorder (**HB 1028**), enabled marijuana delivery services (**HB 1234**), and sanctioned medical marijuana as an alternative to opioids for pain management (**SB 13**).

✓ **HB 1129: Prohibit Conversion Therapy for a Minor**

Prohibits licensed psychiatrists or other mental health providers from engaging in conversion therapy with anyone under 18 years old. The practice aims to change sexual orientation, typically for patients who don't identify as heterosexual.

✓ **HB 1171: Expand Child Nutrition School Lunch Protection Act**

Allows eligible youth through 12th grade to participate in the Child Nutrition School Lunch Protection program, which uses state funds to cover families' co-payments for reduced-price lunches. The program had previously been limited to students in 8th grade and younger. This was the second consecutive year in which legislators chose to expand eligibility.

✓ **HB 1033: Local Governments May Regulate Nicotine Products**

Makes cities and counties eligible to receive state cigarette tax revenue if they pass their own laws regulating the sale or use of cigarettes, other tobacco products, or nicotine products, which previously disqualified them. HB 1033 also gives counties more authority to enact policies focused on minors and impose a nicotine sales tax.

SPOTLIGHT

✓ **HB 1211: Prior Authorization Requirements for Health Care Services**

Requires more transparency from insurance carriers about their requirements for prior authorization (a process in which carriers must approve coverage for a requested health care service), including through posting information on past approvals and denials and the reasoning behind them. It also sets a five-day deadline for approving or denying authorization for treatment.

✗ **SB 182: Repeal the Death Penalty**

Would have ended the death penalty as an option in Colorado beginning in summer 2019. Democratic sponsors chose to pull the bill from consideration after concerns over the process and the objections of one of their members, Sen. Rhonda Fields (D-Aurora). Only three people are on Colorado's death row, and two of them were convicted of murdering Fields' son and his fiancée.

✓ **SB 238: Improve Wages and Accountability for Home Care Workers**

Requests an increase in federal rates for agencies that provide home health care and increases the minimum wage for home health care workers to \$12.41 per hour. The bill also creates new review and training requirements for these workers. The cost to the state? Nearly \$6 million next fiscal year.

The 2019 session ended May 3, but in some aspects, it's just beginning.

Legislators gave authority to state agencies to craft the details on high-profile bills, and they asked voters to reconsider a key part of TABOR. Here are some ways the session will leave a legacy.

The real work happens this summer and fall.

The legislature passed a public insurance option, but what will it look like? We won't know until HCPF and DOI design the program. State agencies also will write the rules for reinsurance and Canadian prescription drugs. Research, rulemaking, and implementation are part of a long and complex process; passing a bill is just the beginning.

Major bills need the Trump administration's approval.

Proposals to create a public option, reinsurance, and prescription drug importation program each need federal waivers to take effect. That means approval from the Trump administration. The federal government has already approved reinsurance programs in other states, but Colorado is one of the first to try a public option and drug importation. The fate of these programs will remain in doubt until Trump's appointees sign off on them.

TABOR is on the ballot this November. TABOR has checked the legislature's power for nearly three decades. It requires voter approval of tax increases and mandates that some state revenues during boom years be refunded to taxpayers. With the passage of HB 1257 and HB 1258, voters will decide



this year whether to do away with the second part and let the legislature keep and spend all the tax revenue it receives. Colorado voters historically have been hesitant to trust the state government with more tax revenue. This ballot question will test whether attitudes are changing.

How will legislators approach the 2020 legislative session?

The 2019 session saw an outbreak of bad legislative manners. Democrats hastily scheduled hearings to catch opponents off guard, and Republicans supported recall campaigns and sued Democrats over the way they ran floor debates. The question for 2020 is whether either side has an incentive to change its behavior. Or will these tactics become the new normal?

The 2020 election is coming soon. Speaking of 2020, there's an election on the horizon. President Trump, U.S. Sen. Cory Gardner, and three-quarters of Colorado's legislature will be on the ballot. Colorado Democrats will choose their candidates for president and U.S. Senate in a June 2020 primary. Democratic legislators could be on opposing teams until then, depending on which candidates they support. Bipartisan relations won't get any easier in the 2020 session, either. Legislators are often more hesitant to support controversial legislation in election years when tensions are high and opponents spend heavily on advertising to call out controversial votes, so Polis could have less support for going after big policy goals.



Acknowledgements

**Colorado Health Institute
staff contributors to this report:**

Eli Boone (co-author)
Joe Hanel (co-author)
Allie Morgan (co-author)
Jim Beaudry
Brian Clark
Chrissy Esposito
Cliff Foster
Jalyn Ingalls
Liana Major
Sara Schmitt
Jaclyn Zubrzycki

We extend our thanks to CHI's legislative monitors, Mike Beasley and Jennifer Miles, for another session of helpful information and insights, as well as the CHI staff members who tracked bills and contributed expertise to this report and to CHI's 2019 legislative portfolio.

SAVE THE DATE

*Please mark your calendar for
the Colorado Health Institute's
annual health policy conference*

December 5-6, 2019



HILTON DENVER INVERNESS HOTEL • ENGLEWOOD

Connect with fellow legislators, local officials, executive branch leaders, and members of the broader policy community to discuss Colorado's most critical health and health care issues and look ahead to 2020. Information on registration, agenda, and fees coming soon.

Questions? Contact HIHC@coloradohealthinstitute.org, call 303.831.4200
or visit coloradohealthinstitute.org/research/hot-issues-health



The Colorado Health Institute is a trusted source of independent and objective health information, data, and analysis for the state's health care leaders. Through its Legislative Services program, CHI provides a variety of resources to lawmakers and their staffs and to members of the executive branch. Services include one-on-one briefings, responses to information and research requests, publications on pressing health policy topics, a legislative blog, presentations at the Capitol and for constituent groups, and the annual Hot Issues in Health conference. CHI's work is made possible by generous supporters who see the value of independent, evidence-based analysis. Those supporters can be found on our website at **coloradohealthinstitute.org/about-us**.

303 E. 17th Ave., Suite 930, Denver, CO 80203 • 303.831.4200

coloradohealthinstitute.org