



Colorado Society of Anesthesiologists (CSA) 2023 Legislative Session Wrap-Up

May 12, 2023

The Colorado Society of Anesthesiologists had a serious issue long before the legislative session with a quiet battle against the Medicare opt out consideration by Governor Polis. CSA lobby team was notified by Governor Polis's health policy staff in August about this consideration. CSA was able to meet with President of Senate, Senator Steve Fenberg and former Representative Edie Hooton who were opposed to any independent practice or changing the opt out status in Colorado. As champions, both legislators reached out to the Governor/staff and provided enough information to stave off any decisions or consideration until after the election in November.

ASA became a strategic partner in providing current research materials, garnering support of national physician societies, and grant funding to expand AB team in subcontracting additional assistance in the world of Governor Polis. CSA did local work to continue to educate Governor/staff and achieving a list of state physician organizations (including Colorado Medical Society) to oppose any changes. Many thanks to the entire ASA government relations team for their support and therapy sessions!

The Governor and staff elected to move through vetting the policy change with both Colorado Nursing Board and Colorado Medical Board in mid- February. While the nursing board voted to move forward, the Colorado Medical Board after serious consideration voted unanimously to oppose these changes. As a reminder, the Colorado Medical Board is chaired by Dr. Roland Flores who was masterful in orchestrating an equitable and fair discussion.

Following board outcomes, CSA board members including lobbyists from AB team met with Governor Polis to continue to validate our request to not expand the Medicare opt out in Colorado. CSA/ASA representatives met with Congresswoman Caraveo who agreed to call the Governor to express her concern about this potential change. These ongoing meetings also included Lt. Governor Primavera along Governor's health policy staff director.

In summary, there has been no change to the Medicare opt out in Colorado. The current administration has been very supportive of many "scope of practice" expansion legislative changes including the passage of PA in this session.

It has been almost a year since this process began. CSA lobby team will regularly check in with Governor's staff. It is maddening to tread water on this ongoing issue but it gives credence to "no news is good news" to this point.

CSA Dashboard.

Colorado Society of Anesthesiologists engaged in 15 bills this session, supported 2 bills, opposed 2 bills, amended 1, and continued to watch 10 bills. The prior authorization bill and surprise billing alignment to address batching of claims will be introduced next year.



MEDICAID BUDGET

Medicaid Rates! Colorado anesthesiologists will see an increase of 3% in reimbursement rates beginning July 1, 2023. CSA lobby team was able to foot note be budget with the following language:

Anesthesia rates for services delivered by anesthesiologists and nurse anesthetists are not subject to this rebalancing of any codes above 100% of Medicare and these codes are subject to overall 3% common policy increase.”

Rate balancing occurred in Medicaid today on physician rates that were evaluated 18 months ago by our favorite MPRACC (Medicaid Provider Rate Review Committee). They did not evaluate anesthesiologists in this session, but it wasn't clear in the requested budget items if they would take all acute physician codes to 100% of Medicare. Any code below 80% was brought to 80% which was unclear in the budget discussions if anesthesia was impacted.

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Detailed Bill Matrix Link: <https://app.coloradocapitolwatch.com/bill-analysis/4693/2023/0/>

The CSA 2023 Bill Tracker has links to all the bill documents for the bills CSA tracked, including the bill text and fiscal notes.

CSA Priority Legislation (all bills have been signed into law or are awaiting Governor's signature unless otherwise noted)

Legislation with Active Engagement:

- [SB23-144, Prescription Drugs for Chronic Pain](#): The bill allows a health care provider to prescribe, dispense, or administer certain controlled substances to patients with chronic pain caused by a diagnosed condition, with a few exceptions. A prescribing provider is not subject to disciplinary action by their regulator for prescribing medication, including in doses that exceed the recommended morphine milligram equivalent dosage or state or federal opioid prescribing guidelines. The provider must keep records of the controlled substance, write accurate prescriptions, and prescribe according to the current standard of care. Before prescribing, providers must discuss the risks of using a controlled substance with the patient or their guardian. Providers also cannot taper a dosage to meet a predetermined dosage recommendation if the patient is stable, compliant with the treatment plan, and not experiencing harm from the current prescribed dosage. If a provider decides to taper or maintain a medication, they must provide an assessment of the patient's condition and treatment plan, and discuss the decision with the patient. The bill also prohibits policies at health facilities and pharmacies that allow providers to reject patients based on their required dosage of drug for chronic pain treatment, and pharmacists, health insurance carriers, and pharmacy benefit managers to refuse to fill a patient's required dosage.

Position: Amend



- [HB23 1295, Audits of Department of Health Care Policy and Financing Payments to Providers](#): The bill requires the Office of the State Auditor (OSA) to conduct an independent review of the Department of Health Care Policy and Financing's (HCPF) Recovery Audit Contractor Program during FY 2023-24. The review must include policy recommendations on several specified concerns. Additionally, the OSA must hire a contractor to help pursue policy recommendations available under federal law. On a quarterly basis, the bill requires HCPF to report audit information on its website, conduct trainings for providers, and hold stakeholder meetings regarding audits and reviews. HCPF must also publish contracts with auditors online. Finally, HCPF is required to create a Provider Advisory Group for recovery audits, consisting of membership outlined in the bill, that meets at least quarterly.

Position: Support

Lobby team participation and active engagement in stakeholder meetings, meetings with the Governor's office to secure amendments to make the bill stronger. These amendments were adopted and remain in the final version of the bill that is headed to the Governor.

- [SB23 009, Limit Opioid Prescription and Exemption for Intractable Pain](#): The bill prohibits a prescriber from issuing to a patient a prescription for an opioid that will be dispensed or administered outside of a health-care facility or the prescriber's practice location if the amount of the opioid exceeds 90 morphine milligram equivalents per day, unless the patient suffers from intractable pain.

Position: Oppose

***This bill was postponed indefinitely and died**

- [HB23-1116, Contracts Between Carriers and Providers](#): The bill places restrictions on carriers that process payments for health care providers. Beginning in FY 2023-24, contracts must:
 - offer a method of payment that is not associated with a fee;
 - offer a method of payment other than a credit card;
 - notify the provider of any fees associated with electronic payments and advise them of alternative methods;
 - not impose a fee for changing methods of payments; and
 - require an explanation of benefits with each payment.

The Commissioner of Insurance in the Department of Regulatory Agencies has the authority to enforce these requirements and impose penalties for violations.

Position: Support - CSA actively supported this legislation

- [SB23-083, Physician Assistant Collaboration Requirements](#): The bill removes the requirement that a physician assistant be supervised by a physician or podiatrist, replacing it with a requirement that the physician assistant enter into a collaborative agreement with a physician licensed in good standing or a physician group. The agreement must include a description of the collaboration and performance evaluation process and any additional requirements made by the employer that is specific to the physician assistant's practice. With a collaborative agreement in place, a physician assistant can practice medicine, including prescribing and dispensing medication, including controlled substances. If the physician assistant has fewer than 5,000 practice hours, the agreement must include additional provisions such as completing certain practice hours in-person or through technology, defining the expected nature of the collaboration, and requiring a performance evaluation. The collaborative agreement must be made available at the physician assistant's practice site. The bill also requires physician assistants who have been practicing for less than 3 years to meet certain financial responsibility requirements that they are exempt from under current law.



Position: Opposed – While opposed to this legislation, CSA lobby team assisted Colorado Medical Society and they took the lead on the amendment negotiations etc.

Legislation Monitored:

- [SB23-002, Medicaid Reimbursement for Community Health Services](#): The bill requires the Department of Health Care Policy and Financing (HCPF) to seek federal approval to pay for services provided by community health workers under Medicaid by July 1, 2024, and to begin implementing this coverage once approval is received. Prior to implementing the new benefit, HCPF must hold four public stakeholder meetings on community health work. Stakeholders include the community health workers, Colorado Department of Public Health and Environment (CDPHE), health care providers, and schools and school-based health clinics.

The bill defines “community health worker” as a frontline public health worker who serves as a liaison between health care or social service providers and community members to facilitate access to physical, mental, or dental health-related services, or services to combat social determinants of health. Services provided by community health workers must, at a minimum, include preventative services, screening, and assessments, and health coaching and advocacy.

Through the stakeholder and federal approval process, HCPF must determine the qualifications for an individual to qualify for state reimbursement for community health worker services. The requirements will include completion of a state-approved training program and clinical supervision. HCPF must report to the General Assembly on implementation of community health worker services under Medicaid by January 31, 2026.

Position: Monitor CSA originally had an Amend position on this legislation, worked to amend the bill and then moved to monitor.

- [HB23-1071, Licensed Psychologist Prescriptive Authority](#): This bill allows licensed psychologists to prescribe and administer psychotropic medications by obtaining either a conditional prescription certificate or prescription certificate issued by the State Board of Psychologist Examiners (board) in the Department of Regulatory Agencies (DORA). The bill outlines the criteria and process for obtaining a prescription certificate. Once granted, the psychologist may only administer and prescribe psychotropic medication under the supervision of a licensed physician or advanced practice registered nurse, must maintain a collaborative relationship with the patient’s health provider, and must meet certain practicum and continuing education requirements. A prescribing psychologist must disclose that they are not a physician licensed to practice medicine and obtain consent from the patient. The bill also adds a requirement that one member of the board be a prescribing psychologist. Additionally, the board can establish rules for certification and suspension of a certificate, must keep records of all prescribing psychologists, and handle complaints received. DORA is required to collect and share information on prescribing psychologists for inclusion in sunset reviews that concern the regulation of mental health professionals.

Position: Oppose CSA listed to oppose this change but no active lobbying efforts.



- [HB23-1077, Informed Consent to Intimate Patient Examinations](#): The bill requires health professionals, students, and trainees to obtain informed consent from sedated or unconscious patients before performing intimate examinations, unless it is medically necessary for the life or well-being of the patient. In addition to patient consent, students or trainees may only perform intimate examinations if it is related to the planned procedure to be performed, the patient has recognized them as part of the care team, and they are under direct supervision. The bill outlines the process for obtaining patient consent and subjects non-compliant professionals and health-care facilities to disciplinary action or sanctions by their regulator or the Department of Public Health and Environment (CDPHE). The bill also specifies that limitations on liability damages does not apply to violations by health professionals. Health-care facilities can develop their own consent forms or use the form developed by CDPHE.

Position: Monitor

- [SB23-081, Access to medical Marijuana](#): The bill modifies requirements for physicians issuing medical marijuana certifications, daily medical marijuana sales limits, and tracking provisions. It also changes references to a physician's medical marijuana "authorization" to instead refer to a "recommendation."

Position: Monitor ***This bill was postponed indefinitely**

- [SB23-093, Increase Consumer Protections Medical Transactions](#): The bill makes changes to state laws related to consumer protections in medical transactions, including:
 - placing a 3 percent cap on the interest rate on medical debt;
 - establishing requirements for payment plans and legal actions by a creditor or debt collector related to medical debt;
 - specifying what must be included on itemized statements for debt collection disputes;
 - requiring a health care facility to provide an estimate of the cost for a person who intends to self-pay for services and limiting by how much the final cost can exceed the initial estimate; and
 - prohibiting collection of debt during an appeals process.

The bill makes failure to comply with the bill's requirements and current laws related to out-of-network billing a deceptive trade practice.

Position: Monitor

- [HB23-1209, Analyze Statewide Publicly Financed Health Care](#): The bill requires the University of Colorado to acquire model legislation developed by a nonprofit to enact a universal single-payer healthcare system. By October 1, 2024, the school must produce a report on the model legislation that:
 - analyzes costs;
 - identifies potential revenue sources to cover the costs;
 - analyzes connections to federal law; and ☐ confirms that the legislation will have desired results.

The bill creates a task force under the Department of Health Care Policy and Financing (HCPF) to assist the university in its report that will meet at least six times. The task force consists of representatives of the General Assembly, various state agencies, and members of various stakeholder groups. Non-legislative



members of the task force serve without compensation, but may be reimbursed for actual and necessary expenses.

Position: Monitor

- [HB23-1215, Limits on Hospital Facility Fees](#): The bill prohibits certain health care providers from charging a facility fee that is not covered by a patient's insurance for preventative services provided in an outpatient setting. Providers are required to disclose information about facility fees to consumers and post this information in their facilities. Failure to comply with these provisions is a deceptive trade practice in the business of insurance. Additionally, HCPF must form a steering committee to produce a separate, one-time report by October 1, 2024, that details the impact of facilities fees using data from the past 10 years.

Position: Monitor

- [HB23-1218, Health Facility Patient Information Denied Service](#): The bill requires certain health care facilities to submit data on service availability, including how frequently specific services are denied for non-medical reasons, to the Colorado Department of Public Health and Environment (CDPHE). The CDPHE must then develop forms to relay this information to the public by August 1, 2024, and every two years thereafter. By October 1, 2024, the CDPHE must publish the forms on its website. Providers must present their form to patients as part of the informed consent process. CDPHE is required to investigate any complaints of noncompliance and may issue fines.

Position: Monitor

- [SB23-195, Calculation of Contributions to Meet Cost Sharing](#): The bill requires a health insurer or pharmacy benefit manager to include in the calculation of a covered person's contributions toward cost-sharing requirements, including any annual limitation on a covered person's out-of-pocket costs, any payments made by or on behalf of the covered person.

Position: Monitor

- [SB23 298, Allow Public Hospital Collaboration Agreements](#): The bill exempts hospitals with fewer than 50 beds from select antitrust requirements for the purpose of improving healthcare access in rural or frontier communities. The bill specifies this exemption does not extend to actions that have the effect of setting reimbursement rates, dividing services among hospitals, or reducing the wages of hospital staff. To qualify, hospitals must submit proposals to the Department of Health Care Policy and Financing (HCPF) and to the Department of Regulatory Agencies (DORA) if the proposed agreement involves negotiating with health insurance payers. Proposals of merit must be referred to the Attorney General within 15 days. Proposals must be approved or denied within 45 days and may be reviewed annually. The bill specifies an appeals process for denied proposals.

Position: Monitor



General Legislative Overview

The 2023 Colorado legislative session ended with partisan tensions after lawmakers were faced with trying to resolve the two biggest issues of the session in just a few days' time.

Here are the key events in the last days leading up to adjournment at 10 p.m. on May 8, 2023:

Land use defeat - The ambitious and much amended land-use bill championed by Gov. Jared Polis died on the last day of the session. The Senate had stripped the top-down, state-control provisions of the original SB 23-213. House Democratic progressives restored some of those when they got their hands on the bill. The Senate refused to give in to the House changes, and the bill died. It was a major defeat for Polis, who has not seen a legislative defeat since entering office four years ago. The governor blamed loss of the bill on "special interests." A companion bill, HB 23-1255, passed without controversy. It bans cities from enacting growth limits.

Property tax relief passes— The second major end-of-session issue was property tax relief. A complicated measure, SB 23-303, proposed a reduction of property tax rates with losses of local government revenues to be backfilled with diversion of some Taxpayer's Bill of Rights surpluses. All of this will have to be approved by voters in November because it requires a change in TABOR refunds. Democrats tweaked amendments to the bill to attract the support of some local governments (i.e. fire districts), drawing Republican rhetorical scorn during debate on the final evening of the session.

The bill passed the House Monday evening without the no votes of the House's 19 Republicans, who walked out of the chamber. The future of this measure will be one Aponte & Busam plans to watch closely, given the difficulties of presenting a very complicated measure to voters.

Senate Democrats crack down – The Senate had been largely free of the House Democratic-Republican procedural conflicts seen this session. But when Republicans threatened to slow things down Democratic leaders lowered the hammer and limited debate. That ensured the passage of HB 23-1311, the TABOR refund bill in the final two days of session.

The 2023 session may not have begun on a hopeful note, but it did begin with a sense of change.

In the 65-member House 30 representatives were new to the Capitol, many of them young Democratic progressives.

Republicans, contrary to some pre-election prognostications, lost seats in both chambers. The rump of 19 GOP House members warned early on that they would make things difficult for the majority.

That threat played out as the session unfolded. Republicans made long speeches on minor bills they supported, and several times delayed action by asking bills to be read aloud in their entirety. The Democratic majority leadership responded by invoking rules that limited the length of debate, something rarely done in past sessions. House GOP first timers included some hard-right representatives, most from El Paso County, who became major players in GOP delaying tactics.

Earlier in the session, Democrats pushed through GOP speech making and passed significant bill packages on gun control and protection of reproductive rights.

But House progressives had a mixed scorecard, losing bills to ban assault weapons, create fairer scheduling for workers and allow cities to permit safe drug injection sites.



Here are some of the other big issues that dominated the 2023 session:

Criminal justice - The third major debate during the closing days was over HB 23-1249. Originally the bipartisan measure proposed raising the minimum age for charging youths with crimes to 13. The current age is 10. Instead of going into the criminal or juvenile court systems youth would be supervised and treated by local organizations called collaborative management programs.

The bill was considered over multiple days in the Senate and drew strong opposition from some Republicans. It finally passed Monday morning in a highly amended version that basically calls for a study of the issue. A few hours later the House agreed to the amended bill.

State Budget – Lawmakers faced a changed budget landscape in the 2023 session. Starting in the pandemic year of 2020, unexpectedly strong state revenues followed by significant federal relief funds gave legislators significant increase revenues to allocate, although spending of the federal money is time-limited.

Revenue growth has moderated going into the 2023-24 budget, and there’s no new federal money flowing. So, it was more of a “normal” budget year, although the Joint Budget Committee had sufficient resources to fund a 5 percent increase in state employee salaries, give a 3 percent increase to community providers and cover key inflationary costs for state agencies.

The full budget package, which includes more than just the long appropriations bill (SB 23-214), adds up to \$41.4 billion from all fund sources, a 4.2 percent increase. The grand total for General Fund is \$15.42 billion, a 14 percent increase.

A primary driver of the General Fund increase is the end of the enhanced federal match for Medicaid, set up during the pandemic but coming to an end. That will require the state to spend more on the medical insurance program.

The budget also includes continued startup funding for the new Department of Early Childhood and the Behavioral Health Administration. And significant increases in school district local revenues and a \$1 billion-plus balance in the State Education Fund enabled lawmakers to shrink the Budget Stabilization Factor next year and eliminate it in 2024-25.

The committee that prepared the budget had five members without prior experience on the JBC – Reps. Shannon Bird, Emily Sirota and Rob Bockenfeld and Sens. Jeff Bridges and Barbara Kirkmeyer. Only Sen. Rachel Zenzinger, the chair, had served on the committee before.

There were some clear growing pains for members during the months of briefings, hearings and votes. But members handled their toughest test – presenting the budget on the floors of the Senate and House – like veterans.

Key statistics:

- Projected GF available for spending - \$18.98 billion
- GF obligations (before amendments) - \$16.72 billion
- GF reserve - \$2.26 billion
- TABOR refunds - \$151.4 million



Other Criminal Justice – This was an active area of legislation. Bills of interest that passed include limits on use of restraints in state prisons (HB 23-1013), admissibility of juvenile statements when police lie to suspects (HB 23-1042), toughening of auto theft laws (SB 23-097) and restrictions on no-knock raids (SB 23-109). An effort to toughen fentanyl laws (SB 23-254) failed. And progressive Democrats killed a bill (SB 23-158) that would have renewed the Colorado Commission on Criminal and Juvenile Justice.

Education – Bills of note that passed included a \$41 million increase in special education funding (SB 23-099), creation of a task force to study the state accountability system (HB 23-1241), a \$27.3 million program to improve math teaching and student performance (HB 23-1231), provision of mental health screening in secondary schools (HB 23-1003) and banning of corporal punishment in schools and childcare centers. There also were several bills passed that seek to improve adult education and workforce training.

Elections – A bill pushed by Senate President Steve Fenberg of Boulder alters the system of state reimbursement for county election costs and also makes changes in campaign spending disclosure rules, contribution limits, requirements for polling centers and drop boxes and other changes (SB 23-276).

Environment & energy – This also was a high-interest area this session. Bills that passed dealt with air-quality permits (HB 23-1294, much amended), tighter utility regulation of utilities and limits on which rate-case expenses can be passed on to customers (SB 23-291), reduction of greenhouse gas emissions (SB 23-016), energy standards for appliances (HB 23-1161), expanding the role and changing the name of the oil and gas conservation commission (SB 23-285) and creation of a task force to study Colorado River issues (SB 23-295). Lawmakers also passed a number of wildfire mitigation and suppression bills and approved purchase of a second Fire Hawk helicopter.

Firearms – This was the first hot issue of the session. Measures that passed included creation of a waiting period for delivery of firearms purchases (HB 23-1219), strengthening the red flag law (SB 23-170), increasing the minimum age to buy firearms (SB 23-169), making it easier to sue gun manufacturers (SB 23-168) and cracking down on “ghost guns (SB 23-279). But a proposed ban on assault weapons failed in committee with bipartisan opposition (HB 23-1230).

Health care costs – Hospital costs were a major focus in this area and included measures to establish corrective action procedures for hospitals that fail to meet the minimum community investment thresholds (HB 23-1243), some restrictions on hospital outpatient facility fees (HB 23-1215) and hospital and medical cost transparency (HB 23-1226 and SB 23-252) and regulation of psychedelic mushrooms (SB 23-290). 3 percent medical debt SB 23-093.

Housing – Beyond the late-breaking land use bill, the legislative calendar was full of other housing measures. A ban on municipal growth limits passed without much controversy (HB 23-1255), but a proposal to allow local governments to impose rent controls failed (HB 23-1115). There were a variety of renters’ rights bills, including some restrictions on landlords (HB 23-1095 and SB 23-184), eviction protections (HBs 23-1120 and 1171) and habitability requirements (HB 23-1171).

Reproductive rights – The session’s second big controversy after gun control was abortion. Majority Democrats efficiently pushed through bills to expand access to reproductive health services (SB 23-189), strengthen legal protections for reproductive health care providers (SB 23-188) and provide stronger regulation of agencies that counsel against abortions. That latter measure already is facing a court challenge.



School funding – The annual school finance act (SB 23-287 this year) set Total Program Funding for school districts at \$9.1 billion, an increase of about \$670 million, funded almost entirely by dramatic increases in local property tax revenues. Base per pupil funding increases by \$598.25, to \$8,076.41, an 8 percent inflation increase. Average per-pupil funding is estimated at \$10,579. On top of TPR, rural districts will receive an additional \$30 million.