

2020 LEGISLATURE

ANTICIPATED CHALLENGES



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November 8, 2019

Colorado Medical Society (CMS) has prepared the following high-level preview of the upcoming 2020 Colorado legislative session covering some of the major issues affecting physicians and the patients they serve. In the coming year the need for physician advocacy on critical public policies is clear given an activist legislature and governor, a public anxious about the effects of rising costs, numerous other stakeholders with concerns about access, safety and public health, and a profession burdened by administrative complexity and burnout. Many of the issues outlined below have been anticipated in the 2019-2020 operational plan of the CMS board of directors.

Key topics include:

- **Public Option** – The release of the [draft public option plan](#) by the state on October 8 capped a flurry of CMS and physician activity over the summer that included special physician convenings and committee work (review the CMS proposal and letter to the state [here](#) and [here](#)). The state's draft public option proposal addressed many physician concerns including the need to increase competition and access to affordable coverage, to standardize benefits and use of value-based insurance design, and to enhance transparency and value-based payment reforms. Importantly, the draft proposal neither set physicians rates nor required physician participation in the plan. The CMS board voted to approve this version of the plan (read the letter [here](#)). Modifications to the draft plan are now being considered by the state and the final version of the proposed plan is due to the legislature on November 15. Two or more bills to operationalize the plan are expected during the upcoming legislative session by mandating health plan participation and setting hospital reimbursement rates.

The governor's office has thanked CMS and physicians for our constructive and proactive approach to date on this issue. In the coming months it will be critical for physicians to continue to develop and lead solutions to drive down the cost of care while maintaining or improving quality. It will also be important to address legitimate questions about the impacts of and opinions about the plan by physician members and other stakeholders. The CMS lobby team is already meeting with legislative leaders on the public option and many of them anticipate that this issue will likely be one of the hardest fought during the 2020 legislative session. Watch for more information as the public option moves into the legislature.

- **Corporate Practice of Medicine and Threats to Medical Malpractice Cap** – Reportedly, the number one issue for the trial lawyers in 2020 will be to erode the corporate practice of medicine doctrine that makes it difficult for a health system or professional corporation to be sued for a physician's negligence in those settings. This trial lawyer push would expand the value of a lawsuit by targeting the deep pockets of large hospitals and physician groups for vicarious liability. In addition, CMS, in partnership with COPIC, is gearing up once again in defense of the stable liability climate to oppose any increase in medical malpractice caps.
- **Timely Credentialing** – Untimely credentialing of physicians continues to be an administrative barrier to physician practices. CMS, in partnership with the Colorado Medical Group Management Association, is actively exploring a legislative solution to promote timely credentialing for physicians when they join a new group or practice. The proposal will require carriers to conclude the

credentialing process within 30 days of receiving a complete application for primary care applicants and 45 days for specialty applicants. The CMS lobby team is actively meeting potential legislative sponsors for the bill.

- **Hospital and pharmaceutical costs** – High hospital and pharmaceutical drug prices will continue to be in the spotlight, with anticipated legislation calling for enhanced transparency and more cost saving measures.
- **Reinsurance Program Funding** – Last year the state created a reinsurance program for carriers on the individual market that helped to drive down the cost of health insurance premiums by 20%. It is expected that additional funding will be necessary in order to continue this much-touted program.
- **Opioids** – Five bills are expected from the Opioid Interim Committee. CMS is particularly focused on the proposed prevention bill, which, among other things, requires carriers to cover alternative treatments for opioids on the same tier as opioids. Benzodiazepines are expected to be added to the mandatory PDMP check. CMS physician leaders Drs. Jonathan Clapp and Donald Stader have been instrumental in working with the legislative interim committee to add some key clinical exceptions to this requirement. In addition, work continues to enhance the ability and decrease the costs of integrating the PDMP with electronic health records and health information exchanges.
- **Immunizations** – The 2019 session witnessed the defeat of an immunization exemption narrowing bill due to the outcry of anti-vaccine advocates. The upcoming legislative session will see another bill aimed at addressing Colorado's last place national rank for kindergarten vaccination rates by narrowing exemptions to public health immunizations. CMS supported the bill last year.
- **Scope of Practice** – We expect several scope of practice issues next session including chiropractors' interest in using the term physician, CRNAs conducting fluoroscopy, and naturopaths seeking to expand prescriptive authority.
- **Out of Network (OON)** – A hard-fought bill during the 2019 legislative session aimed to address surprise out of network bills. The issue will once again be raised in 2020 with possibly two clean-up bills to address a benchmark drafting error in HB19-1174 and other technical issues aimed at clarifying the arbitration process and other data issues.