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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

January 8, 2013

The Committee on Legal Services met on Tuesday, January 8, 2013, at 10:04 a.m. in HCR 0112. The following members were present:

Representative Gardner, Chair
Representative Levy
Representative Murray
Representative Waller (present at 10:11 a.m.)
Senator Brophy
Senator Carroll
Senator Morse, Vice-chair
Senator Roberts
Senator Schwartz

Representative Gardner called the meeting to order.

10:06 a.m. -- Chuck Brackney, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1a - Rules of the Medical Services Board, Department of Health Care Policy and Financing, concerning medical assistance - section 8.443 - nursing facility reimbursement, 10 CCR 2505-10.

Mr. Brackney said this issue has to do with some provider fees and reporting requirements attached to those fees. The statute requiring the reporting requirements requires monthly reports, but the rule relaxes that to annual reports. Section 25.5-6-203 (1) (g), C.R.S. , has to

do with the provision of long-term care services in nursing facilities. It says the state department shall require each nursing facility provider to report monthly its total number of days of care provided to nonmedicare residents. However, Rule 8.443.17. A 4.e. says each nursing facility will report annually its total number of days of care provided to non-Medicare residents to the department. Because rule 8.443.17. A 4.e. directs nursing facilities to report the total number of non-Medicare patient days annually, it conflicts with the language of section 25.5-6-203 (1) (g), C.R.S., which requires monthly reporting of this information, and should not be extended.

10:09 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 8.443.17. A 4.e. of the Medical Services Board and asked for a no vote. Senator Brophy seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, and Representative Murray voting no.

10:10 a.m. -- Jeremiah Barry, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1b - Rules of the Medical Services Board, Department of Health Care Policy and Financing, concerning financial management of the children's basic health plan - presumptive eligibility for pregnant women, 10 CCR 2505-3.

Mr. Barry said by way of background, the children's basic health plan was originally designed to provide health care for children whose families' incomes did not qualify for medicaid but were low enough that it wasn't practical for them to purchase health insurance. In 2002, the program was expanded in two ways. First, pregnant women were added to the list of eligible recipients, and this was because the child of the pregnant woman was ultimately going to be eligible for services under the children's basic health plan. Additionally, there was an effort to get people into the program as soon as possible so recipients were presumptively eligible. Section 25.5-8-109 (5) (a) (I), C.R.S., states a pregnant woman whose family income does not exceed the applicable level specified shall be presumptively eligible for the plan. What this means is a woman can state her income and if her income qualifies her for the plan, she is eligible. She's notified that the department is going to verify that income, but she is eligible once she states her income. The plan authorizes the department and the board to design a schedule of services that are included in the plan. They are allowed to do that schedule of services but there are some limitations. Specifically, section 25.5-8-107 (1) (a) (I), C.R.S., requires that inpatient and outpatient hospital services be on that list of services that are provided. Rule 170.5 provides that inpatient hospital care is not a covered benefit for presumptively eligible clients, thus conflicting with the statute that provides that inpatient hospital services are to be covered by the plan.

Mr. Barry said subsequent to preparing the memo and a discussion with the department about

the rule, the board adopted a new rule that replaces the rule that we're recommending not be extended. In this new rule, the inpatient hospital care has been limited to the prenatal care program - presumptively eligible clients. We still think there is a problem with this rule because there is nothing that authorizes the board to limit services to presumptively eligible clients and even pregnant women who are presumptively eligible. If they're eligible for the plan, they get all the services under the plan. This is eliminating services that are required to be offered. The matter is somewhat complicated because this new rule was promulgated on December 14, 2012, which means that it is not scheduled to expire until May 15, 2014. Therefore, although we originally recommended that the rule not be extended, that rule no longer exists and we recommend that the new Rule 170.5 that was promulgated be repealed because it is in conflict with the statute.

Representative Gardner asked does the repromulgation of the rule on December 14 create a situation where it is discretionary for the Committee to act out of cycle and repeal it or not? Mr. Barry said yes, you do have the discretion. You're not required to rule on this now, so you could wait a year, but it's before the Committee and we don't think the change that has been made to the rule changes the fact that it shouldn't be extended and ought to be dealt with now.

10:17 a.m. -- Alan Kislowitz, Department of Health Care Policy and Financing, testified before the Committee. He said the department has decided not to contest this. It was an error in our understanding and communication. I do want to make it clear that the rule says that presumptively eligible prenatal care members do not have coverage for inpatient hospital care. The practice is that prenatal members do receive inpatient hospital care, if they need it. No care is taken away from these members. We hold that payment back until their presumptively eligible term of 45 days expires. If they become eligible, then we pay that claim and there's no harm. If they're not eligible, they shouldn't have been on the plan and we would not pay the claim. It was just a matter of good stewardship of taxpayers' money to hold back the expense of hospitalization. That was the spirit of our rule.

10:19 a.m.

Hearing no further discussion or testimony, Senator Morse moved to repeal Rule 170.5 of the Medical Services Board and asked for a yes vote. Representative Levy seconded the motion. The motion passed on a 9-0 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting yes.

10:20 a.m. -- Julie Pelegrin, Assistant Director, Office of Legislative Legal Services, addressed agenda item 1c - Rules of the State Board of Education, Department of Education, concerning administration of the accreditation of school districts, 1 CCR 301-1.

Ms. Pelegrin said to refresh everyone's memory, statute requires the department annually to review the performance of districts, the charter school institute, and public schools. Their performance is based mainly on four performance indicators. One of them is the public school's progress in closing the achievement and growth gaps. The other three are student achievement, student longitudinal growth, and student achievement of postsecondary and workforce readiness. This first issue has to do with the performance indicator concerning a public school's progress in closing the achievement and growth gaps. The statute sets out all four performance indicators and then sets out a series of measures for each of those performance indicators that the department is to calculate and apply for each district and each public school. Section 22-11-204 (5) (a) (I) (E), C.R.S., says that for each public school, in measuring the achievement of the performance indicator concerning progress made in closing the achievement and growth gaps, the department is to disaggregate by student group the percentage of students enrolled who score at each of the achievement levels in each of the subjects. The state board adopted Rule 9.02 (D) to specify the measures the department must use in determining each public school's achievement on the progress in closing achievement and growth gaps. Rule 9.02 (D) (1) (e) corresponds with the statute, only it says that the department is to aggregate by student group for a public high school the percentage of students enrolled in the public school at each grade level. Clearly, the statute intended for this measure to apply to all public schools, not just high schools. We therefore recommend that Rule 9.02 (D) (1) (e) of the rules of the state board of education not be extended.

10:24 a.m.

Hearing no further discussion or testimony, Representative Levy moved to extend Rule 9.02 (D) (1) (e) of the State Board of Education and asked for a no vote. Representative Murray seconded the motion. The motion failed on a 1-8 vote, with Senator Brophy voting yes and Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

10:26 a.m. -- Ms. Pelegrin continued addressing agenda item 1c. She said on Rules 10.01 and 10.03, some of the issues that we're raising with regard to those two rules are similar to ones that came up in a rule from 2010. In the rule in 2010, the rule was addressing the criteria and issues that the department considers in deciding the accreditation of school districts. At that time, we argued that the rules conflicted with statute because they did not require the department to consider all of the statutory issues and criteria with regard to all of the districts, but the Committee felt that the department's interpretation of the statute was reasonable and voted to extend the rules. In Rules 10.01 and 10.03, which address those criteria and issues with regard to public schools, we did feel that, based on the packet of amended rules we received, it appears that the rules did not require the department to consider two of the five statutory issues with regard to any school. In addition, we were still questioning the rules that allowed the department to apply some of the issues only to certain schools. Our real concern was with those two issues that didn't appear to be addressed. The department provided the

Committee and our Office with a memo last week. The memo points out that the two statutory issues that we were concerned about are addressed in Rule 9.01, which was not in the packet because it wasn't amended. Since it appears that those two issues are addressed .in the rules, our only remaining concerns are really around issues that the Committee has already decided. We continue to feel like the department's interpretation of the statute doesn't align as well as we would like to see, but the Committee has previously decided that issue. Unless you want to re-debate that issue, we're happy to withdraw our objections to Rules 10.01 and 10.03.

10:28 a.m. -- Keith Owen, Deputy Commissioner, Department of Education, testified before the Committee. He said we would gladly accept that recommendation. We feel that the way we apply this to districts is very parallel to the way we apply it to schools. To be inconsistent between districts and schools would be very problematic for the department.

10:30 a.m. -- Julie Pelegrin addressed agenda item 1d - Rules of the State Board of Education, Department of Education, concerning administration of the educator licensing act of 1991, 1 CCR 301-37.

Ms. Pelegrin said to be employed as an educator in a public school in Colorado, a teacher needs to have a license or an authorization. Authorizations are created to allow a person to work as an educator even though that person may not qualify for an educator license or so that a person is not required to go through the process of obtaining an educator license. The authorizations are set forth in section 22-60.5-111 (1), C.R.S. It authorizes the department to issue the authorizations specified in the section to persons who meet the qualifications prescribed by the statute and by the rules of the state board. Rule 4.11 (6) addresses the authorization for a school speech-language pathology assistant. The speech-language pathology assistant authorization is created in section 22-60.5-111 (10), C.R.S., and it says the state board has the authority to adopt the criteria for persons to receive that authorization. Subsections (1) through (5) of Rule 4.11 set those requirements, but in subsection (6) of the rule, it specifies the manner in which the employing school district must supervise a speech-language pathology assistant. The rule is not setting criteria; it's setting supervision requirements. There is no statutory authority in section 22-60.5-111, C.R.S., to authorize rules that would specify how a district must supervise a person who holds an authorization. Therefore, we recommend that Rule 4.11 (6) of the rules of the state board not be extended.

10:34 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 4.11 (6) of the State Board of Education and asked for a no vote. Senator Roberts seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

10:34 a.m. -- Julie Pelegrin continued addressing agenda item 1d. She said Rule 4.16 creates the adult basic education authorization. Section 22-60.5-111 (1), C.R.S., specifies all of the authorizations. It is a specific and exclusive list of 15 authorizations, but it does not include an authorization for adult basic education. Therefore, there is no statutory authority for this authorization and we recommend that Rule 4.16 not be extended.

Representative Gardner asked do we need to create an adult basic education authorization in statute?

10:35 a.m. -- Keith Owen, Deputy Commissioner, Department of Education, testified before the Committee again. He said yes, we're going to be requesting a statutory change in our department clean-up bill this year.

Representative Gardner says that seems logical to me. Just because we sometimes don't approve rules doesn't mean it isn't good public policy.

10:36 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 4.16 of the State Board of Education and asked for a no vote. Senator Brophy seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

10:37 a.m. -- Julie Pelegrin addressed agenda item 1e - Rules of the State Board of Education, Department of Education, concerning administration of the early literacy grant programs, 1 CCR 301-90.

Ms. Pelegrin said last year, the legislature passed the read act for preschool to 3rd grade literacy. Part of the act created the early literacy grant program. The state board was authorized to adopt rules to implement the program. In statute, there were some reporting requirements specified for early literacy and for any local education provider that receives an early literacy grant. Section 22-7-1213 (2), C.R.S., specifies that if a grant is received, the local education provider is to submit to the department information describing the program that they used the grant moneys on, the number and grade levels of students who participated in each of the types of programs or services provided, and the progress made by participating students in achieving reading competency. The state board adopted Rule 4.01, which is about reporting requirements. It mirrors the statute in paragraphs (A) through (C). Paragraph (D) requires local education providers to report other information that the department may deem necessary to monitor the effectiveness of the grant program. That list of reporting requirements in statute is not a minimum; it's an exclusive list. Also, the potential breadth of other information that the department may deem necessary to monitor effectiveness is pretty

broad. We recommend that because Rule 4.01 (D) conflicts with the statute and is not authorized, it should not be extended.

10:39 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 4.01 (D) of the State Board of Education and asked for a no vote. Representative Waller seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

10:41 a.m. -- Ed DeCecco, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1f - Rules of the Executive Director, Department of Revenue, concerning gambling payment intercept, 1 CCR 210-1.

Mr. DeCecco said Rule 11 should not be extended because it creates a $10 fee related to the administration of the intercept program that is unauthorized. Some background is helpful. The General Assembly created the "Gambling Intercept Payment Act" in 2007 and has since expanded the program. Here's how it currently works: Let's say I win $1,500 playing the slots at Ameristar. Prior to paying me, Ameristar would run my name through the intercept registry. The registry should include the names of people who owe child support and court-ordered restitution, and eventually it will include certain unpaid debts to the state. It should be noted that the registry operator is defined to mean the department of revenue or the private entity that maintains the registry under the direction and control of the department. In this case, the department has a contract with the state internet portal authority (SIPA) to be the registry operator. Let's say the department runs my name and finds that I owe $1,000 of restitution. Ameristar will withhold this amount plus several other costs that are added to the amount of this outstanding debt. First, there's a statutory fee of $25. This fee was created in 2009 but was contingent on a future event and didn't start being collected until 2011. This $25 payment ends up in the gambling payment intercept cash fund where it's subject to annual appropriation for the direct and indirect costs of the administration of the act. In addition to this $25 set in law, there's the fees included in Rule 11. Thirty dollars will go to Ameristar to cover the licensee's cost of compliance with the gambling intercept act. In addition, $10 goes to the registry operator as a payment processing cost. In my example, out of the $1,500, $1,000 is going to go to the judicial department to be paid to the person I owe the debt, Ameristar is going to receive $30 for processing this, $25 goes to a cash fund to pay for the cost of the program, and SIPA gets $10. I would ultimately receive $435. Out of these distributions, it's only this $10 charge, which is included in Rule 11, that is problematic. The executive director promulgated Rule 11 under section 24-35-607 (4), C.R.S., which requires the department to promulgate a rule to allow a licensee to retain at least $30 of each payment withheld pursuant to the act to cover the licensee's costs of compliance with the act. The language of Rule 11 says to cover the cost of the licensee's compliance with the act and these

regulations, the licensee shall retain $40 from the cash payment intercept. A total of $10 of the $40 shall be submitted to the registry operator with the intercept payment as a payment processing cost. The remaining $30 shall be retained by the licensee as a compliance cost. Again in my example, the $30 to Ameristar is clearly allowed under the law. It's the $10 that SIPA takes that's problematic. First, the payment fails to meet the plain language of section 24-35-607 (4), C.R.S. This provision allows a licensee to retain some of the cash payment intercept to cover its cost of compliance, and "retain" means "to keep possession of". Under Rule 11, however, the licensee does not keep possession of the $10. Instead it must immediately transmit it to the registry operator. This transmittal is part of the second, broader issue with Rule 11. The executive director is using a provision that requires a licensee - or the casino - to be reimbursed for its costs of complying to pay for the administration of the act itself. Yet the act contains no authority for the $10 charge. If the General Assembly had intended for the $10 to be collected, it could have included the fee in the act, as it did when it enacted a $25 fee.

Mr. DeCecco said the department argues that there is a slight twist to this rule due to the fact, in part, that SIPA is the registry operator and SIPA routinely charges fees for its services. In this instance, the fact that SIPA is the registry operator does not make the $10 fee permissible. SIPA's authority to charge its fees is generally limited by section 24-37.7-106 (1), C.R.S., which states that SIPA shall not increase or decrease the amount of any charge or fee that a state agency is authorized by law to impose for electronic information, products, and services. That limit applies here. As previously mentioned, a $25 statutory fee is added to each outstanding debt that is credited to the gambling intercept payment cash fund for the direct and indirect costs of administering the act, which would include the electronic processing of the claim. Accordingly, the General Assembly has established $25 as the amount that the department or anyone else may charge for electronically processing an intercept transaction, and under section 24-37.7-106 (1), C.R.S., SIPA can neither increase nor decrease this fee. Therefore, even if SIPA is the registry operator, the additional $10 payment processing cost is still prohibited. This does not mean that SIPA shouldn't collect a $10 fee for its payment processing costs. It just means that the fee has to come from the existing $25 statutory fee, which is currently not being used. Therefore, because the $10 payment processing cost cannot be included as a valid cost of compliance with the act, we recommend that Rule 11 not be extended.

Representative Levy asked did you have an opportunity to look up the original bill's fiscal note and see whether there was anything in the fiscal note about SIPA needing funds to operate this system? Mr. DeCecco said in the original bill there is nothing that created that. We also listened to tapes from all of the bills and weren't able to find any clear legislative history that talked about this $10 fee.

Representative Levy said I realize there was nothing in the bill that got translated into statute, but I just wondered whether there was an appropriation clause that may have referenced this

fee. Mr. DeCecco said in a fiscal note for the 2009 act that created the $25 fee, it does reference the $10 charge being levied under the rule. I will mention that the fee was in a rule that never made it to this Committee because we didn't find an issue with it. I don't think that was necessarily a good enough reason to let the fee still be charged. Perhaps the fact that there's this new $25 fee brought it more to our attention. The June 8 fiscal note did mention that the $10 fee is the only record that has a clear mention of it. It doesn't necessarily show any legislative intent, it just shows the fiscal analyst describing all of the fees that are charged. At that time, the $10 fee was charged pursuant to a rule that wasn't challenged.

Senator Schwartz said I'm looking for clarification about how the $25 is currently used and distributed. Would that be an opportunity for SIPA to recover the $10 cost? Mr. DeCecco said it's my understanding that the fee goes into the gambling payment intercept cash fund in accordance with statute. That money now is subject to annual appropriation by the General Assembly for the direct and indirect costs associated with the program, but there has not been any moneys appropriated from it. It seems as if there is money that could be used for that purpose. If they want it to go directly to SIPA, then a statutory change may be necessary to avoid it going to the cash fund in the first place.

10:52 a.m. -- Heather Copp, Deputy Executive Director, Department of Revenue, testified before the Committee. She said we do respectfully disagree with the assertion that the department doesn't have authority under the compliance part of the original bill and the other bills that were described. In 2007, House Bill 1349 established the gambling payment intercept act. It did allow the department to contract with a registry operator. At that time, SIPA was the most equipped to do that interface. That bill also allowed us to promulgate rules for the licensee to retain a portion of the payment. We did promulgate those rules in July 2008 and we established a total compliance cost of $25, of which $15 was retained by the licensee and $10 was remitted for payment processing costs to SIPA. All along we have considered that a portion of the compliance costs for the licensee to comply with the act. Section 24-37.7-107 (1) (f), C.R.S., says that SIPA shall fund its operations from moneys derived from the sales of services, products, or information. At that time, the department did not receive any funding to implement this act. Then in 2009, House Bill 1137 was passed, which expanded the act to judicial restitution. That added an additional $25 fee to be deposited in the gambling intercept fund to allow for the expansion of the act. Since that time, we've also expanded it to include department of personnel and administration state-collected debts. The fiscal note did specifically mention the existing compliance costs of $25, of which $15 was retained by the licensee and $10 went to SIPA. It specifically mentioned that the $25 going to the gambling intercept cash fund would be an additional $25 for a total of $50. The fiscal note specifically says the bill will increase the fee imposed by $25 for a total fee of $50. Section 24-37.7-106 (1), C.R.S., says that SIPA shall not increase or decrease the amount of any charge. However, we feel the fee we're asking the licensee to maintain is a compliance cost and also SIPA has not increased their fee since 2008 when the original rule was done. The latest bill was in 2011, Senate Bill 051, which resulted in this

new rule-making, and it just changed the language to say the licensee could retain at least $30 of each payment instead of saying a portion of the payment. The department amended its rules to allow for compliance costs of $40, of which the licensee would keep $30, and, again, the original $10 would be remitted to SIPA. We did go back and listen to testimony and during the hearings for Senate Bill 051, the General Assembly did hear testimony regarding the $10 payment of SIPA and therefore our belief is that it was intended to remain the same because there were no changes made at that time. That testimony appeared in the Senate committee, House committee, and then upon amendment, where it was discussed that there was now going to be $40 to the licensee, of which $10 went to SIPA and $25 still goes to the cash fund. I mentioned that both tax, lottery, and gaming do intercepts. We have the possibility that a person could be intercepted at a gambling establishment through a lottery win and through their tax refund. There are three separate databases now. Our intent was to use that fund in the future to be able to have one central repository, so that all of lottery, gaming, and tax are checking the same database. That's one of the things we were hoping in the future to be able to use that money for. There's currently $13,000 in the cash fund. To show you how successful the program has been, a total of $2.1 million has been intercepted for child support and judicial. We do believe that the $40, plus the $25 that goes to the intercept cash fund, is a reasonable amount to be able to intercept those kinds of dollars.

Senator Morse said assuming that we do not extend the rule, what happens? Ms. Copp said at this time we do not have an appropriation for the $25 that goes into the cash fund and, therefore, the registry would have to be shut down until we could ask for the appropriation. SIPA is not willing to operate the registry without their $10 compliance cost.

Senator Carroll said to me it looks like there is authorization to pay the $10, but just from the $25 that is statutory authorized. What I don't understand about talk of shutting this down is why can't you take the $10 from the statutorily authorized $25? Ms. Copp said because at this time we haven't asked for an appropriation for that $10 to come out of that $25 because the $10 has always come as part of the compliance cost and so we didn't need an appropriation for that. At this time, we do not have the ability to take money out of the fund to pay SIPA. We would have to get an appropriation for that. We did not realize this was an issue; we thought we were always in compliance based on the authority we had in statute.

Senator Carroll said we do use SIPA on a variety of our on-line services that I think fall within the statutorily authorized amount. I'm not remembering a separate appropriation needed for a sub-use of a fee to go to SIPA. Why would we need a separate appropriation for SIPA? Mr. DeCecco said I believe it's because this money is actually directed to the cash fund, so that under the law as it's written now, SIPA couldn't just retain the $10 and move the other $15 to the treasurer to put in the cash fund. That money has to go to the cash fund and, unless it's appropriated to the department, they can't spend it.

Representative Gardner asked if that money is sitting in the cash fund now? Ms. Copp said

yes, there's $13,000 in that cash fund. We were allowing that to accumulate until it got to a point at which we could use it to make the master repository.

Senator Carroll said it sounds like the way we statutorily set up this fee limited you by directing it to a cash fund. Are you looking at a statutory change so you don't have the language directing it to a cash fund? Ms. Copp said we didn't think we had a problem with the $10 fee because it was part of the compliance cost, so we never anticipated needing an appropriation for that purpose. In the future, we would have asked for an appropriation to be able to expand the repository. At this time, we have not contemplated that because we felt we had the authority as part of the compliance cost to have the licensee pay the $10 fee to SIPA.

Senator Brophy said I think Mr. DeCecco is right that you don't have the statutory authority to add $10. The statutes do give the General Assembly the ability to appropriate money out of this fund for direct and indirect costs, so we certainly could do a supplemental appropriation between now and when the rule review bill is adopted so that there wouldn't be any reason to shut the program down. There is plenty of time to make sure the appropriate amount of that $13,000 could be used to pay the charges from SIPA so that the program could continue until you either decide to leave it that way or you come back seeking statutory authority to add this $10 charge directly to SIPA.

Representative Gardner said I agree with Senator Brophy. It seems to me there is plenty of time to address this.

Senator Schwartz asked would there also be a corresponding reduction on the part of the entities that are collecting this? They are allowed to collect $40, they retain $30, and $10 goes to SIPA. Would that also need to be a statutory change or would there be a corresponding change that we lose the $10? Ms. Copp said if the rule isn't approved, we would have to go back and look at the rule because the intent is that the licensee would get the $40 because they have to remit $10 of that back to the registry operator. The intent is that they only keep $30, so we would have to make a change to that.

Representative Murray said you currently have an appropriation to run the intercept program and it's from the other $25. As I understand it, you have $25 and another $25. Ms. Copp said no, the department does not get any money for running the repository. Twenty-five dollars goes directly to the cash fund and we would have to get an appropriation if we wanted to use that. Of the other $25 currently, which this would have increased to $40, $15 of that is retained by the licensee and $10 is remitted. None of that comes to the department at this point.

Mr. DeCecco said I agree, although the $30 theoretically is available for appropriation to the department.

Representative Murray asked why have you not asked for an appropriation from the fund, because the purpose of the fund was to run the program? Ms. Copp said if you read the statute, the first use of the fund is expansion of the program and the second use of the fund is for direct and indirect costs. Our intent was, because we need to expand the program to make it more usable for the people that are getting intercepted because in some cases they're getting intercepted multiple times, we wanted to make improvements using that fund and we're not at the point to be able to do that because of the amount of money in the fund and otherwise. We did not believe that we needed to use that money for the direct or indirect costs because that was being done as part of the compliance cost that the licensee was retaining.

Mr. DeCecco said to clarify, the fee was passed in 2009 but didn't become effective until 2011. The reason was because this was first funded by gifts, grants, or donations and there was a continuous appropriation, if that money got into the fund, to be used to expand it to judicial for restitution. Once it was expanded, that's when the $25 fee went into effect and once that $25 fee began to be collected, it went into the cash fund and at that point the moneys in the fund are subject to annual appropriation. The expansion of the program relates to the fund as it existed prior to the $25 fee. By the very fact that we have a $25 fee, the purpose related to expanding it for restitution has already been satisfied.

Representative Murray said I appreciate Mr. DeCecco's comments because that's how I see it. In terms of the expansion of the program, perhaps you could make a request to the General Assembly that you need to improve the computer system and you need an appropriation. Use the money in the fund is how I kind of see it.

11:09 a.m.

Hearing no further discussion or testimony, Representative Murray moved to extend Rule 11 of the Executive Director of the Department of Revenue and asked for a no vote. Representative Waller seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

11:10 a.m. -- Kate Meyer, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1g - Rules of the Secretary of State, Department of State, concerning elections - county security procedures, 8 CCR 1505-1.

Ms. Meyer said section 1-5-616, C.R.S., pertains to the use of electronic and electromechanical voting systems, which means touchscreen and electronically tabulated voting systems. The statute contains language directing the secretary of state to set by rule standards and procedures for the use of these electronic and electromechanical voting systems. Subsection (5) (a) of that section requires counties and designated local election

officials to establish written procedures to ensure the accuracy and security of voting in the political subdivision and submit those procedures to the secretary of state's office for review. The rule helpfully abbreviates the term "written procedures to ensure the accuracy and security of voting" to be "county security plans" and I'll be using that term for the rest of this presentation. We're principally concerned today with subsection (5) (b) of section 1-5-616, C.R.S., which sets forth the procedure for amending already established county security plans. Once the county devises amendments to its already-established procedures, it forwards those proposed revisions to the secretary of state's office. The secretary of state shall notify the designated election official of the approval or disapproval of the revisions no later than fifteen days after the secretary of state receives the submission. Rule 43.4 of the secretary of state's office is the corresponding administrative provision. Specifically, Rule 43.4.4, states that if, under section 1-5-616 (5) (b), C.R.S., the secretary of state is unable to complete its review, the secretary will notify the county that the security plan or revisions are temporarily approved until the review is complete. We believe this conflicts with the statute in two crucial respects. First, it appears to give the secretary of state an indefinite period of time within which to review any proposed revisions to county security plans where subsection (5) (b) unambiguously imposes a 15-day time period. Second, and perhaps more importantly, it deems any unreviewed proposed revisions as temporarily approved until such time as the secretary of state can complete his review. This results in counties implementing not only unreviewed amendments to security plans, but, taken to its perfectly conceivable extreme, it might even result in counties using amendments to procedures that are ultimately rejected by the secretary of state's office. Because Rule 43.4.4 gives the secretary of state an indefinite period of time within which to conduct it review of proposed revisions to county security plans, and because it deems such revisions temporarily approved until they do complete the review, we would ask you not to extend this rule.

11:14 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 43.4.4 of the Secretary of State and asked for a no vote. Senator Brophy seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

11:15 a.m. -- Esther van Mourik, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1h - Rules of the State Treasurer, Department of the Treasury, concerning state public finance policy, 8 CCR 1508-2.

Ms. van Mourik said for a little bit of background, the state public finance policy originated from Senate Bill 150 from last year, which established the state treasurer as the manager of the state's public financing. The effort was to centralize such management, but the statute makes the management subject to the state public financing policy, which the statute directs

the state treasurer to promulgate by rule. Included in the state treasurer's responsibilities, as manager of the state's public financing, is post-issuance compliance, which generally refers to reporting requirements under federal and state tax and securities laws. Meeting post-issuance compliance deadlines is an important part of financing transactions and there are consequences if they are not met correctly.

Ms. van Mourik said section 24-36-121 (5) (k), C.R.S., says the state treasurer shall promulgate by rule a state public financing policy, and the state public financing policy shall include policies related to post-issuance compliance with federal and state tax and securities laws, including arbitrage, rebate, and remedial action requirements. Rule 1.12 D. conflicts with the statute because the rule doesn't actually include any policies related to post-issuance compliance. Instead, the rule says that the state treasurer may adopt post-issuance compliance procedures. Effectively, the rule allows the state treasurer to adopt policies at a later date, in a separate document, or not at all. Because Rule 1.12 D. directly conflicts with statute, it should not be extended.

11:18 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 1.12 D. of the State Treasurer and asked for a no vote. Senator Brophy seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

11:19 a.m. -- Esther van Mourik continued addressing agenda item 1h. She said next is the first sentence of Rule 1.11 and Rules 1.11 A., 1.11 B., 1.11 C., 1.11 D., and Rule 1.12 A. The "State Administrative Procedure Act" (APA) requires a regulation to be clearly and simply stated so that its meaning will be understood by any party required to comply. Unfortunately, these particular rules don't even specify clearly who is required to comply. Most provisions of the state public financing policy repeatedly refer to the state treasurer when imposing duties or specifying powers related to the management of state public financing and refer to state agencies when imposing similar duties on all agencies that seek to obtain financing. These specific rules impose duties on the state, without naming a specific state official or any state agency responsible for actually executing these duties. In fact, the definition section of the policy doesn't even define "the state". The point is that it's not clear which party is required to comply with the regulation. I'll give you one example from all of those rules. Rule 1.11 B. imposes the duty to maintain separate accounts by source of funds on a monthly basis. Either the state controller or the state treasurer could reasonably fulfill this duty. The other portions of the rules at issue suffer from a similar lack of clarity and, therefore, should not be extended.

Representative Gardner said you've recommended that the first sentence of Rule 1.11 not be

extended. Why are we doing a sentence? Usually we don't do sentences out of rules. Ms. van Mourik said my understanding is that we actually have had rules similar to this where we have not extended a sentence in a rule. I think it makes sense in this case. If you look at the first sentence, normally you would expect that to end in an colon instead of a period. The sentence in and of itself says the state shall comply with the applicable arbitrage regulations mandated by the internal revenue code, including, but not limited to, timely filings. But, if we don't know who the state is and who is supposed to be complying with these regulations, I think it makes sense to not continue that particular sentence.

Representative Gardner asked if we look at the recommendation in its totality, aren't we just repealing Rule 1.11? Ms. van Mourik said actually we're not. Rule 1.11 E. is not included because that specifies that the treasurer is going to be doing something.

Representative Gardner said maybe we've done it in the past, but it is not something that we usually do by sentence. We usually do the rule, or not.

11:23 a.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said if we had a problem with Rule 1.11 E., then we would recommend getting rid of all of Rule 1.11. We have, in the past, referred to the first paragraph or the first sentence, so we have done that previously. It's a function of the way the particular agency numbered this particular rule.

Representative Gardner asked is it because the sentence itself is a stand-alone rule? Ms. Haskins said that is one way to look at it.

Representative Gardner said we don't rewrite rules by picking or choosing in general. Ms. Haskins said yes, that is true, but we're trying to preserve the ability for Rule 1.11 E. to remain in the code and this is the easiest way to do that.

Representative Levy said I wonder if there isn't some reasonable inference, given that these are rules promulgated by the state treasurer and they're in the treasurer's section of the code of regulations, that the rules refer to the state treasurer? Ms van Mourik said it helps to know a little more background with respect to this particular issue for me to be able to say that I don't know if that inference would be fair. With respect to the management of state public financing in this state, the state controller, the attorney general, and the state treasurer have all played fairly large roles in portions of this management. Senate Bill 12-150 tried to centralize that with the state treasurer. However, there appears to be some tugging and pulling with respect to particular portions of post-issuance compliance among those agencies, particularly the controller and the treasurer. I think, based on that history, my preference would be that it be clear who is actually going to be performing these duties so that there is no question and so that the pulling and tugging cease.

11:27 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend the first sentence of Rule 1.11 and Rules 1.11 A., 1.11 B., 1.11 C., 1.11 D., and Rule 1.12 A. of the State Treasurer and asked for a no vote. Representative Waller seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

11:28 a.m. -- Michael Dohr, Office of Legislative Legal Services, addressed agenda item 1i - Rules of the State Board of Human Services, Department of Human Services, concerning special projects - domestic violence program, 12 CCR 2512-2.

Mr. Dohr said I just found out that the state board is going to be contesting Rule 12.200.4 but they are not contesting Rule 12.200.7. I will do Rule 12.200.7 first. The issue at hand for both of the rules is the fact that the state board has repealed rules and taken those issues and placed them in an administrative handbook. They have taken those issues out of the rule review process and out of the APA protections. Therefore, we are asking that the rules not be extended. Pursuant to section 26-7.5-104 (2) (a), C.R.S., the state board is required to establish by rule standards and regulations for all domestic abuse programs. In Rule 12.200.7, the state board removed the procedures related to the complaint process and included a statement that said individuals could file a complaint pursuant with the procedures that are going to be set forth in the administrative handbook. We believe that is a standard and regulation for the domestic abuse program that should be in rule and that it certainly falls under the definition of a rule in section 24-4-102 (15), C.R.S. Therefore, we are recommending that Rule 12.200.7 not be extended.

Senator Brophy asked could you explain what the difference is between a rule and something that exists in a handbook? Mr. Dohr said the most important aspect is that the handbook does not go through the rule process, therefore it's not subject to the APA so there is no notice for the rule-making hearing and there's no opportunity for public comment. They don't get reviewed by our Office because we only review the rules and not anything that ends up in an administrative handbook.

11:32 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 12.200.7 of the State Board of Human Services and asked for a no vote. Representative Levy seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, and Representative Waller voting no.

11:33 a.m. -- Michael Dohr continued addressing agenda item 1i. He said Rule 12.200.4 gets rid of the requirements and funding awards and replaces it with language that says the domestic violence program will announce availability of funding through a request for application and solicit responses to a request for application as required by the state. In distributing the funds, the program funding recommendation committee will set forth standards in the program's administrative handbook. The issue we have here is that the standards that are going to be relied upon in making these funding recommendations are going to end up in the handbook and not in rules. Again, we think that is something that should be done by rule. Section 24-4-102 (15), C.R.S., defines a rule as every agency statement of general applicability and the recommendations for funding and those standards are a statement of general applicability. Also, section 26-7.5-104 (2) (a), C.R.S., states that the department must do rules that enforce the standards and regulations. This is a standard and it is even called that in the rule. Therefore, we believe Rule 12.200.4 should not be extended.

11:35 a.m. -- Alicia Calderon, Attorney General's Office, testified before the Committee. She said we wanted to respectfully disagree with a portion of the analysis. The statute does require that standards and regulations for domestic abuse programs be placed in rule. However, the standards for the programs continue to be found in rule. They are at Rule 12.201. They were not part of this rule package and they have not been repealed. The department went through a very lengthy and thorough process reviewing its rules to determine which rules were not needed. This is one of the rules that was removed and the primary reason for removal was because this portion of the rules deals with a grant-making process and what can be placed into the request for application itself. All of the portions of the rules that have been deleted could go directly into the request for application, such as what the standards are for the request for application or what a grievance process would be. All of that can go into the request for application itself and we don't believe that portion of the rules needs to be in regulation. We do agree, however, that it should not be placed in an administrative handbook. We do need to fix a small portion of the rule anyway.

Representative Gardner said it seems almost as if the infirmity here was to try to put it in the administrative handbook at all, rather than to just make the rule say that requests for application will minimally include something. Would you agree with the analysis that maybe you said too much? Ms. Calderon said yes, we would.

Mr. Dohr said I think the course of action would still be to not extend the rule and then give the department the opportunity to fix it. If they do fix it, then it can be taken out of the rule review bill before the end of session.

Representative Gardner asked if there was a redraft of the lead paragraph to set these things as minimal inclusions in a request for application, rather than creating this administrative handbook, would that pass muster? Mr. Dohr said I think there is probably a way for the rule

to be redrafted so that there is sufficient language regarding standards in the rule but still allowing the request for application to stand on its own.

Representative Gardner said it seems to me the problem is you don't want to be overly prescriptive in the drafting of your requests for application, but you're sort of in this nether world.

11:40 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 12.200.4 of the State Board of Human Services and asked for a no vote. Senator Roberts seconded the motion. The motion failed on a 0-9 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

11:41 a.m. -- Jason Gelender, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1j - Rules of the Transportation Commission, Department of Transportation, concerning the statewide transportation planning program, 2 CCR 604-2.

Mr. Gelender said this a simple and uncontested rule issue. The department already has the process of repromulgating started to fix this in the works. This is a standard incorporation by reference requirement violation. Specifically, one of the things under the statute that may be incorporated by reference are federal regulations from the code of federal regulations. Section 24-4-103 (12.5) (a) (II), C.R.S., says the reference has to identify the incorporated code, standard, guideline, or rule by citation and date, identify the address of the agency where it's available for inspection, and indicate that it does not include any later amendments or editions of the rule being incorporated by reference. The department did a standard incorporation by reference provision that met the requirement of providing a citation for the regulations referenced but did not identify them by date, specify the department's own address where they're available, or state that they don't include later amendments to the regulations. The long laundry list of actual rules that we're requesting not be extended are rules that make reference to various provisions of the code of federal regulations.

11:43 a.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rules 1.22, 1.25, 1.42, 2.03.1, 2.03.1.1, 2.03.1.2, 2.03.1.3, 2.03.1.4, 4.01, 4.02.1, 4.02.2, 4.02.3, 4.02.5.9, 4.04.2.2, 4.04.2.4, 4.06.1.7, 6.01.2, 7.01, 7.03, and 7.04 of the Transportation Commission and asked for a no vote. Senator Brophy seconded the motion. Representative Gardner said this is an important issue in Colorado regulatory requirements and standards. We require this in some detail so you can't just incorporate by reference in a loose fashion. Mr. Gelender said without commenting on the policy, that's what the statute requires. Representative Gardner

said it may seem to the Committee or to the public that this is not important, but the General Assembly has been thoughtful about ensuring that members of the public could find and know exactly what it is they're required to comply with. The motion failed on a 0-8 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting no.

11:47 a.m.

The Committee recessed.

11:56 a.m.

The Committee returned from recess. Representative Gardner disclosed that as Chair of the Committee, he requested that the next rule be pulled forward for an earlier review because of unusual circumstances.

11:57 a.m. -- Chuck Brackney, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 2a - Rules of the Colorado State Board of Chiropractic Examiners, Division of Professions and Occupations, Department of Regulatory Agencies, concerning the scope of practice of chiropractors, 3 CCR 707-1.

Mr. Brackney said this issue has to do with a rule that authorizes chiropractors to administer injections to patients and sets up a separate certification process that the board will use to certify chiropractors who do injections. We believe allowing chiropractors to do injections exceeds the scope of practice in the statute that chiropractors must currently follow. The rule-making authority of the board is found in section 12-33-107 (1) (a), C.R.S., which says that the board is authorized to adopt, promulgate, and from time to time revise such rules and regulations not inconsistent with the law. It's general rule-making authority but they do have to follow the rest of the statutes regarding chiropractors. The definition of the word "chiropractic" is the scope of practice for the chiropractors and it sets out what the General Assembly allows chiropractors to do. It's this statute that is the most important. Section 12-33-102 (1.7), C.R.S., defines "chiropractic", and the things chiropractors can do, generally speaking, under the statute can be put into four categories. The first is to analyze and diagnose human ailments by the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column. Second is the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. Third is the use of venipuncture for diagnostic purposes, meaning they can draw blood and run a blood test. Finally, the statute allows chiropractors to use acupuncture. In the interest of being thorough, I would like to show you one more statute. Section 12-33-102 (2), C.R.S., defines the term "chiropractic adjustment" and says it means the application, by hand, of adjustive force to correct a wide number of things listed

in the statute. That is pretty much the extent of the scope of practice for chiropractors.

Mr. Brackney said Rule 7 C. reads that nutritional remedial measures as referenced in section 12-33-101 (1.7), C.R.S., means that a doctor of chiropractic may administer, prescribe, recommend, compound, sell, and distribute homeopathic and botanical medicines, vitamins, minerals, phytonutrients, antioxidants, enzymes, glandular extracts, nonpresciption drugs, and durable and nondurable medical goods. What I think that paragraph does is interpret the statute about the use of sanitary, hygienic, and nutritional measures and that sort of thing. This paragraph was in the rule previously and we really don't have any problem with it. It's the rest of the rule that was adopted at the board's meeting in November that causes us some trouble. The next sentence says administer includes oral, topical, inhalation, and injections. The board is giving authority to chiropractors to do injections. The rest of the rule says chiropractors that choose to administer these things by means of injectable procedures have to be certified by the board and the rule sets out certain education and testing requirements. However, nowhere in the whole statute regarding chiropractic and its definition was there any mention of chiropractors doing injections. Injections are not "the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column". Nor can injections be considered "the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments". The term "injection" is defined as "the act of forcing liquid into a part, as into the subcutaneous tissues, the vascular tree, or an organ". Injections, by definition, constitute an invasive procedure that breaks the skin of the patient and injects a foreign substance into the patient's body. The definition of "chiropractic" contains two specific instances in which the General Assembly has authorized chiropractors to break a patient's skin. The first is venipuncture, the drawing of blood for purposes of diagnosis, and the second is the use of acupuncture. Neither of these instances involves injections to patients of foreign substances. Finally, the definition of the term "chiropractic adjustment" does not include anything that could be read to allow the administration of injections.

Mr. Brackney said the idea of chiropractors doing injections has been talked about by the General Assembly before. In the past several years we've seen a couple bills on it, most recently in 2010 with House Bill 1416. It proposed to allow chiropractors to treat neuromuculoskeletal ailments, limited to topical, subcutaneous, and intramuscular routes of administration. Similarly in 1997, we had House Bill 1017, which sought to give chiropractors the authority to do injections. Neither of these legislative proposals was successful. I think both of them underscore the whole idea that authority for chiropractors to do injections would require a change to the law and specific authority in statute.

Mr. Brackney said I'm not the only one who has this opinion. Under the APA, every rule must receive an attorney general's opinion. In almost all cases it's pretty pro forma; they approve the rules and say everything is fine. You are not going to see a negative opinion by

the attorney general on rules very often. This is the rule review equivalent of "Big Foot". The attorney general's opinion on this rule says the attorney general's office has reviewed the rules and our opinion is that the changes to Rule 7 exceed the legislative scope of authority granted to the board. It's my understanding that the opinion was issued prior to the adoption of the rules by the board and the board chose not to go along with this opinion, which it is entitled to do. However, what the board is not entitled to do is adopt rules that exceed the statutory authority granted to them by the General Assembly. The current definition of "chiropractic" does not allow for the administration of injections by chiropractors. The board does not have the power, by rule, to expand the scope of practice of chiropractors to allow them to administer injections without the authority of a specific statutory directive. To approve this rule would be to say that the authority for chiropractors to do injections has been lying dormant in this statute for years and not until last November did the board decide to act on it. I would suggest that is the incorrect interpretation. The rule also creates a certification process that allows chiropractors to be certified to administer injections. The rule establishes educational and testing requirements for this certification, but the creation of an additional level of certification is also beyond the authority of the board. Rather, this is the prerogative of General Assembly to create the certification level or to direct the board to do that. The legislature has not authorized any additional certification for chiropractors who administer injections. Because neither section 12-33-102 (1.7) nor 12-33-102 (2), C.R.S., provide authority for the board to permit chiropractors to administer injections to patients and to establish a new level of certification for this purpose, the authorization for injections by chiropractors in Rule 7 C. exceeds the authority of the board and the rule should be repealed.

Senator Morse said the motion will be to repeal the rule, but does that mean it goes away on May 15 just like not extending it or does it have a different effect? Mr. Brackney said that under the terms of the APA, because the rule was adopted in November 2012, it is considered a 2013 rule and would therefore be set for expiration on May 15, 2014. To get rid of it this year, you would have to do a separate motion to repeal it. Generally we do that on the same day as the rest of the rules, so it would be repealed on May 15, 2013.

Senator Morse said my understanding is that the board may either repeal the rule or extend the effective date. How would that impact us if we vote to repeal the rule, effective May 15? Will we need to revisit this issue if the board repeals it before that or if it extends the effective date? Mr. Brackney said the board has voted to extend the effective date of this rule to April 30, 2013. If the Committee decided to get rid of the rule as of May 15, 2013, the rule would be in effect for two weeks and then it would go away. It would not take any additional action by the Committee to do anything about it. There is also a lawsuit on this rule, but we consider this process here with the legislature to be separate. You're doing your legislative oversight function and you do not need to act after they do or based on anything a court may do.

Mr. Morse said there is a public safety concern. We are talking about an invasive medical

procedure that will be done by those that we've arguably suggested should not to be able to do it. If there is a gap and this is permitted for two weeks and the legislature has suggested that it should not be permitted, our only other option is to run a bill that makes this inappropriate as of the day that bill is signed by the Governor. Mr. Brackney said I believe that is correct. Running a bill would do that. That is how the APA is set up, that all the rules are in effect until May 15 of the next year regardless of what this Committee does.

Senator Schwartz said I have one question relative to the application of acupuncture as a treatment that is authorized for chiropractors. Do you know what the oversight is over the administering of acupuncture by this profession and do they have to show certification and training?

12:14 p.m. -- Dino Ioannides, State Board of Chiropractic Examiners, Department of Regulatory Agencies, testified before the Committee. He said there is a separate acupuncture authority that licensed chiropractors can get in addition to the chiropractic license. It's a separate application process and a separate approval process.

Representative Gardner asked can you tell us what the regulatory state of affairs is? My understanding is that the board may have acted to suspend or delay the effective date until April. Mr. Ioannides said once the attorney general's office issued its negative rule opinion, and once this Committee decided it was going to take up the issue, the board adopted emergency rule 30, which says the board is delaying the implementation of its addition to Rule 7 C. regarding injectables for 120 days until April 30, 2013, to allow the legislature to decide if the rule is proper. One hundred twenty days is as far as emergency rules will allow you to go and so that's where the April 30 date comes in. The board was attempting to be deferential and work in the process.

Representative Levy said we've been focusing on the term "injectables" and I wonder about another term used in Rule 7 C. which is "administer". I don't know what administer means. Prescribe, recommend, compound, sell, or distribute is pretty clear. Going back to the statute, "chiropractic" means the use of sanitary, hygienic, nutritional, etc., which I guess is where prescribing, recommending, compounding, selling, and distributing homeopathic and botanical medicines comes from. But, what does "administer" mean? Is injecting a subset of administering? Mr. Ioannides said that is exactly the question that the board was attempting to answer. Prior to the adoption of the rule, the term "administer" was not specifically defined. The term is found in the statute, but not in terms of nutritional or remedial measures. The term was for the first time used in this context in the rules. Only recently with the current rule did the board attempted to define what it is.

Representative Levy said I didn't see "administer", but you did note that it's not used with respect to the substances that can be injected, so even if it were available elsewhere it's not available for this. Mr. Ioannides said the term "administer" in this context is not used in the

statute.

Representative Levy said we have received a memo from the medical board, also under the department of regulatory agencies, disagreeing with this rule and expressing the opinion that's it's not within the scope of the statute. How does the department internally deal with the conflicts between the different boards? Mr. Ioannides said these are two type 1 boards and the department serves as the administering umbrella agency. The department works hard to get to commonalities where possible, but these are two type 1 boards.

Representative Murray asked what is a type 1 board? Mr. Ioannides said a type 1 board is defined in the APA as a policy-autonomous board. That means that it gets to make high-level policy decisions independent of, for example, the executive director of the department. The executive director doesn't exert rule-making authority over the chiropractic board. It is squarely within the purview of the chiropractic board.

Representative Gardner said I'm going to go to public testimony and ask that those who favor the rule and wish the rule to remain in place testify first.

12:23 p.m. -- Dr. Michael Masteller, Chiropractic Orthopedist, testified before the Committee. He said I practice in Longmont and I've been in practice for 34 years. In 1991, I was appointed to the chiropractic board and have had experience on this board. I'm here to give testimony on Rule 7 C. as there is concern that all the information concerning injections by chiropractors has not been brought forward for the Committee to evaluate. I would like to preface by saying I hold a chiropractic license in another state that does allow me to prescribe medications and does allow me to do injections, based on similar rules like the one proposed here. I would like to start with addressing the reasons the Office is recommending Rule 7 C. be repealed. One, the board doesn't have the authority to authorize the administration of injections. The Office's argument is based on section 12-33-102 (1.7), C.R.S. The Office contends that the chiropractic act limits doctors of chiropractic to hand adjustments only. In my opinion, I believe the board has a valid argument that adoption of Rule 7 C. does not exceed the statutory authority. First, the Office reads the statute very narrowly. Second, the Office ignores the portion of section 12-33-102 (1.7), C.R.S., that allows the use as indicated of procedures that facilitate the adjustment or manipulation by hand. This is exceptionally broad language which arguably provides sufficient authority for the board to adopt the rule. Further, the Office memo makes a number of conclusionary statements without any legal or factual support.

Dr. Masteller said two, the Office also argues that there are only two instances in the chiropractic act where invasive procedures are specifically authorized, venipuncture and acupuncture. Because these are two instances where invasive procedures are specifically authorized, the Office's logic is that the General Assembly never authorized the board to have the authority to permit the administration of injections. Under Rule 6 L. (1), dry needling is

allowed by chiropractors. Dry needling is into the intramuscular tissue and uses nutritional remedial measures to drive substances through the skin into the muscular tissue by using a needle. Chiropractors are already allowed to do that.

Dr. Masteller said three, the Office argues because the General Assembly has twice failed to pass legislation to allow chiropractors to administer injections, the rule should be repealed. House Bill 1416 was specifically not for injections. It was specifically for a drug formulary and chiropractors were attempting to pass a formulary for what they deal with in their practice, like muscle relaxants and anti-inflammatories. It does say by injection of a formulary which means using drugs, and when that bill was presented, that's what caused the problem with that bill. It appears that it was an issue about injections, but it was not. It was based on a formulary that dealt with medications.

Dr. Masteller said finally, the Office argues that the board does not have the authority to establish new certifications. The board does have the authority to establish new certifications as part of their defined duties under statute. There have been new certifications allowed under the chiropractic practice act. Acupuncture is a new certification. You have to have educational hours to do acupuncture under the act. With proper certification, chiropractors that have extra education can perform EKGs in their office. Anything that requires increased educational basis is a new certification for a chiropractor. Dry needling is where you take needles and stick it into the tissue and you irritate it to cause a change so that it tightens up the musculature and the ligaments so you have a nonhyper, mobile joint. That was a new certification. Surface EMGs where you test muscular activity is a new certification. Chiropractors can perform manipulation under anesthesia with an anesthesiologist if they're trained and have certification. Animal chiropractic is another instance whereby chiropractors have increased their certification. To say that we have only two certifications I don't believe is correct. This rule is not any different than those rules because of the educational study that is required for safety features of chiropractors to perform injectable services.

Dr. Masteller said I have given the Committee a legal opinion from the law firm of Crawford & Cleveland, P.C., out of Englewood. They do a lot of health care litigation. You'll see that they have stated that it is within the purview of the board to put this rule forward. They explain why the legislature should look at this and why the legislature should move this rule forward. That is one of the three legal opinions that has been given to you. The other two are from two other law firms that state basically that injection does fall under the purview of the board.

Dr. Masteller said the Attorney General's office and the Office of Legislative Legal Services have not taken into consideration the most important aspect, nor have they addressed the issue of allowing acupuncturists to perform injections of these same items and the prescription drug lidocaine through the policy-making process. The first policy was brought forward in 1999 because there were four other states that allowed acupuncturists to inject

these same remedial measures. It passed through the department and they were allowed to give these injections. Then in 2005 when acupuncturists finally got a board, they revisited the issue of injections of remedial measures and are still doing that today. There was never a rule process, there was never a legislative process, but they're allowed to do that. I don't think this Committee has taken into consideration what has happened in the past. Therefore, we believe that we have provided sufficient evidence that the board did have authority granted by the statute to promulgate Rule 7 C. and argue the other health care practitioners were afforded a different outcome using the same criteria as the board. We would ask this Committee to review the issues presented to allow a fair and unbiased report based on these facts presented. Also, remember the valid argument presented that the Office read our statute very narrowly and that the Office ignores the portion of the chiropractic act that allows the use as indicated of procedures that facilitate the adjustment and manipulation by hand. Injections would facilitate that process. This is broad language that arguably produces sufficient authority to the board to adopt Rule 7 C. Also, the Office memo makes a number of conclusionary statements without legal or factual support. Therefore, we would request that the rule be tabled until these legal concerns can be addressed properly and give a fair and appropriate determination.

Dr. Masteller said I would like to go back to Representative Levy and address the issue of administration. I have seven definitions of administration. They all state that "administration" means injection. It means oral, inhalation, topical, and injection. Consequently, the definition of administer does mean "by injection". "Administer" has been in this practice act since 1997. There has never been a true definition of "administer". Doctors of chiropractic have requested a definition of what administer means. I have seven definitions, five of them out of medical dictionaries, one of them out of Wikipedia, and one out of a practice act that defines "administration" in the Colorado statutes under the pharmacy practice act. In the definition under the pharmacy practice act, it clearly states that administration means by injection. If that word is in our rule, then that word has to be defined somewhere so that we know what it means. Also, with regard to the acupuncturist issue, the acupuncturists do not have any training to perform these types of procedures, but they're allowed to do it.

Senator Carroll said this might be a question for Mr. Brackney. Regarding the use of "administer" elsewhere in the statutes where injectables are allowed, are injectables itemized separately or are there places where injectables are inclusive within the word "administering"?

12:39 p.m. -- Mr. Brackney addressed the Committee again. He said we should remember that "administer" is not used in the definition of chiropractic. One of the memos provided by Dr. Masteller goes on and on about the definition of "administer" which is found only in the rule. As to whether we can use the definition that comes out of the pharmacy act, that is a bit of a stretch. If we bring a word out of an act that's meant in the context of pharmacists, I wonder how far we could stretch it. I don't think that's a good idea. I think it should say that

in the chiropractic act.

Representative Levy said I understood you earlier to say that "administer" is not actually used in the statute with reference to the sanitary, hygienic, nutritional, etc. As I read these opinions that we received from Dr. Masteller, the one from Crawford & Cleveland doesn't deal with statutory authorization, it just goes to the issue of whether "administer" can be defined as including injectables. Without relating back to the statute, that doesn't really help us. This other letter from 1996 from Shayne Madsen suggests that because the statute authorizes nutritional remedial measures and doesn't restrict the manner in which they are provided, injection must be allowed. Not that I agree with it, but this goes to Senator Carroll's question and whether for other scopes of practice that are allowed to administer injections, is it specifically authorized as a means of delivery? Mr. Brackney said yes. In the medical practice act for doctors, section 12-36-106, C.R.S., talks about administering any form of treatment. It doesn't say injection specifically but it says broadly administering any form of treatment. Contrast that with section 12-33-102 (1.7), C.R.S., where it doesn't say anything like that.

Representative Levy said I didn't expect you to go through all of the statutes, but when we think of some licensed professionals who have a more restricted scope of practice, is there anything else we can look to? Mr. Brackney said I can look for some and try to figure that out.

Representative Levy said Dr. Masteller also suggested that there are lots of other types of interventions authorized by rule that are perhaps more invasive than what the statute might suggest. Are those specifically authorized by statute, dry needling for example? Mr. Brackney said I haven't considered that one in this context. It's not specifically authorized in section 12-33-102 (1.7), C.R.S. Whether you could read that in there I don't know. Dry needling does not involve quite as invasive a procedure, I don't think. That is not in the statutes.

Senator Schwartz said consistent with those questions, there are certain procedures that are authorized through rule-making that require some sort of education, such as acupuncture and dry needling, and are additional certifications. What kind of latitude do we provide the board in terms of certifying chiropractors to perform those other procedures? Is it consistent with other professional licenses? Is it consistent to allow a chiropractor to do acupuncture with the same requirements we have for an acupuncturist in the state to be licensed?

12:46 p.m. -- Dr. Masteller testified again. He said I'll use pharmacists as an example. Pharmacists can now inject flu vaccines, which was passed through the pharmacy act. They are only allowed a total of 20 hours of education: Eight hours didactic and 12 hours injection. That has been a standard throughout the chiropractic profession in many other states that allow chiropractors to do injections. The acupuncturists have never had to do any specific education that gives them the safety issue of being able to do injections. They just do them

because the department at the time said it was okay. That's where a lot of this confusion comes from. We're trying to do something the right way, to have educational background, to cover the safety issues, and to do everything appropriately and some other health care profession can do it without education or without these other issues. I would have to defer the education issue to the acupuncturists but I'm telling you that at the beginning it wasn't that way. That's concerning if they can do it by policy through the department and we can't even do it through rule.

Senator Schwartz said I just want to know if chiropractors are certified for certain procedures, that the standards of those professions are used, in terms of number of hours and training that's expected. Dr. Masteller said yes.

Senator Roberts said maybe I missed something, but on the acupuncturist issue, in those cases they're not injecting something so much as inserting a needle. Dr. Masteller said no, they are injecting the same materials that we are talking about - vitamins, nutritional supplements. They do acupuncture, but they are actually injecting a substance that goes into the intramuscular or into the subcutaneous tissue.

Senator Roberts said I just want to understand. You're saying that there is a particular treatment that you could get. You're not saying with the average acupuncture treatment you're being injected. Dr. Masteller said correct. There are acupuncturists out there that do true injections into the tissue.

12:51 p.m. -- Dr. Kelvin Washington, Chiropractor, testified before the Committee. He said I've been licensed to practice chiropractic since 1978. I presently practice in Conifer. I have a diploma in sports medicine and am certified in acupuncture. After hearing the testimony of Dr. Masteller, there's really not much more I can say because he covered the bases quite well.

Senator Carroll said Dr. Masteller said some folks have been interpreting acupuncture to include injections for a while. Under the chiropractic act, how long do you think injections have been allowed under the current statute? Dr. Washington said that's a loaded question. It's my understanding and my contention that as a chiropractor who is also certified to do acupuncture, I'm in a catch-22 if I were to perform injections. The injections that the acupuncturists are doing are in acupuncture points, subcutaneous. Therefore, the question came up to the board that some of us chiropractors who are licensed can't do this under our scope but can only do it under the acupuncture scope. We're in limbo. To answer your question, I think it was around 1998 when these issues and questions about injections were coming up. To go a little bit further, I graduated from a college that taught a broad range of education, so we were taught these things back in the 1970s, but each state can dictate how doctors or chiropractors can practice according to the statutes.

Senator Carroll said it sounds like you feel that because you have both the acupuncture certification as well as the chiropractic, that acupuncture more clearly covers injectables under current law. Or do you think that for chiropractors, even those who haven't necessarily gotten the additional acupuncture certification, injections are allowed for all chiropractors under current statute? Dr. Washington said I feel that education is necessary for chiropractors or anyone to do anything that's expanding their ability to practice. There are a number of us chiropractors who have taken the additional educational requirements. There's also a board certification, so we had to pass the board certification in order to be certified in injectables.

12:56 p.m. -- Dr. Ken Spresser, Chiropractor, testified before the Committee. He said I have been a chiropractor for 30 years and I practice in Arvada. I've been in leadership of both the American Chiropractic Association and the Colorado Chiropractic Association for decades. I've been on the pulse of the pro-drug movement by chiropractors since 1997 when a small group of chiropractors attempted to introduce drugs into the chiropractic practice act. I testified against it then and I'm here for the same reason today. I submitted a letter to the attorney general on December 3 recommending against allowing chiropractors to inject legend drugs. I support the attorney general's opinion, which he generated on December 5. Forty-seven chiropractors from 14 states and two foreign countries have sent letters and e-mails to the attorney general and this Committee against the use of injectables by chiropractors. The laundry list of items that a minority in my profession want to inject into patients are defined as legend drugs in federal law and require a prescription. Prescription drugs should not fall under the purview of a chiropractor. Chiropractors do not have the appropriate training to administer drugs by injection. Chiropractors don't learn to inject drugs through residencies or internships or other clinical rotations. Let's pretend for a moment that this Committee were to allow, as an example, the injection of botanical medicines as proposed by the board under Rule 7 C. The word "botanic" means pertaining to or derived from plants. Many drugs like digitalis, morphine, cocaine, belladonna, and penicillin are botanic in nature. We don't need chiropractors injecting these substances into their patients. Typically, chiropractic programs are accredited by the Council on Chiropractic Education, but here in Colorado this minority group of chiropractors would seek their accrediting from a Colorado company called American Chiropractic Physicians Credentialing Center, promulgated by a chiropractor out of Franktown. Also, the only nationally recognized examining body in the chiropractic profession is the National Board of Chiropractic Examiners and they do not offer any testing for chiropractors who want to inject drugs. Finally, the 24 hours of study and instruction is woefully inadequate to be competent in administration of drugs by injection. Please protect the public from this small interest group and the board that only wants to make more money by exceeding their statutory boundaries.

12:59 p.m. -- Marschall Smith, Program Director, Colorado Medical Board, testified before the Committee. He said I've been authorized by the medical board to provide this statement on their behalf. The medical board opposes implementation of Rule 7 C. The medical board does not believe that injections are within the scope of chiropractic as defined in section

12-33-102 (1.7), C.R.S. Additionally, the medical board has concerns that the public could be harmed by such a practice. The language of Rule 7 C. is sufficiently vague and undefined that it does not place any practical limits on the types of injections that can be authorized, some of which require a prescription. Colorado law currently does not grant prescriptive authority to chiropractors. This rule expands the scope of practice without legislative authorization and, unless disapproved by this Committee, establishes a precedent whereby the practice of chiropractic in Colorado can be expanded unilaterally. The medical board sent a memo of its position to the chiropractic board prior to the adoption of the rule. The medical board also requested a meeting with the chiropractic board before the rule was adopted to discuss the rule's expansion of scope of practice by a licensed chiropractor. No response to the request was ever received by the medical board.

Mr. Smiths said for my own comment, the medical board takes very seriously its responsibility to implement and regulate the practice of healing arts in Colorado. The legislature has authorized and charged the medical board with the duty to implement and regulate the practice of the healing arts in Colorado. Branches of the healing arts, through their respective boards, are permitted by the legislature under the framework of the medical practice act and are strictly confined to that field for which the legislature created a separate license. The medical board is concerned when other boards take unilateral action to expand their scope of practice. These types of actions may be harmful to the public health, safety, and welfare and can create confusion and waste resources. Should a board wish to expand its scope, a discussion should first take place between representatives of that board and the medical board. Then a proposal can move through the regular legislative process that would then change the scope of practice. This process is effective in regulating and controlling the practice of healing arts to the end that the people are properly protected against unauthorized, unqualified, or improper practice.

1:02 p.m. -- Susan Koontz, General Counsel, Colorado Medical Society, testified before the Committee. She said the society represents over 7,800 physicians in the state of Colorado. We support the attorney general's opinion and the opinion of the Office and we are appreciative and grateful for the work that has been done by staff on this rule. I also did want to point out one additional section of the statute, which is 12-33-118, C.R.S., which specifically provides under the reference of doctor of chiropractic that such license shall not confer upon the licensee the right to practice surgery or obstetrics or to prescribe, compound, or administer drugs or to administer anesthetics. Specifically in statute, the chiropractors are not allowed to administer drugs and that includes injections. I also feel that in their prior legislation they have impliedly admitted that the statute is lacking and that they do not have the ability to give injections by bringing forth prior legislation.

Senator Morse asked is the statute you read from in the medical practice act or the chiropractic practice act? Ms. Koontz said it is in the chiropractic act.

1:05 p.m. -- Dr. Jan Kief, Colorado Medical Society, testified before the Committee. She said I'm an internist in family medicine in metro Denver and president of the Colorado Medical Society. I appear before you representing the Colorado Medical Society. Thank you for the opportunity to ask you to deny this rule. It is our opinion that Rule 7 C. is not only illegal but is potentially dangerous. In December, three members of the chiropractic board approved the rule that after a 24-hour course chiropractors could perform injections of non-FDA-approved substances as well as administer them through inhalation and topically. The rule does not restrict the medical conditions to be treated or where in the human body the injections can be administered. This leaves open to individual interpretation the disease to be treated, the substance they want to inject, and the site they want to inject it into. I want to briefly touch on these components of the rule. First, pharmacology and injection therapy are areas that cannot be learned in 24 hours. Pharmacists do a lot of pharmacology. Physicians study and practice over years to know drug interactions, liver and kidney metabolism, and how the entire body will respond to substances. For example, I would never be able to do spinal manipulation. The chiropractors are very skilled at that and it takes years of practice. I refer my patients to them for that treatment. With regard to injection sites, sites include under the skin and into soft tissues, muscles, veins, arteries, spinal fluid spaces, and more. Deaths and complications have occurred even in trained hands. None of these sites and none of these substances are without danger. You can puncture a lung, tear a blood vessel, infect the spine, and more. If a profession cannot treat a complication caused by them doing a procedure, I believe they shouldn't be doing the procedure. Inhalation of drugs can cause spasm of the airways, like asthma, permanent scarring, a reaction of the lungs, and chemical burns to these tissues. Next, the nutritional remedies, like the vitamins that are spoken about in statute, that can be taken by mouth can be nonprescription, but anything that is injected that is pharmaceutical grade has to be by prescription and since chiropractors cannot prescribe, they would be injecting non-FDA-approved compounds. Unknown compounding methods, manufacturing processes, and the multiple chemicals that are found in botanicals and glandulars that they propose to inject can cause severe reactions and are a true concern for patient safety.

Dr. Kief said it is important to note that broad rules like this can be very hazardous. For example, just five months ago the chiropractic board affirmed that they could diagnose and treat the endocrine system. The endocrine system is a complex set of organs and glands in the body responsible for metabolism and hormonal regulation of most processes in the body and diseases like diabetes, thyroid, adrenal disease, hypertension, cholesterol, metabolism, menopause, osteoporosis, and a host of other diseases. Endocrinologists are physicians specially trained to diagnose and treat the endocrine system and it encompasses internal medicine, pediatrics, obstetrics, and gynecology training and takes over 10 years. Thus, if Rule 7 C. goes into effect, chiropractors in Colorado would be authorized to diagnose and treat endocrine disease and perform injections for these diseases and more. My themes as president of the Colorado Medical Society are collaboration, relationships, and evolution in health care and we believe that health teams are the way to go and we would be happy to

collaborate with the chiropractic community on these issues. We do have a meeting scheduled later in January with them. They have reached out. Personally, as a physician, I know what I know and I know what I do not know and I do what I've been trained to do with excellence. Health professions should each be proud of what they do but first should do no harm and keep patient safety as a central tenet. For now, I ask this Committee to deny Rule 7 C.

Representative Gardner asked can you tell the Committee what the status or posture is of the current litigation brought by the Colorado Medical Society and other associations?

1:11 p.m. -- Susan Koontz said we filed a lawsuit to temporarily enjoin Rule 7 C. with the hopes of getting that ruling within a 7-10 day period. With the action that was taken by the emergency meeting of the chiropractic board, we have asked the court to grant us a stay of the lawsuit pending the outcome of the legislative process. The court has just granted that two days ago so we won't be pursuing the lawsuit actively unless there is that two-week window period that was discussed earlier by Senator Morse.

1:12 p.m. -- Chuck Brackney testified again. He said I can give a semi-report on Representative Levy's question from a while ago. This is not complete but I want to tell you what I found in three different sections. For dentists, the statute reads dentistry means the evaluation, diagnosis, prevention, or treatment, including nonsurgical, surgical, or related procedures, of diseases. For acupuncturists, the statute reads acupuncture means a system of health care based on traditional oriental medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease. For podiatrists, the statute reads the practice of podiatry means by the use of any medical, surgical, mechanical, manipulative, or electrical treatment. Those are the ones I found in my quick search.

Representative Gardner said before I entertain a motion, it seems to me that we have the potential that if we were to vote to repeal Rule 7 C., we still might have a two-week window in which the rule would be effective, absent what might happen at the courthouse.

Senator Morse said I can tell you I was comforted by the testimony of the department that the only reason right now that there is that gap is because the emergency rules are permitted only for 120 days and that stretches to April 30, but that the board intends to follow the precedent that we set here today. I'm hoping, that being true, that when the emergency rule expires they'll be able to do another emergency rule or, if not, late in the session we could entertain the chance of doing a bill if we need to. It seems to me that the board, even with the testimony suggesting that there is some belief that they feel they have a right to do this, understands that with the attorney general, the Office, and the Committee disagreeing with them, that they will probably back off so we won't have the two-week issue. That's what I'm hoping.

Representative Gardner said that's my hope as well. I think I'll just leave it at that.

1:16 a.m.

Hearing no further discussion or testimony, Senator Morse moved to repeal Rule 7 C. of the Colorado State Board of Chiropractic Examiners and asked for a yes vote. Senator Roberts seconded the motion. The motion passed on a 8-0 vote, with Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting yes.

1:17 p.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed agenda item 3 - Approval of the Rule Review Bill and Sponsorship of the Rule Review Bill.

Ms. Haskins said this is the annual rule review bill which we bring to you each year and ask for your approval to introduce as a Committee bill. The bill contains the Committee's recommendations on executive branch agency rules that were reviewed by our Office and the Committee. This draft contains the votes that you took at the October and November meetings. After this meeting I will be redrafting the bill to incorporate all the votes you just took at this meeting. This bill postpones the automatic expiration of the APA for the rules that were adopted by executive branch agencies on or after November 1, 2011, and before November 1, 2012. It will also have the repeals you voted on today. The rules in the bill are being allowed to expire because the Committee has found that there was a conflict with state law or they are beyond the statutory authority of the agency to adopt. What we're asking for is the Committee's approval to introduce the bill with amendments to incorporate your votes today.

1:19 a.m.

Hearing no further discussion or testimony, Senator Morse moved that Ms. Haskins be given permission to draft the bill including the amendments that the Committee has made today. Representative Waller seconded the motion. The motion passed on a 8-0 vote, with Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting yes.

Senator Morse agreed to be prime sponsor for the rule review bill. Representative Gardner agreed to be the other prime sponsor for the bill. Senator Carroll, Senator Roberts, Senator Schwartz, Representative Levy, Representative Murray, and Representative Waller agreed to be co-sponsors of the bill.

1:21 p.m. -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, addressed agenda item 4 - Sponsorship of Other Committee on Legal Services Bills: Bill to

Enact the C.R.S. and Revisor's Bill.

Ms. Gilroy said I'm here to invite this Committee's consideration of sponsoring two bills that you've traditionally sponsored each year. First is the bill to enact, which is a technical, nonsubstantive bill that is intended to enact the softbound volumes of the 2012 Colorado Revised Statutes to reflect the changes you all made by legislation last session, as well as all the changes the Office made in our publication process by revision, including spelling, grammar, numbering, harmonizations, etc. It would make it the positive and statutory law of a permanent and general nature in the state of Colorado so the courts can rely upon the law and not have to rely on the 2011 statutes. It's generally one of the first bills introduced in the session and presented to the Governor for signature.

1:22 a.m.

Hearing no further discussion or testimony, Senator Roberts moved that the Committee authorize the bill to enact. Representative Waller seconded the motion. The motion passed on a 8-0 vote, with Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting yes.

Ms. Gilroy said I did confirm with Senator Brophy before he left that he would like to be a co-sponsor on this bill and the revisor's bill.

Representative Murray agreed to be prime sponsor for the bill to enact the C.R.S. Senator Morse agreed to be the other prime sponsor for the bill. Representative Gardner, Representative Levy, Representative Waller, Senator Brophy, Senator Carroll, Senator Roberts, and Senator Schwartz agreed to be co-sponsors of the bill.

1:24 p.m. -- Jennifer Gilroy continued addressing agenda item 4. She said the revisor's bill is another technical, nonsubstantive bill that corrects any errors that we find in the statutes as we review them over the course of the year to improve the clarity and certainty of the statutes. Unlike the bill to enact, this bill is introduced very late in the session in order to make it available as a vehicle to correct bills during the course of the session. It is the only bill that is introduced with an appendix that explains every section in the bill and the reason for it. It generally has missed cross references or missed conforming amendments or we repeal or change obsolete terms or phrases in statute. We endeavor to make it completely technical and not include any substantive law in it. This bill was one of the bills that did not pass last year at the end of the session, so this year it will include the provisions we had in the 2012 revisor's bill.

1:26 a.m.

Hearing no further discussion or testimony, Senator Roberts moved that the Committee authorize the revisor's bill. Representative Murray seconded the motion. The motion passed on a 8-0 vote, with Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Levy, Representative Murray, and Representative Waller voting yes.

Representative Gardner agreed to be prime sponsor for the revisor's bill. Senator Morse agreed to be the other prime sponsor for the bill. Representative Levy, Representative Murray, Representative Waller, Senator Brophy, Senator Carroll, Senator Roberts, and Senator Schwartz agreed to be co-sponsors of the bill.

1:28 p.m. -- Debbie Haskins and the Committee addressed agenda item 5 - Setting a Date for a Brief Organizational Meeting for COLS in January. A meeting date was set for Friday, January 11, at 9:30 a.m.

1:31 p.m. -- Debbie Haskins addressed agenda item 6 - Scheduled Meetings During the Session on First Friday of the Month: February 1, March 1, April 5, May 3 - Noon to 2:00 p.m.

Ms. Haskins reminded the Committee members that there are scheduled meetings for the Committee on the first Friday of each month during session from noon to 2:00 p.m.

1:33 p.m.

The Committee adjourned.