

**DEPARTMENT OF REGULATORY AGENCIES
FY 2017-18 JOINT BUDGET COMMITTEE HEARING AGENDA**

Tuesday, December 13, 2016
3:30 pm – 5:00 pm

3:30-3:40 INTRODUCTIONS AND OPENING COMMENTS

3:40-4:15 IMPROVE ENFORCEMENT OF MEDICAL MARIJUANA GREY MARKET

- 1 Does the Department plan on submitting recommendations for legislation on Medical Marijuana Grey Markets? Through which Departments will those requests be submitted? Will the requests be coordinated?
- 2 With regard to medical marijuana banking:
 - a. What is the status of the ability for marijuana companies to use the banking system?
 - b. Has the federal government allowed for this?
 - c. Did federal legislative action on marijuana industry banking change law or just direct the federal government to not enforce the law?
 - d. Has the Department explored the possibility for an interstate compact for banking with other states that have legalized marijuana?
- 3 Please discuss how physicians in the State are regulated. Is the State making special provisions for those who recommend medical marijuana that are not made for physicians who do not recommend medical marijuana?
- 4 With regard to medical marijuana recommenders:
 - a. How many physicians recommend medical marijuana in the state?
 - b. How are these individuals identified?
 - c. Does the number of medical marijuana recommendations affect whether a physician is considered a medical marijuana recommender?
 - d. If a physician recommends medical marijuana one time, would that physician be considered a medical marijuana recommender?
 - e. Is there a process for a physician who no longer recommends medical marijuana to remove themselves from the medical marijuana recommenders list?
 - f. Does the Department offer a tiered fee schedule for physicians that offer limited services or who may only practice in Colorado on a limited basis?
- 5 May doctors in Colorado own a medical marijuana clinic?

- 6 Please discuss staff recommendations on the Improve Enforcement of Medical Marijuana Grey Market budget briefing issue. Have physicians expressed their opinion on this issue to the Department?
- 7 What is the impact of medical marijuana over-prescribing to communities with regard to the number of grow houses? Can these grow houses be a sign of over prescribing?

4:15-4:35 UNCLAIMED PROPERTY PROGRAM

- 8 Through what steps does an insurance company ensure that it has performed its due diligence in discovering beneficiaries or policy holders prior to surrendering unclaimed proceeds to the Unclaimed Property Program?
- 9 Through what steps does a bank ensure that it has performed its due diligence in notifying account owners of inactivity prior to surrendering balances to the Unclaimed Property Program?
- 10 Has the Department discussed with the Department of the Treasury any changes to policy that may improve the due diligence and notification process of banks to reduce the number of accounts that need to be surrendered to the Unclaimed Property Program?
- 11 With regard to the unclaimed property program, what is considered to be unresponsive?

4:35-5:00 GENERAL QUESTIONS

- 12 Please discuss common question seven, which deals with the Department of Law's request to change the calculation of legal services appropriations.
- 13 Please provide and discuss the caseload and workload in the Division of Civil Rights?
- 14 What enforcement mechanisms does the Division of Insurance have at its disposal?
- 15 Please provide an update on the task force on rural health rates?
- 16 With regard to the Public Utilities Commission (PUC):
 - a. What is the long-term strategy for the PUC given the fact that many new members will soon be appointed?
 - b. What changes have occurred in the last year for the PUC?
 - c. Is the PUC anticipating any action with regard to possible deregulation?
 - d. Is the PUC anticipating any possible federal changes due to the change in administration at the federal level?

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
- 2 If the Department receives federal funds of any type, please respond to the following:
 - a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2016-17.
 - b. Are expecting any changes in federal funding with the passage of the FFY 2016-17 federal budget? If yes, in which programs, and what is the match requirement for each of the programs?
- 3 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated June 30, 2016 (link below)? What is the department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations?

http://leg.colorado.gov/sites/default/files/documents/audits/1667s_annual_report_-_status_of_outstanding_recommendations_1.pdf

- 4 Is the department spending money on public awareness campaigns? What are these campaigns, what is the goal of the messaging, what is the cost of the campaign? Please distinguish between paid media and earned media. Do you have any indications or metrics regarding effectiveness? How is the department working with other state or federal departments to coordinate the campaigns?
- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy?
- 6 For FY 2015-16, do any line items in your Department have reversions? If so, which line items, which programs within each line item, and for what amounts (by fund source)? What are the reasons for each reversion? Do you anticipate any reversions in FY 2016-17? If yes, in which programs and line items do you anticipate these reversions occurring? How much and in which fund sources do you anticipate the reversion being?
- 7 [Background Information: For FY 2017-18, the Department of Law has submitted a request to change the calculation of legal services appropriations as well as the monthly billing system for legal services provided to state agencies. Specifically, the proposal would: 1) calculate the number of budgeted legal services hours for each agency as the average of actual usage in the prior three years; 2) include a two-year average of "additional litigation costs" such as court reporting, travel for depositions, expert witness costs, etc., in the appropriation for legal services (these costs are not currently included in the appropriation and are often absorbed from other personal services

and operating expenses line items); and 3) convert from monthly billing based on the actual hours of service provided to monthly billing based on twelve equal installments to fully spend each client agency's appropriation.]

Please discuss your agency's position on the Department of Law's proposed changes to the legal services system, including the potential impacts of the changes on your agency budget. That is, does your department support the proposed changes? How would you expect the changes to positively or negatively impact your department? Please explain.

- 8 What is the expected impact of Amendment 70 (minimum wage increase) on Department programs? Please address impacts related to state personnel, contracts, and providers of services.
- 9 Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Cybersecurity Center in the Office of Information Technology?
- 10 Is the SMART Act an effective performance management and improvement tool for your Department? What other tools are you using? Do your performance tools inform your budget requests? If so, in what way?
- 11 Please identify how many rules you have promulgated in the past two years. With respect to these rules, have you done any cost-benefit analysis pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analysis pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.
- 12 What has the department done to decrease red tape and make the department more navigable/easy to access?
- 13 What is the number one customer service complaint the department receives? What is the department doing to address it?

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- 1. Does the Department plan on submitting recommendations for legislation on Medical Marijuana Grey Markets? Through which Departments will those requests be submitted? Will the requests be coordinated?**

Response: The Department does not plan to submit recommendations for legislation regarding Medical Marijuana Grey Markets. However, the Department recommends the Joint Budget Committee contact the Governor's Office of Marijuana Coordination for a list of coordinated legislative efforts concerning Medical Marijuana Grey Markets.

- 2. With regard to medical marijuana banking:**

- a. What is the status of the ability for marijuana companies to use the banking system?**

Response: Colorado law does not prohibit state-chartered banking or financial institutions from providing basic financial services to marijuana-related companies. The Division of Banking and Division of Financial Services conduct statutorily required examinations of all state-chartered financial institutions, including those that may choose to serve marijuana-related companies. In addition, the Division of Financial Services has issued one state-chartered license to Fourth Corner Credit Union ("Fourth Corner") to provide financial services specifically to the marijuana industry. Worth noting, there are two pending lawsuits concerning the Fourth Corner—one filed by Fourth Corner against the United States Federal Reserve based on their denial of a "master account," and the other filed by Fourth Corner against the National Credit Union Association ("NCUA") based on their denial of insurance to Fourth Corner.

- b. Has the federal government allowed for this?**

Response: Marijuana is an illegal Schedule I controlled substance pursuant to the Federal Controlled Substance Act ("CSA"), which makes it unlawful to manufacture, distribute, dispense or possess any controlled substance in a manner authorized by the Act. The Federal Bank Secrecy Act ("BSA"), 31 U.S.C. § 5311 *et. seq.*, states that banks are required to avert money laundering through sound operations which includes helping investigative and regulatory agencies identify money laundering entities and take appropriate action. For example, under the BSA, banks are required to:

- Establish effective BSA compliance programs;
- Establish customer due diligence programs and monitoring programs;

- Screen against Office of Foreign Assets Control (“OFAC”) and other government lists;
- Establish an effective Suspicious Activity Report (“SAR”) monitoring program; and
- Develop risk-based anti-money laundering programs.

In order to comply with the BSA, banks and financial institutions are required to adhere to the Anti-Money Laundering Law (“AML”), which prevents individuals from participating in a financial transaction that has criminal proceeds tied to it or concealing the said source, ownership or control of funds. Banks are required to monitor such activity and report all violations through a Currency Transaction Report (“CTR”), which is required for any transaction that exceeds \$10,000 U.S. currency, or a SAR.

On February 14, 2014, the Financial Crimes Enforcement Network (“FinCEN”), a division of the U.S. Department of Treasury, issued guidance to clarify the BSA expectations for financial institutions seeking to provide services to marijuana-related businesses. Should a financial institution choose to offer accounts to the marijuana businesses, there are a set of extensive requirements that must be met prior to issuance. The FinCEN guidance sought to clarify how financial institutions can abide by their BSA obligations and align their practices with BSA reporting for federal and state law enforcement priorities. A financial institution's decision as to whether to open, close or refuse an account to a marijuana-related business is left up to the discretion of the financial institution. However, some of the factors that the financial institution should consider are the business objectives, an evaluation of risk associated to the business and the capacity to manage those risks. When making this assessment, the FinCen guidance advises that thorough customer due diligence is critical during the assessment (which consists of a variety of actions, including, for example, verifying with appropriate state authorities whether the business is licensed and registered as required by state law).

c. Did federal legislative action on marijuana industry banking change law or just direct the federal government to not enforce the law?

Response: No Federal legislative action on marijuana industry banking has been enacted by the United States Congress. In August of 2013, the U.S. Department of Justice issued the “Cole Memorandum” to provide guidance regarding marijuana enforcement priorities. The U.S. Department of Justice stated that it is committed to enforce the CSA through utilization of eight enforcement priorities with the investigative resources available to address the most significant threats in a rational way; however, the Memorandum was not specific to banking.

d. Has the Department explored the possibility for an interstate compact for banking with other states that have legalized marijuana?

Response: The Governor has previously worked with Governors in other states to send letters to both the Federal administration and to the United States Congress to encourage the provision of clear banking solutions as a matter of public safety. While the Department has not explored an interstate compact for banking marijuana-related businesses with other states that have legalized marijuana, the Divisions of Banking and Financial Services confer with their regulatory counter-parts in other states concerning potential solutions and obstacles regarding marijuana banking, and will continue to do so.

3. Please discuss how physicians in the State are regulated. Is the State making special provisions for those who recommend medical marijuana that are not made for physicians who do not recommend medical marijuana?

Response: Physicians are regulated by the Colorado Medical Board (housed in the Department's Division of Professions and Occupations), pursuant to its statutory authority as set forth in Article 36 of Title 12 of the Colorado Revised Statutes. The Medical Board ensures the public's health, safety and welfare through both the licensure of qualified applicants and the regulation of licensed Colorado physicians. The regulation of physicians is largely a complaint driven process, meaning once the Board receives a complaint, it initiates an investigation and determines if the evidence supports a violation of Colorado's Medical Practice Act. If such a violation occurs, the Medical Board pursues public disciplinary action. Physicians recommending medical marijuana are regulated no differently than any other physician.

4. With regard to medical marijuana recommenders:

a. How many physicians recommend medical marijuana in the state?

Response: The Colorado Department of Public Health and Environment ("CDPHE") maintains the Medical Marijuana Registry where such information is housed. As the Department understands it, per the latest CDPHE report to the Medical Board in August 2016, there were 750 physicians listed in the Medical Marijuana Registry.

b. How are these individuals identified?

Response: Colorado law does not authorize the Medical Board to require physicians recommending medical marijuana to notify the Board. Instead, pursuant to state statute, physicians must register with the Medical Marijuana Registry housed at CDPHE. Thus, questions concerning identification of such individuals are better directed to CDPHE.

c. Does the number of medical marijuana recommendations affect whether a physician is considered a medical marijuana recommender?

Response: Per the Department's response to Question No. 4(b), the Department recommends the above question be directed to CDPHE (which maintains the Medical Marijuana Registry).

d. If a physician recommends medical marijuana one time, would that physician be considered a medical marijuana recommender?

Response: Per the Department's response to Question No. 4(b), the Department recommends the above question be directed to CDPHE (which maintains the Medical Marijuana Registry).

e. Is there a process for a physician who no longer recommends medical marijuana to remove themselves from the medical marijuana recommenders list?

Response: Per the Department's response to Question No. 4(b), the Department recommends the above question be directed to CDPHE (which maintains the Medical Marijuana Registry).

f. Does the Department offer a tiered fee schedule for physicians that offer limited services or who may only practice in Colorado on a limited basis?

Response: Colorado law sets forth the following license types for physicians: original, endorsement, pro-bono, training, and distinguished foreign teaching. Pro-bono, training and distinguished foreign teaching physicians are authorized to provide limited services and, as such, have a tiered fee schedule as follows:

- Training License: Base fee \$10
- Pro-Bono License: Base fee \$20
- Distinguished Foreign Teaching: Base fee \$100

5. May doctors in Colorado own a medical marijuana clinic?

Response: Pursuant to C.R.S. § 25-1.5-106(5)(d), physicians may own a medical clinic that offers medical evaluations for medical marijuana so long as the clinic is not at a location where medical marijuana is sold or distributed. Further, a physician may not hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition of a participant in the medical marijuana program.

6. Please discuss staff recommendations on the Improve Enforcement of Medical Marijuana Grey Market budget briefing issue. Have physicians expressed their opinion on this issue to the Department?

Response: By way of background, the Department will develop a campaign to raise awareness throughout the community so that consumers are aware of the regulation of medical marijuana recommendations and the complaint process, thereby ensuring consumers, healthcare professionals, other state agencies, and law enforcement have the necessary awareness and tools to report misuse and abuse of the medical marijuana recommendation system. This awareness campaign will include a Department forum specifically targeted to identify regulatory gaps, enhance collaboration and evidence sharing with law enforcement to identify violations of the Medical Practice Act, and to expedite medical marijuana cases and discipline. In addition, the Department envisions adding an investigator FTE to investigate medical marijuana cases and staff a “hotline” for law enforcement, state agencies, and concerned consumers, further removing barriers and increasing access to the filing of complaints.

The Department also seeks to support legal expenses incurred in the prosecution of medical marijuana cases. These cases have historically been heavily litigated – by way of example; numerous physicians recommending medical marijuana refuse to honor Medical Board subpoenas, thereby requiring the Medical Board to litigate subpoena enforcement actions in Denver’s District Court during the investigation of a complaint. In addition, the Medical Board has been engaged in litigation for nearly two years defending the Board’s investigation of physicians recommending medical marijuana based on complaints filed by CDPHE. As of October 2016, the Medical Board has already expended 30% of its legal allocation on 9% of total medical board complaints.

Finally, through medical marijuana policy development, the Department and Medical Board have engaged a broad medical marijuana stakeholder group, including physicians, other healthcare professionals,

marijuana industry leaders, attorneys, patients, and other state agencies. However, the Department has not engaged stakeholders on the Marijuana Grey Market specific to staffing recommendations pending a determination on the above funding proposals. The Department appreciates Joint Budget Committee Staff's recommendation, and recognizes the underlying rationale for the same. However, given practical, financial, and legal complications arising from the constitutional and statutory structure of the Medical Marijuana recommendation system (including, for example, that the Medical Marijuana Registry is housed by CDPHE, not DORA), Staff Budget Briefing Option No. 1 (fully funding the decision item from the Marijuana Tax Cash Fund) is the Department's preferred option.

7. What is the impact of medical marijuana over-prescribing to communities with regard to the number of grow houses? Can these grow houses be a sign of over prescribing?

Response: The Medical Board and the Department have worked collaboratively with state and Federal law enforcement to take action when the Board has found reasonable grounds to believe that the public health, safety or welfare imperatively requires emergency action and/or that licensed physicians are guilty of a deliberate and willful violation of the Medical Practice Act by recommending the medical use of marijuana and authorizing high plant counts without medical necessity. The Department believes that such violations contribute to the Medical Marijuana Grey Market, and recommends the Joint Budget Committee contact the Governor's Office of Marijuana Coordination with respect to any specific impact in terms of the proliferation of grow-houses.

4:15-4:35 UNCLAIMED PROPERTY PROGRAM

8. Through what steps does an insurance company ensure that it has performed its due diligence in discovering beneficiaries or policy holders prior to surrendering unclaimed proceeds to the Unclaimed Property Program?

Response: The Colorado Division of Insurance examines insurance company practices, during both financial and market conduct examinations, in identifying beneficiaries of unclaimed insurance proceeds and their procedures in accounting for and remitting funds to the Unclaimed Property Program. These examinations identify whether the insurance company is following its own (and reasonable market) practices to identify unclaimed benefits and beneficiaries or policyholders, and the law in escheating funds to the Unclaimed Property Program administered by the Colorado Department of Treasury (the "Unclaimed Property Program"). In the Division's experience, life insurance is the line of insurance that raises the most significant issues regarding unclaimed benefits. To further the Department's goal of consumer protection, the Division of Insurance is currently participating in two national efforts to help beneficiaries identify and locate a decedent's life insurance policy or annuity, and to require insurance companies to use the Social Security Death Master File to identify when they should engage in outreach to beneficiaries before escheating life insurance proceeds to the state.

By way of background, upon the death of an insured under a life insurance policy, the insurer pays the policy benefits to the named beneficiaries. The policy requires the beneficiaries to send the insurer written notice of the death in order to receive the death benefits. In cases where the beneficiaries are not aware of the policy or of the death of the insured, death benefits may go unclaimed for many years (or not at all). Under Colorado and most states' laws governing unclaimed property, if death benefits are not claimed

within a specified period of time, the insurer must pay the benefits to the last known state of residence of the beneficiary.

To assist consumers in searching for a deceased person's "lost" life insurance policies and annuities, the National Association of Insurance Commissioners ("NAIC"), with participation by the Colorado Division of Insurance, has established a Life Insurance Policy Locator. This service allows consumers to submit policyholder information and requires insurers to report "matches" to state insurance departments and contact beneficiaries or authorized representatives to initiate the claims process. The Life Insurance Policy Locator is available on the Colorado Division of Insurance website, and links to the NAIC service to provide nationwide searches.

While the Locator service is new, life insurance companies have other mechanisms which they can use to identify where benefits may need to be paid. While some companies have not consistently used such resources to benefit consumers, multi-state audits in which Colorado is participating in have made an impact. The audits, which began in 2011, of the top 40 life insurance groups (based on national market share) found that many insurers made minimal efforts to locate beneficiaries for unpaid death benefits from life insurance policies. As part of regulatory settlements that occurred following the audits, each insurer has agreed to conduct more thorough searches for beneficiaries (attempting contact by email, telephone, mail, and through online search tools) to determine if life insurance benefits are owed, and if so, to pay them to the appropriate beneficiaries. To date, 23 audits have resulted in the return of more than \$6.75 billion to U.S. consumers, and in Colorado, insurers have paid \$143,750,390 to Colorado beneficiaries and another \$2.86 million to Colorado in penalties.

9. Through what steps does a bank ensure that it has performed its due diligence in notifying account owners of inactivity prior to surrendering balances to the Unclaimed Property Program?

Response: Colorado state-chartered banks have a contractual relationship with account holders which require efforts by both parties before dormant accounts are escheated to the Unclaimed Property Program. When establishing an account, the account owner agrees to notify the bank of a current address of record and a current mailing address. Generally, the bank is also provided with the consumer's instructions for how the consumer should receive communications from the bank for both electronic and physical communication, including statements, consumer alerts and other communications.

Part of a state-chartered bank's due diligence will include maintaining accurate records that demonstrate that an account has been inactive for an amount of time adequate to confirm that property, by law, may be deemed abandoned. The Division of Banking focuses on the safety and soundness of the accounts while they are in the account relationship with the state-chartered bank. During safety and soundness examinations, Division examiners review and assess the bank's internal controls for abandoned/dormant accounts. The review includes an assessment of the bank's policy and procedures regarding accounts for which customer contact has not been re-established; and that the affected accounts are removed from active files and properly controlled. The review also includes an analysis of general requirements of Colorado escheatment statutes and bank policies and practices. However, Colorado banking statutes do not address specific standards regarding customer communication requirements; rather, as noted above, such issues are outlined in the account agreement between the bank and account holder.

10. Has the Department discussed with the Department of the Treasury any changes to policy that may improve the due diligence and notification process of banks to reduce the number of accounts that need to be surrendered to the Unclaimed Property Program?

Response: The Division of Banking has not discussed the subject of unclaimed property concerning banks with the Department of the Treasury recently; however, the Department believes doing so could prove productive and impactful, and intends to engage in such discussions with the Department of the Treasury in the coming months. Further, while the Division of Banking has not received any consumer complaints regarding the lack of account holder notification prior to a financial institution surrendering balances to the Unclaimed Property Program (with the exception of one complaint in 2011 that was resolved to the satisfaction of the consumer), the Division nonetheless intends to take several steps to further improve such processes. These include, for example, promulgating an industry bulletin that emphasizes continuous education on industry best practices, which will allow for institutions to review and update the procedures that are in place for notification, and placing such information on the Division's external website so that consumers can also have access to the information.

11. With regard to the unclaimed property program, what is considered to be unresponsive?

Response: Colorado statute requires state-chartered banking institutions to attempt to locate the account owner if the account has been dormant for a period of five years. Further, not more than 120 days before a bank will file an unclaimed property report with the Department of the Treasury, the bank must send written notice to the account owner's last known address that the property is being held by the bank and that it will be turned over to the Department of the Treasury due to inactivity. State statute does not list a specific number of notifications that must be made to the owner in order for them to be deemed unresponsive.

4:35-5:00 GENERAL QUESTIONS

12. Please discuss common question seven, which deals with the Department of Law's request to change the calculation of legal services appropriations.

Response: The Department has concerns regarding the Department of Law's proposal in terms of the financial and practical impacts of transforming direct and chargeable costs into a shared-service model (as described in response to Question No. 7 below). However, the Department recognizes the proposal raises policy issues that are ultimately for the Joint Budget Committee to determine.

13. Please provide and discuss the caseload and workload in the Division of Civil Rights?

Response: Colorado's Civil Rights Division continues to have a critical impact in terms of protecting the civil rights of Coloradans. By way of an example, working in partnership with the U.S. Equal Employment Opportunity Commission ("EEOC"), the Division was involved earlier this year with the successful investigation, prosecution and \$1 million settlement — the largest settlement of its kind in Colorado history — of a Vail condominium complex and its management company as part of a sexual harassment, national origin discrimination and retaliation lawsuit brought by the EEOC on behalf of female employees of the complex. Evidenced by the foregoing, and as detailed below, both the Division and the Colorado Civil Rights Commission continue to fulfill their respective statutory mandates.

By way of background, and pursuant to statutory requirements, the Colorado Civil Rights Division has 270 days of jurisdictional time to conduct its investigative process. At its discretion, the Division may request a 90-day jurisdictional extension of time from each party, thus allowing up to 450 days for its investigative process. The Division continues to meet these statutory requirements without issue. While data for Fiscal Year 2015-16 is not yet finalized (annual data is regularly published in late December), 963 cases were “dual filed” with both the Division and Federal civil rights agencies during Fiscal Year 2014-15. The Division completed 833 cases during the same time-period, including 644 employment discrimination cases, 122 housing discrimination cases, and 67 public accommodation discrimination cases.

During Fiscal Year 2015-2016, and for the second consecutive year in the Division’s history, the Division met 100 percent of its original Federal contract goal with the EEOC, thereby ensuring Federal funding for the Division. Moreover, based on the Division’s excellent performance, it was awarded an upward contract modification, which the Division then proceeded to meet and exceed by an additional 4 percent. Also worth noting, in an effort to further expedite case processing, the Colorado Civil Rights Division has developed a robust Alternative Dispute Resolution (“ADR”) program. In short, after a Charge of Discrimination is filed with the Division, the charging party or respondent may request and engage in voluntary, confidential ADR prior to the Division’s investigation. The Division’s mediators hold a meeting or conference with the parties and facilitate settlement negotiations to assist parties in reaching a mutually agreed-upon settlement.

Finally, the Division’s successful efforts in managing the caseload described above have enabled the Division to make progress on other important outreach and continuous improvement initiatives. For example, in November of 2016, the Division became one of only 10 states in the country to implement an online case-filing system. This system, commonly referred to as “Case-Connect,” allows complainants to input their complaints into an online form as well as attach documents. Rather than travelling to the Division’s office in Denver, or mailing materials, respondents and complainants alike can now log into their case to see the current case status, edit contact information, upload pertinent case information, and communicate with the Division. The Division believes the launch of this new case-filing system will allow for improved efficiency via better tracking and management of caseloads. The Division has also redoubled its outreach efforts, recently launching a telephone “hotline” for Spanish-speaking victims of discrimination.

14. What enforcement mechanisms does the Division of Insurance have at its disposal?

Response: The Division of Insurance has a number of enforcement mechanisms pursuant to state law that it can use, depending on the facts and circumstances of the particular case. Such authority ranges from requiring a company to reprocess claims or benefits and pay them in accordance with the law and regulations, including interest if applicable, to suspension or termination of a company’s Certificate of Authority to conduct insurance business in Colorado. The Division may also fine companies or insurance producers (agents or brokers) for violations of state law, require companies to perform self-audits to identify and pay restitution to harmed consumers, and mandate correction of policy forms or rates before a product is sold in Colorado. The Division may issue cease and desist orders to stop unlicensed or unauthorized insurance from being sold in Colorado, refuse or revoke the license of an insurance producer found to be in violation of licensure or business practice requirements, and, in appropriate circumstances, refer a company or individual to the Colorado Attorney General’s office for criminal

prosecution for fraud. During Fiscal Year 2014-15, the Division carried out 170 disciplinary actions against insurance producers (including 74 denials/revocations/suspensions), 18 actions against individual companies, and levied a combined \$2.9 million in fines and restitution. Further, information regarding consumer complaints is reported to the Colorado General Assembly each October 1st and is available at <https://www.colorado.gov/pacific/dora/node/100791>.

15. Please provide an update on the task force on rural health rates?

Response: On August 1, 2016, as required by House Bill 13-1336, the Division of Insurance reported to the Joint Budget Committee on its study to “determine the impacts and viability of establishing a single geographic area” for setting health insurance premiums. Following the hearing, Colorado’s Lieutenant Governor assembled a small group of key stakeholders, along with the DORA Executive Director and Insurance Commissioner, to develop recommendations to address the high cost of health care services which result in high health insurance premiums across the state, but most particularly in Colorado’s rural communities. The Task Force met four times between August and December of 2016 in several different counties, and engaged in broad-ranging discussions on a variety of potential proposals. Worth noting, in response to some of the information presented in the Division of Insurance’s study and discussed by the Task Force, several hospitals identified consumer cost reduction efforts and initiatives they have undertaken which they contend will assist with the differential cost of services in the affected communities.

With respect to next steps, the Department and Division continue to work with the Office of the Lieutenant Governor and Office of the Governor, as well as the Legislative sponsors of House Bill 16-1336 and members of the Joint Budget Committee, on potential proposals arising from the Task Force’s discussions.

16. With regard to the Public Utilities Commission (PUC):

a. What is the long-term strategy for the PUC given the fact that many new members will soon be appointed?

Response: By way of background, the Public Utilities Commission (“PUC”) includes three members who are appointed by the Governor of Colorado and confirmed by the Colorado State Senate for a term of four years. However, management of the staff and daily operations of the PUC is performed by the Director of the Division, who reports to the Executive Director of the Department. The long-term strategy of both the Commission and the Division is to continue serving the public interest by effectively regulating utilities and facilities so that the people of Colorado receive safe, reliable, and reasonably-priced services consistent with the economic, environmental and social values of our state. Per the statutory requirements of the SMART Act, the Division has identified several specific strategic priority initiatives for Fiscal Year 2016-17, including, for example, continuing to migrate regulatory applications and permits to online platforms. As part of the Department’s robust Performance Plan, the Division also reports quarterly to the Governor’s Office of State Planning and Budgeting (“OSPB”) on a series of performance-based metrics (including, for example, processing times for cases and complaint resolution times).

With respect to any turnover on the Commission itself, the Department does not anticipate any significant changes in terms of the Division and Commission’s long-term strategy. The staff of the Division

maintains a rigorous orientation program that is provided to each new Commissioner, which includes discussion of recent legislative changes in a number of regulated sectors. In addition, the Commission has processes and resources in place to assist new Commissioners in pending decisions that may be subject to deadlines.

b. What changes have occurred in the last year for the PUC?

Response: As part of the Department's new initiative to provide more robust public reporting on regulatory activities, the PUC recently published an Annual Report detailing major changes and accomplishments during FY 2015-16 (available online at https://drive.google.com/file/d/0B6RhHT-h2_eSUFKNG5tT00xTXc/view). As referenced in the Annual Report, the Commission issued major decisions in a wide-variety of cases impacting various regulated industries, and as stated above, made progress on a number of Performance Plan related initiatives, including ensuring that all Commission rule-making included early stakeholder participation prior to the publication of proposed rules and securing over \$100,000 in credits and refunds on behalf of utility customers. More detailed summaries of Commission decisions, changes, and initiatives can be found in the PUC's Annual Report.

c. Is the PUC anticipating any action with regard to possible deregulation?

Response: In terms of pending items, the PUC is in the process of implementing rules related to telecommunications deregulation. This rulemaking, which is nearing completion, involved robust interaction with the regulated entities in the form of informal workshops with industry representatives and other stakeholders (which allowed for free discussion of the issues at hand and the opportunity to fully explore differing points of view). Also worth mentioning, the PUC recently revised its processes related to taxi applications in the metropolitan areas of the state following the loosening of entry standards by the Colorado General Assembly during the 2015 legislative session.

d. Is the PUC anticipating any possible federal changes due to the change in administration at the federal level?

Response: While PUC staff anticipates that the Federal government may reverse course with respect to the Federal Clean Power Plan promulgated by the U.S. Environmental Protection Agency, the Department is unable to speculate as to potential Federal changes due to the change in administration at the Federal level.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

- 1. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.**

Response: The Department is not aware of any unimplemented or partially implemented legislation, with the exception of recently passed legislation from immediately prior legislative sessions which are routinely in progress at the Department.

2. If the Department receives federal funds of any type, please respond to the following:

- a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2016-17.**

Response: There are no potential sanctions that might be issued against the Department by the Federal government during FFY 2016-2017.

- b. Are expecting any changes in federal funding with the passage of the FFY 2016-17 federal budget? If yes, in which programs, and what is the match requirement for each of the programs?**

Response: There are no material changes in permanent, ongoing federal awards expected to occur during FFY 2016-17.

- 3. Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated June 30, 2016 (link below)? What is the department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations?**

Response: The Department has no high priority outstanding recommendations as identified in this report.

- 4. Is the department spending money on public awareness campaigns? What are these campaigns, what is the goal of the messaging, what is the cost of the campaign? Please distinguish between paid media and earned media. Do you have any indications or metrics regarding effectiveness? How is the department working with other state or federal departments to coordinate the campaigns?**

Response: The Department is statutorily required to conduct outreach and public awareness campaigns via the Consumer Outreach and Education Program created in C.R.S. § 24-34-108. The Department annually submits a report to the Joint Budget Committee on the activities of this program each November 1st, and with respect to Question No. 4, refers the Committee to the Department's report dated November 1, 2016.

- 5. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy?**

Response: Although the Department does not have division-specific data available at this time, the most recent State of Colorado Workforce Report published by the Department of Personnel and Administration indicates that DORA has a 9.1% turnover rate, with a total of 54 employees leaving the department in FY 2015-16. As the Department understands it, DORA's turnover rate is below the state average and, in fact, the third-lowest turnover rate among principal departments of less than 1,000 employees.

- 6. For FY 2015-16, do any line items in your Department have reversions? If so, which line items, which programs within each line item, and for what amounts (by fund source)? What are the reasons for each reversion? Do you anticipate any reversions in FY 2016-17? If yes, in which programs and line items do you anticipate these reversions occurring? How much and in which fund sources do you anticipate the reversion being?**

Response: All spending authority totals and corresponding reversions are reported in Schedule 3 of the Department's budget request. With respect to General Fund, in total the Department reverted \$19,531 from an FY 2015-16 Long Bill appropriation of \$1.9 million, or 1 percent of appropriations. With respect to Cash Funds budget line items across the Department, some level of reversion is routinely experienced each year in many lines as reflected in Schedule 3 (for example, the primary PUC Cash Fund finished FY 14-15 with a deficit, and thus, spending was successfully managed conservatively during FY 15-16 to ensure that expenses did not outpace revenue, leading to a \$1.5 million reversion in the PUC Personal Services line). The Department does anticipate that its budget line items will have reasonable levels of reversion during FY 2016-17, as they do in most years; however, it is not possible to know in advance exactly which lines and precisely how much.

- 7. [Background Information: For FY 2017-18, the Department of Law has submitted a request to change the calculation of legal services appropriations as well as the monthly billing system for legal services provided to state agencies. Specifically, the proposal would: 1) calculate the number of budgeted legal services hours for each agency as the average of actual usage in the prior three years; 2) include a two-year average of "additional litigation costs" such as court reporting, travel for depositions, expert witness costs, etc., in the appropriation for legal services (these costs are not currently included in the appropriation and are often absorbed from other personal services and operating expenses line items); and 3) convert from monthly billing based on the actual hours of service provided to monthly billing based on twelve equal installments to fully spend each client agency's appropriation.] Please discuss your agency's position on the Department of Law's proposed changes to the legal services system, including the potential impacts of the changes on your agency budget. That is, does your department support the proposed changes? How would you expect the changes to positively or negatively impact your department? Please explain.**

Response: While the Department recognizes and understands the Department of Law's rationale for its stated request, the Department does not support the funding request as currently proposed.

As a general matter, the Department believes that legal services represent a direct charge for services rendered in real time, and should remain as such. The Department agrees that allocations methodologies have utility for shared costs for which it is not possible to determine exact costs. However, legal service

charges do not represent overhead or shared services, and as the Department understands it, industry standard practices require the kind of precise time billings that make allocation methodologies unnecessary for legal service charges. In the Department's view, the provision of legal counsel is not a shared service, but rather, a direct service, provided to a specific program for a specific purpose and by specific attorneys. Unlike a comprehensive accounting or information technology system, legal work—in the form of legal opinions, rulemaking, and litigation, for example—is not a statewide central service. Given that fact, the Department is concerned that highly specific work performed for individual programs may be billed to all agencies and averaged out over multiple years.

Worth noting, and as described in the Joint Budget Committee Staff's Budget Briefing, the Department represents roughly 26% of legal services provided by the Department of Law to state agencies. Similarly, legal expenditures represent roughly 13% of DORA's regulatory costs. Hence, as the Department of Law's largest client, and as a largely cash-funded agency, transforming legal expenditures from a direct cost into a shared service model will have a more pronounced and acute impact on the Department. Department of Law attorneys currently perform legal work for specific DORA programs individually, and further, must track their time precisely. However, the shared-service methodology would eliminate the current directly chargeable and real-time nature of such billings, in effect guaranteeing the total annual appropriation at the commencement of a fiscal year.

Finally, the Department is concerned with the potential impact of the proposal on Departmental fee-setting. As a primarily cash-funded organization, the Department has a statutory obligation to set fees to generate sufficient revenue to support the direct and indirect costs of all its programs, separately, on a fiscal year basis. The "true-up" allocation methodology as proposed by the Department of Law could result in resources being used from other programs to support expenditures in the short-term, thereby hampering real-time accuracy in expenditures (which is critical when forecasting fees). The Department must set fees on license cycles that span one to three years, and must be able to defend such fees as sufficient to support current program costs. However, if current program costs are not billed until following year "true-ups," fee setting decisions that occur prior to "true-ups" will not be informed by actual costs, compounding the difficulty in forecasting future expenditure trends. While the inherent lag of expenditures being averaged to determine future appropriations may be appropriate across-the-board for an entire department, the timing issue may create the possibility of unexpected fund balance excesses or deficits for individual programs.

8. What is the expected impact of Amendment 70 (minimum wage increase) on Department programs? Please address impacts related to state personnel, contracts, and providers of services.

Response: No fiscal impact is expected.

9. Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Cybersecurity Center in the Office of Information Technology?

Response: The Governor's Office of Information Security ("OIT") provides security governance, security architecture, risk management, compliance assessment support, and security operations functions for the

Department. OIT has input into the 5-year plans for the Department, and has worked to prioritize projects benefiting the Department, such as an Enterprise Firewall Refresh project, new quarterly security awareness training, and an enterprise security log collection and correlation engine. Additionally, OIT has implemented a mandatory two-factor authentication for Google email users across the executive branch agencies, which is expected to reduce phishing attempts by 90%. Finally, the Office of Information Security, within OIT, produces a quarterly risk report card, in which they measure risk for the Department and have specific goals set for reducing risk.

10. Is the SMART Act an effective performance management and improvement tool for your Department? What other tools are you using? Do your performance tools inform your budget requests? If so, in what way?

Response: The Department believes that the SMART Act is a very effective performance management and improvement tool. The Department has adopted a robust Performance Plan pursuant to the SMART Act, and works diligently to ensure the strategic priority initiatives and action items described therein (many of which are measured numerically) are completed. Further, OSPB has provided a series of tools and methodologies to the Department for purposes of developing and tracking achievement of the Department's Performance Plan, which has proved very helpful in aligning strategies across DORA's different divisions. Worth mentioning, the Performance Plan structure has also informed the Department's budgeting decisions, evidenced by the R1 Reorganization Savings Request submitted to the Joint Budget Committee for Fiscal Year 2017-18 (which includes a request to decrease \$80,000 in cash funds due to the streamlining of functions in the Division of Banking and Division of Insurance). The Department has also heavily utilized Lean as an improvement process, has taken advantage of templates provided by OSPB, including through the Performance Management Academy, and meets regularly with OSPB staff for further guidance and consulting on performance tools. Over the coming year, DORA plans to increase utilization of the "4 Disciplines of Execution" methodology, as well as several of the strategy development tools discussed in the Performance Management Academy, to continue improving Departmental planning and execution of planning.

11. Please identify how many rules you have promulgated in the past two years. With respect to these rules, have you done any cost-benefit analysis pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analysis pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

Response: Based on the Department's 2015 and 2016 Regulatory Reports (submitted to the Colorado General Assembly on November 1, 2015 and November 1, 2016 respectively), the Department (which includes over 40 boards and commissions) promulgated a total of 227 rules when counted by CCR code. Importantly, of these, 149 were revisions to existing rules, some of which were modifications to further streamline and/or eliminate unnecessary administrative requirements. For example, several boards housed in the Division of Professions and Occupations (specifically the Board of Psychologist Examiners, State Board of Social Work Examiners, State Board of Marriage and Family Therapist Examiners and State Board of Licensed Professional Counselors) promulgated rules to streamline equivalency reviews, enhance assistance for the state jurisprudence exam, and improve interstate mobility of licensed professionals (thereby assisting in filling the mental health care worker shortage in Colorado). In addition, many Divisions engaged in rule-making to implement new statutes enacted by the General Assembly—for

example, the Division of Securities adopted a set of rules in 2015 to implement the Colorado Crowdfunding Act and enable equity crowdfunding (a new investment option which allows businesses that solicit money from the general public to offer equity or a stake in the company).

In terms of cost-benefit or regulatory analyses, the Department has conducted two Cost-Benefit Analyses (“CBA”). First, the Division of Insurance conducted a CBA for Title Regulations 8-1-1 and 8-1-2 in July of 2015 (per stakeholder request). The analysis indicated that both rules would have no adverse effect on the economy, consumers, private markets, small businesses, job creation, or economic competitiveness. The regulations, which imposed the same regulatory standard to all title entities, were anticipated to improve economic competitiveness, encourage entities to enter the market, create jobs, and improve consumer protection. Both rules went through rulemaking after the CBA’s were complete, and the final rules were adopted by the Insurance Commissioner, effective October 1, 2015. Secondly, the Public Utilities Commission conducted both a CBA and regulatory analysis for Proceeding No. 15R-0318T regarding the proposed changes to the Commission’s rules regulating basic emergency service. This rulemaking was ultimately indefinitely suspended.

12. What has the department done to decrease red tape and make the department more navigable/easy to access?

Response: The Department is committed to decreasing red tape and reducing unnecessary administrative burdens, thereby enabling businesses and professionals to thrive and assist in supporting economic development. During Fiscal Year 2015-16, DORA undertook a series of initiatives to cut red-tape, including the following examples:

- Repealing multiple unnecessary administrative rules and requirements across the Department: Multiple DORA Divisions engaged in rule-making that repealed and removed duplicative administrative requirements, including:
 - Reducing cost and time spent by Colorado community banks to comply with unnecessary administrative rules concerning dual filing of reports and duplicative merger reports, among many others (repeal of Rule CB101.57 (effective 7/30/2015) & Rule TC15 (effective 4/30/2016); also repeal and revisions to CB 101.53, 101.64, & 101.66, & AR 6 (effective 2/16 & 4/16)).
 - Eliminating redundant paperwork for securities issuers by repealing rule requiring registration statement filing when such filings are made at the federal level (repeal and revisions to Rules 51-3.1 & 51-3.7, 3 CCR 704-1 (effective 1/30/16)).
 - Simplifying licensing process for qualified mental health providers so that they can more quickly begin working in the community, including eliminating burdensome endorsement requirements (revisions to Rule 12, 4 CCR 726-1, 736-1, & 737-1 (effective 5/1/16)).
 - Streamlining process for engineers to join the Colorado workforce by accepting verification of engineers from other states through the National Engineer Electronic Verification System (revisions to AES Rules 4.1.1.7, 4.1.1.9 & 4.3.4 (effective 9/1/15)).

- Saving Mortgage Loan Originator applicants' time and money: The Division of Real Estate repealed state-specific testing requirements and instead incorporated those requirements into pre-licensing education curriculum. The change saved applicants \$69, and is estimated to save more than \$170,000 per year to individuals and businesses.
- Reducing backlogs and improving processes in money transmitter licensing: The Division of Banking eliminated a money transmitter application backlog from 2012, and secured more than \$200,000 in savings. Additionally, the Division integrated the Nationwide Multistate Licensing System and Registry (NMLS) to license money transmitters, providing a one-stop portal where they can file with multiple states simultaneously.

The Department has also worked with stakeholders to continue identify opportunities to cut red-tape and improve services offered by the Department. For example, during the prior legislative session the Department championed a DORA legislative agenda bill enacted by the Colorado General Assembly that supports local community banks by closing a regulatory gap around how often their boards of directors meet. In short, Senate Bill 16-126 provides the boards of directors of community banks with the ability to meet less frequently (at least quarterly), which more closely reflects federal law. DORA Divisions also continue to meet with their respective industry stakeholder groups to collaborate on improving Departmental services. For instance, as part of the Department's "industry stakeholder initiative," in October of 2015 the Division of Professions and Occupations met with a group of large employers and other industry stakeholders, including several large pharmacies, to hear their feedback regarding potential ways to improve its operations. Based on their feedback, the division instituted a pilot program to reduce the processing time for pharmacy graduates to obtain their first professional license, so they can enter the workforce faster. After initiating a Lean project, the processing time from the start through the receipt of the license was reduced by approximately 95 days. Going from 114 on average to just 18 days, an 84 percent reduction was achieved (despite a 15 percent increase in new applications since Fiscal Year 2013).

Finally, the Department has made great strides in terms of making the agency easier to navigate by modernizing systems. For example, during Fiscal Year 2015-16, the Division of Real Estate implemented DORA's e-License system, enabling approximately 56,000 licensed real estate industry professionals in Colorado to use e-License to submit their applications online, update their accounts, renew or reinstate their license and print their licenses on demand. Also, in the Division of Professions and Occupations, customers can now obtain automatic email receipts for licensing fees, receive email confirmations that their applications were received, and when applicable, are advised on next steps in the process.

13. What is the number one customer service complaint the department receives? What is the department doing to address it?

Response: While the nature of complaints often differs depending on the Division, a complaint previously received often at the Departmental level concerned the general navigability of services. As such, during the past year DORA engaged in comprehensive efforts to further centralize its customer service operations across Divisions. For example, to further strengthen DORA's customer focus, in September of 2016 the Department implemented a new centralized "Welcome Center," offering Coloradans a one-stop shop for DORA's services. The Department also continues to utilize online "chat" services for consumers, and plans to broaden implementation of the same during the coming year. Finally, many divisions have adopted common streamlined processes to ensure that consumers receive a response within an established turnaround time (*e.g.* electronic notification to a customer that a case has been opened or confirmation of a complaint received), as detailed in the Department's Annual Report.

