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Colorado General Assembly

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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

December 18, 2013

The Committee on Legal Services met on Wednesday, December 18, 2013, at 10:10 a.m. in HCR 0111. The following members were present:

Representative Labuda, Vice-chair
Representative Foote
Representative Gardner
Senator Brophy
Senator Roberts
Senator Steadman

Representative Labuda called the meeting to order.

10:11 a.m. -- Jeremiah Barry, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1a - Rules of the Executive Director, Department of Public Safety, Colorado Bureau of Investigation, concerning evidence collection in connection with sexual assaults, 8 CCR 1507-29.

Mr. Barry said these rules came out of a bill from last year, H.B. 13-1020. That bill created a new section 24-33.5-113, C.R.S., which requires the executive director to promulgate rules, which he did. The statute requires the rules to include consent forms to notify persons of the potential effects of each step of the process. The rules make reference to a new consent form, the "Colorado Sexual Assault Consent and Information Form". The statute requires the rule to include the consent form in the rules. The only portion of the consent form that is in the rules

is the reference to the consent form. The form itself is not in there. We think the consent form itself should have been included. This is a new form that the department was attempting to create. They have received a lot of input from stakeholders. They're not certain that the form that they finally came up with is going to be the final form, so they're afraid that they're going to have to modify the form. They were hoping to avoid having to go through the rule process again in case they did need to modify the form itself, but the statute does require the form to be in the rules. The only other thing that makes this rule a little unique is that the rule itself isn't broken down into sections, subsections, and paragraphs. I can't exactly give you a specific portion of the rule citing to a number. Therefore, what we're going to do is recommend that the nine paragraphs under the heading "Consent" of the rules of the Executive Director concerning evidence collection in connection with sexual assaults not be extended.

Representative Labuda asked if there is going to be a complete rewrite of the rule so we know exactly where to go? It seems to me the rule is written sort of like an essay. Mr. Barry said the portion of the rule entitled "Consent" is where we think the consent form should have been placed. It's always difficult when you're leaving something out because there's nothing that can really be stricken. We've tried to make it as small as possible and not force them to redo the entire rule, but just address the section of the rule dealing with consent, which we believe is where the consent form should have been included.

Representative Gardner said legislatively we probably did something that was not necessarily the best practice, which was to require the form itself to be a rule. I wonder if there is anything in those nine paragraphs that violates the statute. It looks to me like what the department has done here is failed to incorporate the form as a rule, which is what the statute contemplates. But, by the same token, it seems to me that maybe the nine paragraphs are perfectly fine with respect to the statute; they just didn't make the form a rule. Mr. Barry said you are correct. I don't believe there is anything incorrect with those nine paragraphs, but the only way this Committee can enforce a requirement is going to be to repeal that section of the rule where we think the form should have been included. I'm not certain how in the rule review bill, which is what this ultimately has to evolve into, we would put something like you forgot to include this form and therefore we ask you to do it again. As a process, when there is an omission such as this, a portion of the rule has to not be extended so they will go back and include what we think should be included.

Representative Gardner said I assume some discussions have taken place. What's going to be the fix here? This is an important program and the form presumably is the result of some public comment. Will it be an emergency rule to replace the nine paragraphs and put the form in? Mr. Barry said as you know, the rule stays in place until May 15, 2014, which is after this session. I would not be surprised if there is a bill to fix this issue. The rule review bill is always held toward the end of session and if there is a statutory fix we will amend the rule review bill to take this out and the rule will be extended.

Representative Gardner asked is the department's preference to have a statutory fix? Mr. Barry said yes.

Representative Gardner said it seems to me that to have made the form a rule requirement rather than a requirement itself was probably a little over the top.

Representative Labuda said I'm wondering when members of the public need help do they come and look at the rules. If they don't go through an attorney, do they call you and ask what is the rule, and you show them the rule and they say there is something here I don't see and where do I go and find it? Should we make the rule more complete with inclusion of forms for those folks? Do we have very many members of the public who come forward and say I want to address this issue? Mr. Barry said I don't know if I can give you a general answer to that. Different rules probably create more interest in the public than other rules. It may be appropriate for some rules to include the forms in the rule. With other rules, it may not be necessary to have the form itself included in it. Sometimes departments are very good about making information publicly available on their web site so if the form is on the web site, which they often are, they can either be directed to that or there are other ways the public can get access to forms without necessarily including all of them in a rule.

Senator Steadman said there are two solutions available to the department. One is to run a bill and change the statutory requirement. The other is to do emergency rule-making and put the form in the rule. Is that right? Mr. Barry said yes, that would be correct. They could do that and if that was done in enough time we probably could take that out of the rule review bill and the nine paragraphs we're suggesting be repealed would stay in.

Senator Steadman asked what would be the least expensive solution? Mr. Barry said I don't know what would be the least expensive. I think the department has a

preference of doing a statutory fix because every time there would be a change to the form they would have to promulgate a rule change. That may be an added expense because there could be several rules required to be promulgated rather than one statutory fix.

10:23 a.m.

Hearing no further discussion or testimony, Senator Steadman moved to extend the nine paragraphs after the heading "Consent" of the rules of the Executive Director of the Department of Public Safety and asked for a no vote. Representative Gardner seconded the motion. The motion failed on a vote of 1-5, with Senator Brophy voting yes and Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, and Representative Labuda voting no.

10:24 a.m. -- Brita Darling, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1b - Rules of the Medical Services Board, Department of Health Care Policy and Financing, concerning medical assistance - hospice services benefit coverage standard and speech-language and hearing services benefit coverage standard, 10 CCR 2505-10, and medical assistance benefit coverage standards, 10 CCR 2505-10.

Ms. Darling said I believe this particular rule issue is one of great importance to this Committee because it goes directly to the General Assembly's delegation of rule-making authority and also to the interpretation of the "State Administrative Procedure Act" (APA). This rule review issue relates to three separate rules. The first two rules that I'll discuss are the hospice services and speech-language and hearing services benefit coverage standards under the medicaid program. I'll be referring to those throughout the presentation as "standards". Those two rules are being reviewed in the current cycle so we'll be asking that you not extend those rules. The third rule concerns the process of creating the medical assistance benefit coverage standards. That is being reviewed out of cycle so I'll be asking you to repeal the rule.

Ms. Darling said by way of background, in 2008, the department created a process called the benefits collaborative. The goal of the process was to bring stakeholders together to better define the covered services in the medicaid program and hopefully to result in better use of those services. This is a robust stakeholder process, the end result of which is to create these benefit coverage standards. Once

the collaborative creates the standards, then the medical services board issues a notice of rule-making under the APA to incorporate by reference those standards into the rule. These standards do not appear in the Colorado Code of Regulations (CCR), but reside on the agency's web site. If this presentation has a theme, I would analogize this benefits collaborative process to a novel with an uplifting story that ends in tragedy. We believe that is so because while the benefits collaborative may be a good idea, our conclusion is that the creation of the standards in that manner violates both Colorado's medicaid law and the APA. That's because the standards must be made rules pursuant to the APA - and they weren't - and also the board cannot use the incorporation by reference process in the APA to create these rules.

Ms. Darling said to my first point that they need to be made rules, why that is the case is found mostly in our medicaid statutes and in the APA. Section 25.5-1-303, C.R.S., is the General Assembly's grant of rule-making authority to the department for the medicaid program. Under subsection (3) of that statute, the board is specifically required to adopt rules and those rules are to concern such matters as medicaid eligibility and the types of benefits provided as well as the obligations and rights of clients receiving services. Further, pursuant to subsection (7) of the statute, the board's proposed rules are specifically subject to the requirements of the APA. Notwithstanding the board's terminology, the board's hospice and speech-language and hearing standards are properly rules because they address such issues as eligibility for services, who may provide services, the duration of services, and other particulars relating to the covered benefits. In fact, we believe that much of the board's standards include the very content that the medicaid law requires the board to promulgate by rule and ultimately include in the CCR. Further, with respect to the APA, the board's standards include agency statements of general applicability and future effect that declare law or policy. That's the definition of a rule under the APA. To comply with the medicaid statute in creating rules, the board has to follow the APA procedures. Specifically, the board must notice the rules in the Colorado Register, they must receive a hearing, they must be subject to review by our Office which is the process by which you determine whether they've exceeded their authority, they must be subject to judicial review, and ultimately they must be published in the CCR that codifies Colorado's agency-made law, and not just referred to on the agency's web site. The board did not follow any of these procedures with respect to the underlying content of these benefits coverage standards.

Ms. Darling said that brings me to my second point, which is that the board cannot rely on the APA's incorporation by reference provision to turn these standards into rules that comply with the APA. As it appears in the CCR, the first rule - it's identical to the second rule - states that all eligible providers of hospice services enrolled in the Colorado medicaid program shall be in compliance with the Colorado medicaid hospice services benefit coverage standard (approved May 30, 2012), which is hereby incorporated by reference. As I mentioned, the standards themselves don't appear in the CCR and the notice and all the APA provisions were specifically for these short, two-paragraph rules. In purporting to make these standards into rules through the incorporation process, the board relies on a faulty interpretation of the APA's incorporation by reference provision. We believe that the material in these standards are simply not the material that may be incorporated this way. Section 24-4-103 (12.5) (a), C.R.S., is the incorporation by reference provision in the APA. It states a rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of this state. We believe the key language in that is that the material being incorporated must have been previously adopted by an agency. Under Colorado's administrative law, we adopt rules through the APA process. This is frequently used, especially in the medicaid program, to incorporate by reference federal regulations that we're required to comply with under the program. The idea is that we don't have to republish in the CCR a duly promulgated rule that's been promulgated under federal law. Based on the board's misunderstanding of the provision, however, they're attempting to essentially create their agency-made law - on an issue that the statute tells us must be done by rule - outside of the APA through this benefits collaborative process, and then only following the APA's safeguards with respect to their incorporation rule. We believe that this interpretation of section 24-4-103 (12.5) (a), C.R.S., leads to an absurd result. If this interpretation was left unchallenged, the CCR could ultimately someday consist of page after page of these two-paragraph incorporation rules that refer a person who is governed by the rules to various agency web sites. More importantly, if the agency doesn't have to actually create the substantive part of the standards through the APA procedures, we can't be sure there is going to be the notice or the hearing except for the single incorporation rule. We believe it completely undermines the entire purpose of the APA, which was to make sure that all agency law is subject to the same process. This is again why I analogized the benefits collaborative to a novel with a tragic ending because I think the department has created a very good process. They've brought together the right

people to fully define our medicaid laws. However, the end result must be notice of the standards, once they've decided what they think they should be, in the Colorado Register, there must be a hearing on those final standards, and they must finally appear in the CCR. They can't use the legal shortcut of incorporation by reference. It is sort of a circular process where you take a rule that's not been adopted and you adopt it by incorporating by reference. There's something missing in that strategy. For these reasons, the Office recommends that Rules 8.550.4.C and 8.200.3.D 2. not be extended.

Ms. Darling said with respect to the third rule, the Office makes the same two arguments. Rule 8.010 is the rule the board adopted to describe this parallel process for the creation of its benefit coverage standards and this incorporation by reference process. This rule was reviewed in a previous cycle and at that time we had no objection. However, now understanding the board's interpretation of this incorporation by reference process and seeing it played out with the other two rules before you, we now believe that the rule violates both the medicaid statute and the APA. We therefore recommend that Rule 8.010 be repealed, effective May 15, 2014.

Senator Steadman said I think I follow the logic of this and see the problem. I'm looking at the hospice rule and that last sentence in the first paragraph really points out the flaw here in that it says the standards we've incorporated by reference exclude later amendments to, or editions of, the referenced material. Yet, that's something that just was posted to the web site and nobody really knows when they were written. If someone wanted to revise them and post a new version on the web site, there's not a process for notice, public comment, and determining which is the real set of standards. It is just whatever you have on you web site today. That's one of the real flaws here. Even though it says it excludes later amendments, no one would be able to verify that because there is no process that's a matter of record if those things were to be changed on the web site. Ms. Darling said in Rule 8.010 they do say they won't amend the standards as they appear on the web site, and if there is any amendment, they will go through another incorporation by reference process. You make the valid point, though, that the CCR is the agency rules for the state and so should every agency do this - anytime they wanted to change a standard - we would have more of these incorporation rules. You might be surfing multiple agency web sites if you were governed by various bodies. The other point I want to make is there still are hospice rules in the CCR and one of my thoughts was whether the standards were replacing the rules. There are several hospice

rules that currently stand as law and I spent 45 minutes trying to decide if the language in the CCR that's rule is the same as the language in their standards on their website that's apparently, according to them, also rule. It is very difficult to be sure. Now you essentially have to look in two different places, in the CCR as well as the agency web site to determine. If there is a conflict, I assume later in time, if this incorporation process is upheld, that anything incorporated under those standards would presumably trump what's in the CCR but it still sits there.

Representative Foote said I wonder if it's a fair statement to say that your argument is that there has been an incorporation by reference of a rule that really can't be referenced. Is that fair to say? Ms. Darling said exactly. The material that we believe can be incorporated by reference consists of adopted rules of agencies, and they can't adopt it through the rule adopting it, if that makes sense.

Representative Gardner said it's a little more to the point that you can't incorporate by reference a rule that is not, under the APA, a rule. It is not a rule. I begin to see a trend, and I don't think it's ill-intentioned or that anybody is trying to grasp power, but rule-making is necessarily time-consuming and burdensome. We make it so for a purpose. As agencies wish to promulgate more and more rules, they look for shortcuts. It's natural but this is not a shortcut we can or will allow. That is why this Committee exists. In my law practice I deal with a lot of federal rules and I actually have seen in the department of defense this growth of not publishing things in the Federal Register and there are policies that exist out there. I go looking for the policy and it's like how would you know it existed, how do you know if you have the latest one, and when would I have commented on it. That is the same issue here and I hope that our state government in the executive branch will realize we need to be pretty careful about this. I'm inclined to say I don't know how this got by us initially a year ago, but the practice seems to have gotten by those who represent the departments in the Attorney General's office. We can't be incorporating by reference policies on web sites that people don't know. I'm hope the Office will be looking for that. Again, it's not that the policy is a bad policy; it just needs to be properly promulgated. It's a separation of powers issue.

10:43 a.m. -- Corelle Spettigue, Health Care Unit, Attorney General's Office, testified before the Committee. Ms. Spettigue said I'm here today to speak to a very limited legal issue, namely the appropriate interpretation of the APA as it applies here. As you are all aware, when construing a statute the first step in the analysis is to look to the plain language of the statute, giving the words their

ordinary meaning. If the statutory language is ambiguous at any point, then we employ several canons of statutory interpretation to resolve the ambiguity, including interpreting the statute in a manner that gives the most consistent, harmonious, and sensible effect to all of its parts and that would avoid rendering any words or phrases superfluous or that would render some absurd result. As Ms. Darling pointed out, section 24-4-103 (12.5) (a), C.R.S., reads a rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization. The interpretation advocated by the Office is that this language requires a standard or guideline that is incorporated by reference to have been formally adopted pursuant to the APA. However, to read this provision as suggested is to read into it words that are simply not there. "Pursuant to the APA" does not exist in this provision. A plain language reading of the statute allows for a rule to incorporate by reference any part of a standard or guideline that has been adopted by an agency of this state. It doesn't say adopted pursuant to the APA. Here, the department, being an agency of the state, adopted the benefit coverage standard pursuant to the very lengthy stakeholder process as a guiding tool for providers to use in navigating the complex system and web of covered services without employing this arsenal of legalese that tends to muck up the process. Contrary to the position taken by the Office, the incorporation by reference provision in the statute does not, on its face, require formal adoption under the APA. I would say that this position is further supported because the use of the term "adopted" is used twice in this provision. Once with reference to how an agency of this state adopts a standard or guideline and then again when it speaks to how a nationally recognized organization might adopt a standard or guideline. A nationally recognized organization who is not subject to the APA would be adopting a standard or guideline and that is certainly allowable under our statute. To give consistent and harmonious effect to this provision, why are we saying adoption in the first instance requires APA adoption, whereas adoption in the second instance does not. Furthermore, the language allows for non-rules. It says code, standard, guideline, or rule. If it was meant to be under the APA, then all of those would be rules, conceivably. If we are going to require every guideline or standard to actually be pursuant to the APA, then it would be a rule and so these words would be, in effect, superfluous. The canons of statutory interpretation frown upon interpreting a statute in a way that would make the words or phrases superfluous. I would also note that the Office's own historical interpretation of this statute lends further support to this position. We know we're

within the realm of reasonableness because this rule was considered and approved by this very Office. Accordingly, we lack the understanding of why suddenly this seemingly arbitrary application of this new interpretation is of such import. More importantly, I think this Committee should be aware of the potential ramifications of adopting this particular construction of the statute because there are countless regulatory examples where agencies incorporate material by reference that were not submitted to rule-making procedures of the APA. For instance, the department of transportation has rules governing under what circumstances specific information signs can be erected on state highways and they incorporate by reference their own CDOT sign design manual. The department of education incorporates by reference a supervisor's manual for instructions for state testing that is produced by ACT, which is a completely private company, independent of the department. The department of natural resources has American society for testing and materials designation standards and specifications. The department of regulatory agencies also incorporates by reference the American institute of certified public accountants code of professional conduct and professional standards and imposed that upon the regulated community. In effect, the overarching concern that would serve to invalidate these particular rules is that the department failed to allow for an opportunity for public notice and comment and I would submit to this Committee that many other agencies in Colorado would also likely be in violation of this incorporation by reference provision and we would strongly encourage the Committee to tread carefully before upsetting the apple cart. We have a situation where the regulated community and the department have been relying on this construction for years now and to suddenly employ a much narrower interpretation of the statute would in effect turn a lot of the incorporation by reference rules that have been submitted thus far on their heads, and, therefore, create immeasurable uncertainty and a lot of chaos that would be coming your way. This doesn't just narrowly affect the department of health care policy and financing, is the point I'm trying to make.

Representative Gardner said just so I understand, you're telling me that Attorney General Suthers' position, since he's the elected Attorney General and head of your department, is that in section 24-4-103, C.R.S., when we refer to a rule that has been adopted by this state, that in the context of article 4 of title 24, C.R.S., we're not referring to APA rules and we're just talking about any sort of pronouncement that any executive branch department wants to make and put the label "rule" on it? Is what you're arguing - that this department can write up something, put "rule" at the top of it, have whatever process they choose to have, and that that's a rule, and

in the context of the APA that's what rule means? Is that what the Attorney General's office is telling me, so that I tread lightly? Ms. Spettigue said no, I'm sorry if that was the way I presented it. First of all, I do not represent Attorney General Suthers in his personal capacity as Attorney General. I represent, in my capacity, the department. I'm their attorney and I'm simply representing to you how this rule came to be and how we interpreted this rule. At the time we were pursuing this particular APA process, we interpreted this to mean that there's no issue because the rule does not require any standard or guideline that the agency adopts to be pursuant to the APA because of plain reading of the statute and for the reasons I gave before. To the extent that the Committee wishes to read a stricter interpretation going forward, it was more a consideration for the Committee to please understand that there are many standards and guidelines that have been incorporated by reference throughout Colorado agencies that would not meet that definition and would also be in violation. To the extent that the Committee wants to make that narrow construction applicable going forward, I think that's within your authority and purview to do so, but I would be considerate of the fact that applying such a narrow construction retrospectively would be very upsetting to many of the agencies because we would be essentially telling people you can't rely on the rules as they're passed and that's a problem for the regulated community.

Senator Steadman said isn't the problem here that's it's pointing to something on the web site and it says this doesn't include any later amendments, but because it's not a matter of official record when that got written or when it might have been amended, doesn't that create the same uncertainty for the regulated community that you're cautioning us about? Ms. Spettigue said I think it's important to note that it does go through a fairly strict process throughout the department. I'm going to allow the department to speak to how the standard came to be and why they believe strongly that it does fit within the definition of a guideline or standard as opposed to a formal rule. It is my understanding that it is formerly adopted within the agency and then it is signed and dated and there is a specific limitation on any subsequent amendments without going through that internal procedure.

Senator Steadman said but there is nothing in statute or law that requires that formal procedure to revise it and put it on the web site. It really is a moving target and the regulated community doesn't have the assurance of being put on notice and having an opportunity to participate. Even if there is an elaborate stakeholder process, there may be some people left out that don't know that that's happening

because it's outside an APA-noticed procedure. That same uncertainty is still a possibility. Ms. Spettigue said first, that's not what the statute requires of the department under our plain reading of the statute. That's our interpretation and the interpretation we believe has been applied in the past by the Office and other agencies is not that only APA-approved rules can be incorporated by reference. To the extent that that going forward is going to be a requirement, I'm sure the department will take that under consideration. I think the bigger issue is whether or not there is this public opportunity for notice and comment. These rules were promulgated pursuant to the APA, which directly dealt with this incorporation, and so certainly the Office and any stakeholders or members of the public who had concerns would have been able to raise those at that time.

Senator Steadman said but that overlooks the fact that now that this is the rule, the standard that's posted on the web site can be amended and changed without all that notice and participation. Maybe that's not their intention and they think that it's etched in stone and they'll never amend it, or maybe they think they have a wonderful outreach to stakeholders to involve them if they do change the standards, but they could change the standard and the way the rule references it. It does say it doesn't include later amendments. So, what if they did make a later amendment? Would making a later amendment to the standard invalidate the rule? Ms. Spettigue said I believe that the incorporation excludes later amendments to or additions of the referenced material, so any changes to the standard would not have the effect of law under these particular rules, the idea being it is the standard as it was presented at the time these rules were passed.

Senator Steadman said suppose they did decide to revise the standard and they went through a process that doesn't follow the APA. They put that up on their web site instead and they sign and date it. Let's say I don't know that there is a previous version of the standard that had an earlier date and was posted to the web site. All I know is what's in the rule and the rule points me to their web site standard. How would I know that there has been a later amendment that doesn't apply to me? Where would the notice to the regulated community be afforded in that hypothetical? Ms. Spettigue said the rule states that it has to be the benefit coverage standard that was approved on May 30, 2012. Any later amendments or changes would trigger a regulatory change. You wouldn't be able to make an amendment or change to the benefit standard without then also changing the rule, which would be pursuant to the APA and subject to public comment.

Senator Steadman said so if they did revise the standard it would basically invalidate the rule because the rule wouldn't match what the standard is. One or the other has to give. It seems like this is really becoming circular because you then have to go through another rule-making to update the rules to refer to the standard as of the later date before you could take your standards through the rule-making process. It seems like there is a mismatch here in that one of these things is definitely subject to the APA and the other isn't and any change to one causes a problem for the other. My bottom line is that I think you have a problem.

Representative Gardner said let me tell you why I'm so adamant about this. I'm astounded that the Attorney General's office would argue that in section 24-4-103, C.R.S., the plain meaning is different. The APA says that a rule - and that's the word we're talking about here - means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. The APA later says in section 24-4-103, C.R.S., when any agency is required or permitted by law to make rules, in order to establish procedures and to accord interested persons an opportunity to participate therein, the provisions of this section shall be applicable. When you get to section 24-4-103 (12.5) (a), C.R.S., and it mentions may incorporate a rule that has been adopted by this state, I think that the plain meaning of that under the APA is that the rule would have been adopted according to the APA. I don't even know how you stand that on its head. I'm just astounded that the Attorney General's office would make the argument that somehow section 24-4-103, C.R.S., when it refers to a rule that has been adopted by this state, is referring to policies that are posted on web sites. By the way, the references you mentioned about the ASTM standards and things that other departments have used I think constitute what this Committee has dealt with before which is rules adopted or published by nationally recognized organizations and associations, such as plumbing codes and things like that. Maybe it's going to breed chaos - though I don't think it will breed chaos - for us to reject this rule but it may tell the executive branch to be more careful about this. If we have to go back and do some others, we may go back and do some others. They may have to do what the legislature says the executive branch has to do.

Representative Foote said I was looking at the same definitions section that Representative Gardner was and, of course, "adopt" is not defined in the definitions, which is probably the whole issue here. One thing you mentioned in your previous remarks was something about had the legislature intended that it be

adopted by the APA, it would have said so. It seems like part of what you're resting your analysis on is if the legislature would have thought that rules would have had to have been adopted always by the APA, it would have said so. I'm wondering is there anywhere else where you're relying upon that where it says it has to be adopted by the APA as opposed to just adopted? How do you distinguish those two? Ms. Spettigue said first I would like to address Representative Gardner. The reason the Attorney General's office is here is one he noted previously, which is if this is the interpretation we should have going forward, how did it get past the Attorney General's office and the Office of Legislative Legal Services? How did it get to this point that a year-and-a-half later we're now looking backwards and saying this might have not been correct under the APA? Being that that's the case, I'm presenting to you the interpretation that we employed at the time and that we believe is an interpretation that can be had. I'm not saying that Ms. Darling's interpretation isn't another one, but because of the way that it has all come about and the way the department and the regulated community has relied on the standard, and including the plain language arguments that I've presented, is the best course to retrospectively change everything or is it better to allow this to stand and going forward have the more narrow construction for these types of policies and guidelines that an agency wishes to promulgate? To Representative Foote's question, I don't have a definition of "adopted" and there's not one in the statute. Our interpretation is one in which the adopted reference is used twice in the same provision. You consider the statute as a whole in canons of statutory construction. Why would we give one "adopted" a different meaning than the one subsequent to it? The subsequent use of the term "adopted" is in reference to a nongovernmental agency who obviously cannot be subject to the APA or any of its strictures. Furthermore, because of the list of items that would be allowable as an incorporation by reference - meaning a code, standard, guideline, or rule - in order to not have a superfluous use of these words and phrases, you would have to interpret standard or guideline to be different than an enacted rule pursuant to the APA, or a nonrule, essentially. That is why my office and the department interpreted this to be proper under this provision and didn't, at the time, see any issues with it. Even the Office of Legislative Legal Services didn't see a problem with this. Now that we're going backwards, is it really the best course of action to retrospectively change things and upset the apple cart. As Representative Gardner identified, there are a lot of these kinds of manuals and guidelines that are incorporated throughout Colorado agencies, so this doesn't just effect this particular rule.

Senator Steadman said would your argument be bolstered a little bit more if the rule in question didn't say that the standards were approved on May 30, 2012, but instead said they were adopted? And going back to the statute on incorporation by reference, the thing I'm struggling to try to find in the section on incorporation by reference is are you incorporating outside materials or are you incorporating something you created yourself. If I adopt the plumbing code, that's some other body that has had responsibility and created a code. The statute says that you can incorporate by reference anything that's been adopted by an agency of the United States (so that's looking outward), this state (and I think that's the hard one to interpret), another state, or some other nationally recognized organization or association. You're incorporating by reference somebody else's work product that they've created. In this instance, they're incorporating by reference their own work product. To me, that gets to the policy issue of what is the purpose of the APA and the rule-making, notice, and participation process. If you're going to take somebody else's work product and incorporate it, that's one thing, because it's a known thing that someone else has been responsible for and they went through some process of producing it, but the ability to incorporate by reference something you did off on the side is, to me, a little bit troubling. That's where it gets to the question of incorporating by reference something that's been adopted by this state. I'm not quite sure how to interpret that. Do you have any thoughts? Ms. Spettigue said frankly, the plain language doesn't say a rule may incorporate by reference all or any part of a standard or guideline that has been adopted by an agency of this state. It doesn't say another agency or some separate agency. Again, this is the interpretation we had at the time and I want to make sure you understand why we're here. Our interpretation was that there is no issue with the department - being an agency of this state - incorporating by reference a standard that it has adopted. I gave the example of the department of transportation adopting its own manual on uniform traffic control devices and the CDOT sign design manual. This isn't the first and only time this has been done where someone has incorporated their own reference material into a rule. Is it the best practice? Is this the kind of policy you think would honor the spirit and intent of the APA? I leave that to you; this is the Committee's decision to make. However, I would again caution that it's one thing to act prospectively going forward and it's another to put your hand in the past and upset the apple cart for all these agencies and regulated communities that have relied on these particular rules as they're written and as they have been approved.

Representative Foote said I'm looking again at section 24-4-103 (12.5) (a), C.R.S., and there are five subparagraphs under that paragraph. I'm wondering if it isn't a fair interpretation that subparagraphs (I) through (V) can go to further define "adopted". If you wonder what "adopted" means - does it mean it has to be adopted by the APA procedures or not - and you look through subparagraphs (I) through (V), it talks about some of the requirements that could lead to adoption of rules, but there is nothing in subparagraphs (I) through (V) that says it has to be adopted through the APA procedures. I wonder if you can comment further on that and maybe retrace your steps when you were doing the analysis. Ms. Spettigue said I would say again that I rely on the plain language but also I think the spirit and intent behind the incorporation by reference statute is to allow agencies the flexibility to bring in some of these outside sources that might help them in regulating the programs that they're charged with regulating. Perhaps this isn't the gold standard version of an incorporation by reference which would ideally be, for instance, a federal regulation that has gone through the entire federal APA procedure. However, to the extent that this language here also contemplates standards and guidelines, which are more informal, it's kind of the whole point that they're not this high standard of legal basis necessarily and are more of an informal standard or guideline that would assist the regulated community in knowing what is expected of them. In turn, the departments and agencies are allowed to use those more informal guidelines and standards as an incorporation by reference to assist the regulated community. It kind of cuts both ways and is riding that line because there is no case law and no definition. There is just how it's been applied in the past and what the plain language says. That is the interpretation that the department took in this instance and that my unit as their representatives also took.

Representative Foote said under section 24-4-103 (12.5) (a), C.R.S., and the five subparagraphs following, it lays out how the incorporation by reference can occur if a rule has been adopted. Subparagraph (I) talks about whether or not it's unduly cumbersome to reprint. Subparagraph (II) requires that the reference fully identify the incorporated rule, basically where it comes from. Subparagraph (III) says it needs to be available to the public. Subparagraph (IV) says the rule must state where it comes from. Subparagraph (V) says the agency has to maintain a copy of the code and all the information of where it came from. I'm just wondering if one way to look at how to modify the word "adopted" is if all subparagraphs (I) through (V) have been fulfilled and then the rule has been adopted. I will ask that question to see if you think that's a fair interpretation and if you do, have all of subparagraphs (I) through (V) been fulfilled in this case? Ms. Spettigue asked is

Representative Foote's question that in order to imply the meaning to the term "adopted" as it is written in subsection (12.5)(a) that we should use subparagraphs (I) through (V) as guidance in terms of if subparagraphs (I) through (V) are satisfied within a rule, then it has been "adopted" for purposes of subsection (12.5)(a)?

Representative Foote said yes. Ms. Spettigue said are you trying to say, for instance, that for subparagraph (I) that within the rule there would need to be some statement to the effect that the code, standard, or guideline at issue is unduly cumbersome, expensive, or otherwise inexpedient?

Representative Foote said I'm not looking to go through a line-by-line analysis about whether or not subparagraphs (I) through (V) have been met. I guess what I'm getting at is that one interpretation is that "adopted" means it must be adopted by the APA procedures. The other interpretation I'm throwing out there as a possibility that I'm interested in hearing feedback on is if subparagraphs (I) through (V) have been met, would that constitute "adopted" under the statute as opposed to being adopted by APA procedures? Ms. Spettigue said from a very initial reading I would say that subparagraphs (I) through (V) pertain to whether or not a rule may incorporate by reference this adopted material if the incorporation meets these particular conditions. It's not so much that the adoption meets those conditions but that the actual incorporation, being pursued under the APA, meets those conditions.

Representative Gardner said my concern is that the logical conclusion of what you argue on behalf of the department and the Attorney General is that departments may adopt lots of rules that are not subject to the APA, and that interpretation strikes me as something that would promote a lot of chaos. One ought to tread lightly with that argument because the plain reading of the APA is that adoption of a rule means adoption of a rule under the procedures of the APA. To argue otherwise is to set this state on a course that its executive departments can promulgate things that they call rules without public comment, without publication, without the process of the APA. That really does concern me much more than telling a department that you can't incorporate by reference unless it meets what I think is the plain reading of the section. Just as another comment regarding the argument that the Attorney General's office approved this rule and so we should be careful about it, in my seven years on the Committee, I know of only one case where the Attorney General has disapproved of a rule.

Ms. Spettigue said again I would like to stress that I understand your concern. I don't discredit the interpretation being promoted by the Office. What my office is saying is that there are multiple interpretations to be had here, this being one of them and this being the one that has been applied in the past, even by the Office itself, and therefore perhaps deference to those rules that have been passed thus far under the construction that has always been accepted and relied upon by the agencies and the regulated community should be something for this Committee to consider. I'm going to allow the department to speak more specifically as to why this is not a rule and that this is a guideline and a standard.

Representative Gardner said it's either a rule or not a rule and I think you might have just argued too much by saying you're going to let the department explain why this is not a rule. If it's a rule, it can be incorporated by reference and if it's not a rule it can't be incorporated by reference. Ms. Spettigue said I think it's an important distinction that we're saying a rule may incorporate by reference a guideline or standard. What I'm saying is a rule did not incorporate another rule; a rule incorporated a guideline or standard. That is allowed under the statutory provision and that is what the position of the department is.

11:24 a.m. -- Laurel Karabatsos, Deputy Medicaid Director, Department of Health Care Policy and Financing, and Matthew Azer, Director and Chief Judge, Office of Administrative Courts in the Department of Personnel, testified together before the Committee. Ms. Karabatsos said I'm glad to be here to explain our process for creating the benefit coverage standards, what these guidelines really are, and why it's important to the department's operation. I hope this might shed some light on the previous discussion. Benefit coverage standards define medicaid covered services based on recent clinical research and evidence. It outlines what does medicaid pay for and also provides guidance to our providers. In addition, these benefit coverage standards set reasonable limits on the services, based on the most recent research and evidence-based practices. They are considered to be separate from the rules and complimentary to the rules themselves and actually go into more detail and provide more guidance. They are intended to be plain-spoken documents that are as accessible to our clients as an administrative law judge. Again, they're not meant to take the place of our rules but provide additional information. They were created essentially to make information about our covered services and limits upon them easy to find and easy for stakeholders to understand. For those of you who are not familiar with the benefit collaborative process, there is a formal and standardized process that we follow each time we define covered

services. This includes drafting a plain-language document, having a series of public forums where we get input from all of our stakeholders, and then posting this document for public comment for a 45-day period. Taking these standards through the benefits collaborative process allows the department to create policy in a very transparent manner, it allows for our stakeholders to have a voice in the policy-making process, and it allows the department to draw upon the expertise of its stakeholders in defining our covered services and guidance, including clinical experts in the field. This leads to a better final product and a more informed public, and it has generated a tremendous amount of public good will. Incorporation by reference is the final step in our benefit collaborative process. This enables the department to make its policies enforceable without having to author similar but separate rule content covering the same issues. Creating the separate rule content would limit the amount of guidance that we're putting in our standards that is available to our providers. It would also take extra time and staff resources. There is a translation process that needs to happen if converting plain-language standards into language appropriate for the CCR. Creating this separate rule content we also view as being duplicative and cumbersome. Presently, all of our standards exist in one place on our web site. They're easily accessed by our clients and clients don't need to wade through pages of rules in order to understand what their benefits are and what guidance has been offered to their providers. The current arrangement also helps us avoid authoring language that may be duplicative. Creating separate rule content would make the rules longer, more expensive to reproduce upon request, and less accessible to our clients. There is no doubt as we've been going through this benefit collaborative process that it's helped us. It's helped the department define medical necessity criteria, which has then prevented inappropriate utilization of services, it's generated faster prior authorization of services for our clients requesting help, and it's cut down on the number of appeals we receive. It's also helped us analyze and uncover questionable practices that have been taking place in medicaid and coverage gaps. It's helped us systematically review our policies to ensure that they are evidence-based, promote best practices, and are outcomes-oriented.

Ms. Karabatsos said finally, it's helped us improve client access to cost-effective, high-quality care and services. This benefits collaborative process has also helped our providers. We've had providers tell us that they have increased program compliance with federal and other government regulations and that it's also improved their understanding of what is covered under medicaid and what is encouraged by the department as best practice. In general, our stakeholders have

responded positively and appreciate that their contributions are ultimately reflected in the rule. Very recently our dental providers and durable medical equipment providers have come to us saying that this process has strengthened our relationship with them. Our medical services board has also been supportive of this process and how extremely transparent and inclusive it is. Although we are very proud of this process and stand by it, we're also open to feedback and we plan to continue to improve and grow the process. There are a couple areas in particular where we plan to do that. One is to ensure that our standards are more homogeneous in terms of their content. As you look across our standards, some of them vary in the level of detail that's offered. Some of them also vary in the content that is there. Some of our standards have resources and references for our providers. We want to ensure that all those pieces are in every standard and that they're in the same place in those documents. The other thing we're working on is ensuring that our standard content is organized and numbered in a way that is easily cited. We got this feedback from our stakeholders and so we're looking at adopting some sort of easy to use process, maybe like we do with draft legislation, where every line of a standard is numbered in the margin, but we're not necessarily using complex numbering and indentation schemes that might be used in a formal rule. We've created this process over time in collaboration with the Attorney General's Office and the administrative law judges. We'd like to point out that the benefit coverage standards are submitted in full to our medical services board along with the associated rule language in the same manner that all of our other rules are submitted. The entire standard is noticed and reviewed at a public rule review meeting prior to the medical services board. The board reviews and comments on the entire standard before approving our rule. We've modeled this process off other states such as Florida and Utah who routinely incorporate their own medicaid covered services into rules by reference. Medicaid is a very complex program given that it's a partnership between the states and the federal government. This process allows us to communicate around our benefits in an efficient and effective manner that's very transparent and inclusive of all our stakeholders. It's my strong belief that changing this process will result in less transparency for our clients and less accessibility for both providers and clients in accessing the guidelines a

Mr. Azer said my office doesn't usually get involved in rule-making policy because one of our functions is to hear the cases that have come from the department, but I spoke with Ms. Karabatsos and I think it's important that the Committee understand some of the end game as a result of this incorporation by

reference. My judges have actually found it to be a welcome change from what we had before, which is that we didn't have some of these standards and guidelines referenced in the rule. All we do is take a look at the statutes and rules and when you don't have a guideline or standard that is referenced by the rule, it murkies the waters. What really concerns us is due process because a lot of the people we see are pro se individuals who don't have the acumen to understand exactly what's in a rule. One of the functions of having it incorporated by reference is some plain language that has actually helped individuals who are pro se litigants understand a little better. One of the things we strive to do is make things easier for pro se individuals. By way of example, we did a nonattorney user's guide that lists everything you need to know, whether it's a workers' compensation, human services, or health care policy and financing case, to come in front of the Office of Administrative Courts to hold a hearing on your own. What we found is that people don't use that and they don't use it because there is too much text. They don't want to sit down and read through everything. One of the things that we're trying to do is change how we deliver this information to individuals so that it isn't as text-driven as we have now. We have to be careful because we can't provide any kind of legal education or any help because we are an impartial party. What we do want to do is make it accessible to individuals and what we found is that through incorporation by reference we have people who are better prepared coming in.

Representative Gardner said I understand your position about being more accessible and understandable to pro se parties. It sounds to me like this is a very good process. I don't have a problem with the process. My role is not to decide whether the benefit collaborative standards are superior or that the product is good; it's about whether or not - if they are to be incorporated by reference into a regulation - they are something that can be. In your view do you believe these standards are properly and legally incorporated by reference under the applicable statute? Mr. Azer said that's not my decision to make. We just take whatever people give us in terms of statutes and rules and I am very mindful of the fact that we should not as judges get involved in rule-making. That's not what I'm trying to do here. I'm just trying to let the Committee know that the process that has been put in place has worked in front of our courts.

Representative Gardner said I just want to reiterate. It sounds to me as if the department's process is a good process and a well-intended process and one that led to a lot of public input. I'm a proponent of regulations, even in the CCR, being

in as much plain language as possible. Judge Azer has to make a decision based on the lack of, hopefully, ambiguity. He wants to be able to read and know. Most judges I know hate that piece of the business. It's better when it's clearer. I'm going to vote no to extend the rule but it's not because your process may not be an excellent one. It may be one we need to place in the statute but it really does disturb me that a department could unilaterally decide to use another process other than the APA without coming to the legislature or could incorporate by reference something that didn't use the APA process. I think the APA very clearly sets forth a process and it's a different process than this. It may be a terrible process, but statutorily, it is the process that is the law in the state of Colorado. If we want a different process, I encourage the department and the executive branch to come to us and ask for more flexibility so they can do that.

Senator Steadman said I largely concur with Representative Gardner. I was looking at the statute because I was struck by Ms. Karabatsos' testimony about the difference in the accessibility to your clients between the standards and the rules, when the APA clearly states in section 24-4-103, C.R.S., that no rule shall be adopted unless, to the extent practicable, the rule is clearly and simply stated so that its meaning will be understood by any party required to comply with it. Are you saying that your regulations aren't in compliance with the APA? Ms. Karabatsos said when we talk with our clients, they find it much more difficult to navigate through a rule and the way we are required to communicate in rules such as "shall" language and numbering systems. The feedback we hear is that it is more of a challenge for our clients. When they're able to help craft these standards in their own language, it helps this information be more easily understood. I would say that I also don't believe our rules are necessarily any different than any other department's, but that there is a qualitative difference for our consumers.

Representative Gardner said what is it about the APA and that public process, which is intended to hear from stakeholders, that prevents you from taking the benefit collaborative standards and making them rules under the APA? Ms. Karabatsos said I'm not the department's attorney, but when we created this benefits collaborative process, we were really thinking about billing manuals, guidelines, or standards for our providers. One of the more recent things in health care and state government is to make sure that the services we're providing are the most cost-effective and based on the latest evidence. That doesn't always translate to this service can be provided and this can't. They are guidelines where the department sets forth its values and how we would like our clients to be treated in

the least restrictive environment and the whole person way. I really think it's the nature of the information that we want to put into these standards that we saw as separate and complimentary to our rules and looked to follow this different process.

Representative Labuda said it does seem to me that you have a very good process going. When a rule goes through the APA process, it reaches a much wider audience. I've heard you talk about the stakeholders and the clients, but there are other folks who are not directly involved in that way who are also interested in that. They need to have an opportunity to give input. That's the advantage of the wider net that the APA gathers.

11:45 a.m. -- Brita Darling testified again. She said I just want to make a few brief comments. I don't really want to delve into what does "adopt" mean, but I think "adopt" must mean in the context of the APA whatever authority was given to that agency with respect to that substance. In this particular case, I think Representative Foote made the point that if the legislature had wanted them to adopt them as rules wouldn't they have said so. In fact the legislature did in the medicaid law. It's very clear that matters relating to eligibility, scope, coverage, duration of services in the medicaid program do need to be rules and the statute very clearly said that those rules must follow the APA. I think that's sort of the smoke and mirrors here in that if there are matters relating to eligibility those are clearly matters the statute says must be made rules. If there is language in those standards that doesn't need to be made rules then maybe it doesn't need to be in the CCR, but the language in the standards that really relates to amount, duration, and scope of services needs that wide audience of the APA. It becomes the law of the state and it needs to be in our CCR. One other point, the hospice benefit rules that actually are in the CCR have a section about eligibility. There is also a section in the hospice standards about client eligibility. You create this problem when you take material that maybe doesn't need to be rule and you sort of blend the two together and then you take the language that needs to be rule and you sort of put it in these standards created outside of the APA. I think everyone agrees that this is an amazing process and the Office certainly isn't trying to shut down the benefits collaborative process. To Representative Gardner's point, I don't know that it's much of a shortcut to the APA process. They have literally hundreds of meetings when they're creating these standards. It's not a time-saving effort. It's just that the end product of that benefit collaborative process needs to be in the CCR if it's intended to be the law of the land and regulate our citizens.

11:49 a.m.

Hearing no further discussion or testimony, Representative Gardner moved to extend Rule 8.550.4.C and Rule 8.200.3.D 2. of the Medical Services Board and asked for a no vote. Senator Steadman seconded the motion. The motion failed on a vote of 0-6, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, and Representative Labuda voting no.

11:50 a.m.

Senator Steadman moved to repeal Rule 8.010 of the Medical Services Board, effective May 15, 2014, and asked for a yes vote. Representative Gardner seconded the motion. The motion passed on a vote of 6-0, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, and Representative Labuda voting yes.

11:51 a.m. -- Duane Gall, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1c - Rules of the Colorado Racing Commission, Department of Revenue, concerning racing - chapter 5, veterinary practices, animal health and medication, 1 CCR 208-1.

Mr. Gall said this is an incorporation by reference issue. Rule 5.441 concerns penalties for medication and drug violations. The incorporation by reference at issue pertains to classification guidelines for drugs and medications that are published by the Association of Racing Commissioners International (RCI). The problem is that the guidelines that RCI adopts are updated frequently and the commission's rules are not updated that frequently and the commission finds it a bit cumbersome to go through rule-making every time there is an update to the guidelines. Nevertheless, it is our requirement that public notice be given and a rule-making process be gone through so that the regulated community has notice of what is and is not prohibited. In Rule 5.441, the incorporation by reference language that we take issue with is the very last paragraph, which is unnumbered. It states that the commission adopts, as part of Rule 5.441, certain Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances. Such guidelines are published by the RCI and were promulgated by the Association of Racing Commissioners model rules committee. There is no date given, there is no address at which an interested person can obtain the most recent available version of the guidelines, and there is no disclaimer

about future editions or revisions of the guidelines. If we could, we would have recommended that only this paragraph not be extended, but unfortunately, the rule makes a couple passing references to the guidelines in various places throughout, such as in subsections (2) and (4). In subsection (2), it says the stewards or commission will use the penalty category and schedule as a starting place for a violation of any drug listed in the RCI guidelines. In subsection (4), it refers to a drug or metabolite found to be presenting a pre- or post-race sample that is not classified in the most current RCI guidelines. Again, there is no date given and so for the fact that the references to the guideline are interspersed throughout the rule and the fact that we don't have a discreet paragraph number that we can recommend not be extended, we are recommending that the entire rule be dispensed with. I'm authorized to say that the agency understands our point of view and concurs and they do plan to repromulgate the rule in February. It's just at this point in the cycle they were unable to fix it by the time we had this meeting and therefore they understand that it's likely this rule will not be extended. However, I believe that they'll be able to fix this before the expiration date.

Representative Gardner said in theory we don't question the agency's ability to adopt the Association of Racing Commissioners International Uniform Classification Guidelines. That's one of those nationally recognized organizations or associations. It's really that they just didn't get the details right. Mr. Gall said yes, that's exactly it.

11:56 a.m.

Hearing no further discussion or testimony, Representative Foote moved to extend Rule 5.441 of the Colorado Racing Commission and asked for a no vote. Representative Gardner seconded the motion. The motion failed on a vote of 0-6, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, and Representative Labuda voting no.

11:57 a.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed agenda item 2 - Approval of the Rule Review Bill and Sponsorship of the Rule Review Bill.

Ms. Haskins said the Committee needs to approve introduction of the rule review bill and talk about sponsorship of the rule review bill. The rule review bill has been drafted that is based on last meeting's work. I will need to redraft and add to

the bill the votes that the Committee just took on the rules today. I need a motion to approve the rule review bill with the additions reflecting your votes today.

11:58 a.m.

Hearing no further discussion or testimony, Representative Gardner moved the Committee's adoption and approval of introduction of the rule review bill, reflecting the Committee's actions of today. Senator Roberts seconded the motion. Representative Gardner asked where is the bill starting this year? Ms. Haskins said it's the House's turn to start the bill. The motion passed on a vote of 6-0, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, and Representative Labuda voting yes.

Representative Labuda agreed to be prime sponsor for the rule review bill. Senator Brophy agreed to be the other prime sponsor for the bill. Representative Foote, Representative Gardner, Senator Roberts, and Senator Steadman agreed to be co-sponsors of the bill.

12:01 a.m. -- Jennifer Gilroy, Revisor of Statutes, addressed agenda item 3 - Sponsorship of Other Committee on Legal Services Bills: Bill to Enact the C.R.S.; Revisor's Bill.

Ms. Gilroy said I'm here to invite the Committee to once again sponsor two bills. These are annual bills, referred to as the bill to enact the C.R.S. and the revisor's bill. The bill to enact is a technical, nonsubstantive bill that enacts the 2013 softbound volumes of the Colorado Revised Statutes as the positive and statutory law of the state of Colorado. Essentially, it's a bill that is introduced very early in the session and is one of the very first bills delivered to the Governor for signature. It takes all the categorical changes we make on revision when we prepare the bills you passed for publication in the combined statutes that include things like correcting typographical errors, harmonizing numbering, grammar, and other nonsubstantive things and makes that the official law of the state of Colorado so that that text becomes legal evidence of the law for the state as opposed to mere prima facie evidence. I would ask that this Committee consider sponsoring that bill again.

Representative Gardner agreed to be prime sponsor for the bill to enact the C.R.S. Senator Steadman agreed to be the other prime sponsor for the bill. Representative Foote and Representative Labuda agreed to be co-sponsors of the bill.

Ms. Gilroy said the revisor's bill is a technical, nonsubstantive bill. It's often referred to as the clean-up bill. It is introduced very late in the session because it's used as a vehicle to correct errors or problems we've had with bills even during the course of the session as well as other corrections that are of such a nature that we can't just correct it through the bill to enact. I also want to make sure you're aware our Office has a blog, the LegiSource. I posted a blog in November on the revisor's bill that gives people guidance on what we do and don't include in the revisor's bill. Our Office endeavors to make sure there is nothing controversial or substantive in the bill and those responsible for the bill generally try to maintain that standard as the bill goes through the system. I would seek your sponsorship of that bill.

Representative Gardner agreed to be prime sponsor of the revisor's bill. Senator Roberts agreed to be the other prime sponsor for the bill. Representative Foote, Representative Labuda, Senator Brophy, and Senator Steadman agreed to be co-sponsors of the bill.

12:07 a.m. -- Bob Lackner, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 4 - Litigation Update.

Mr. Lackner said I'm pleased to present to you this afternoon the latest edition of the litigation summary that's prepared by our Office. As you may remember, the document is divided into two parts. The first part is cases in which a member of the General Assembly or the General Assembly is a party. The second is cases of interest to the members of the General Assembly. In this year's edition we've added a table of contents, which groups the cases of interest by category. Hopefully, this addition makes for easier reference. I'm privileged to be able to be the public face of this effort, but you should know this document reflects the very hard work and contributions of 17 attorneys in our Office who monitor the 23 different cases that are addressed. In the interest of time, I will not be discussing any more of the contents in greater detail. You will see that for each case there are one or more attorneys assigned to that particular litigation who monitor that case. I encourage you, if you have any questions, to please contact that attorney. We think it's a very important part of both our professional development and competence in terms of assisting you to be able to understand what's going on in the judicial department as well as what's going on underneath the dome, so we take this seriously.

12:10 a.m. -- Debbie Haskins addressed agenda item 5 - Scheduled Meetings for the Committee During the Session.

Ms. Haskins said we have gone ahead and scheduled the Committee to meet on January 10, which is the first Friday of the session, at 8:30 a.m. for a very quick organizational meeting to elect a chair and vice-chair. And just a reminder to put on your calendars the scheduled meetings on the first Fridays of each month, from noon to 2:00 p.m. starting in February. Those dates are February 7, March 7, April 4, and May 2. If we don't need to meet, we will cancel the meeting but having it on the calendar with a reserved time helped a lot last year because then we could move the rule review bill through and not have to come bother you every time we wanted to schedule a meeting.

12:11 a.m.

The Committee adjourned.