

Please stand by for realtime captions.

Hello? Hello?

High, who's on the phone with us?

Is anybody on the phone? Kristy are you on the phone?

>> Called this for meeting for November to order.

>> [Roll Call.]

>> Christy Blakely is here.

Thank you, we have noted your attendance.

All right. The sculptor the announcements. Date and location of the next medical center services board meeting will be held Friday, December 13, beginning at 9 AM at 303 East 17th Avenue, 11th Floor Conference Room, Denver, Colorado, 80203. It is the policy of this board and the Department to remind everyone in attendance that this facility is private property. Please do not block the doors or stand around the edges of the room. Please turn cell phones off while in the meeting room. if you are listening in this connection please click again on the link to rejoin the meeting. The question-and-answer feature is enabled. Any questions or cameras please identify yourself. They are part of the record the testimony can be given over the phone please refer to the website for instructions. Individuals providing telephonic testimony will -- please identify yourself when speaking. There is a testimony sign up for open form. If you need help finding the room make sure if you're interested asked for help. Do we have an approval of the minutes from last week please?

Motion passes. Let's head into emergency adoption. So Erin Thatcher.

Good morning. Welcome. Please come forward, introduce yourself to the board.

Thank you. Thank you members of the board pick good morning. My name is Erin Thatcher. I am responsible for in-home support services or IHSS. This is a revision to the IHS definition that you saw earlier this year. The office of legislative legal services required us to ensure the definition in our rules match statute so we are making a change to ensure that that request is in compliance so essentially we are just updating two of the destinations. So do you have any questions?

Any questions from the board?

[Indiscernible - low volume]

>>

Either tense up if there's no questions -- do we have any testimony?

We do.

Please come forward. Please introduce yourself to the board and give us bulimic

I have proper -- for the board and I'm Betsy Mary with the home care Association of Colorado. We have testified on this rule in the past and we continue to raise the issues that may or may not be within the control of the board. I'm not an attorney so it's hard to say but we are still concerned about the fact that we have members, providers that will have to deal with unemployment insurance and

the [Inaudible] issues are financial and personal as the employee in this whole process. And the letter kind of continues to explain what our concerns are but as a provider every time there is a mandatory increase for the employee the provider has cost that are not covered in this rule. And I think again it is a statutory issue possibly rather than a rule and the department is well aware of that in our regards -- Emrick -- we continue to be very concerned about this because the rates are very low to begin with. The going rate in the private sector is anywhere from 24, \$25 to [Inaudible]. The agency to provide services, pretty similar services I would say if not identical to the personal care providers that the Medicaid would -- \$17. Our fingers are still crossed. So, we have those concerns and we realize that if it's continuing to be -- or your final reading, and emergency Roba home care is still being stressed. I got a nice document from Colin yesterday on the number of providers that are being serviced, agencies that are servicing Denver County alone with this new rate increase being proposed for January 1 of the services being provided to 4100 people with 57 agencies, providers. In Denver County alone. We've already heard one agency that has just reached the end and said I'm done. I cannot provide these services. And they are -- there not necessarily members of her home care Association. They are small agencies that have been in business for a long time. And they finally have run out of [Inaudible]. Those are the kind of stresses we are under as an agency and it adds to

-- I appreciate you listening today. I'm glad to answer any questions. We were hoping to have a provider here but I think he got caught in traffic. Just for clarification for the board,

I think that just a little bit later [Indiscernible - low volume] so for the poor, please remember what she said.

Multi Mac -- [Indiscernible - multiple speakers]

You have any comments you would like to provide.
We do have someone speaking later.

Thank you. We do have David Bolan signed up. David D my coming forward and introducing yourself to the board. Welcome. Meteorologist --

I'm representing

-- I'm always happy to support the department changes I'm always happy to do that and I'm happy to do that with this. I love it when the department seeks to statute instead of deciding to expand on statute. That's where we run into problems.

Thank you. Any questions?

My only question is [Indiscernible - low volume] my understanding it goes to the office of legal services for review. These definitions were changed several rules ago and it was something that was caught and brought to our attention so we were able to find out what the options were in such a way for us to be compliance so, hopefully that addresses everything for them.

>>

Sorry about my delay. I don't have any questions. Thank you for checking in.

I think I heard that there were no questions from Ms. Blakely.

Correct.

>> [Inaudible] and the compliance was will be contrary -- [Indiscernible - muffled] Ms. Blakely?

Aye.

Motion passes. For clarification for the group, last month when we decided on our consent engine one of the rules we need to have some changes. We pulled that from the consent agenda which is why we have three listed here. Are there any questions? OK. So let's move on to the final adoption consent. Agenda -- agenda. And I will entertain a motion. Who would like a long reading part. I moved final adoption of consent agenda of document 01, MSB 19-07-02 minus a revision of the medical assistance rule concerning HEB asked and if it home accessibility adaptations for the CES and SLS waivers, section 8.5 .94 point 3.6 and 8.503 .40 point five. And document three, MSB, 1907-24 minus a. Revision of the medical assistance rule concerning home and community-based services for the elderly blind and disabled. Life skills training, home delivered meals, and document four, MSB B 19-08-05-a. Revision of the medical assistance rules concerning MAG I medical assistance rule updates, and incorporating a statement on basis and purpose of specific statutory authority.

Thank you.

Second.

Properly moved in second. All those in favor please say aye. Ms. Blakely?

Aye . >>

So now we will head into final adoption agenda in which we will now shift to document 2 into this area and then we will bring up Ms. Cassandra Keller.

Good morning. Welcome.

My name is Cassandra Keller. We opted to pull this regulation of the consent. We had a few suggestions and recommendations of making this to a couple parts -- we thought they were good changes and suggestions that we have done that. I thought I would just been through what they are really quickly. There are five on page 1. We made two small changes, was to to change the word and then changing provider to direct service provider or caregivers . On page 2 we change the word and sure to safeguard and page 3 we removed that part of the contracts requirement that it be for a backup caregiver or other provider of care. And lasts on page 4, 8.6 -- we removed the words anarchy so while a participant would need to have a lock on the bedroom door it would not be required to have a locking keeper got all bedrooms have locks and keys to those doors. We just made those small tweaks you have any questions for me?

Any questions from the board?

I think those are all the things. We highlighted so you could see what the changes

Any questions from the board? Any questions on the phone?

No.

No thank you.

Yes, [Inaudible].

Please introduce yourself to the board. Good morning. My name is Ellen [Inaudible]. I -- I just wanted to come up and thanked Cassandra on the department for working with us in a few of those final tweaks that we notice unfortunately after you guys initially adopted this. Were trying to do our best to catch them but sometimes that happens so just thank you guys for making those final tweaks that were important to our membership and we support the final adoption of the role.

Great. Thank you.

I will entertain a motion.

I move the final approval . [Indiscernible - low volume]

All those in favor please say I. Oppose? Abstain?

Motion passes. Let's head into document 5 and welcome Russell Pickler. -
- Ziglar. Good morning. Welcome and please introduce yourself.

My name is Russ Ziglar, I'm here to present details on the prenatal dental role.

Prior to this revision only Emerald [Indiscernible - low volume] -- please note that orthodontic services for pregnant women are not included. Orthodontic services are not covered in -- co-pays will not be charged to pregnant women for services. Thank you please let me know if you have any questions.

Thank you. Any questions from the board? And thank you for the reminder that this was an emergency adoption earlier. Just coming back for final. Any questions, especially --

I'm going to put you on this bottle of. Any questions from the phone? >> No thank you.

No thank you.

OK. Do we have any testimony?

No, we do not.

But there's no further discussion we can move on adoption.

Moved to final adoption of document 5, CHP 19-07-03-a. Revision of the child health plan plus rule concerning parental -- prenatal dental, section 210 W.

It's been moved and properly seconded. All those in favor say aye, although supposed say no.

>> Motion passes. Thank you very much. Now we will head into document six Henry Mbyte Miss Thatcher for her second rule. Welcome again. Introduce yourself and your counterpart.

Thank you Madam President. My name is Erin Thatcher and I am the benefit and -- which was signed by the gun number in May and that is for personal care and in-home workers pick

Good morning. I'm here to field any questions you may have about the reporting aspect of the bill.

Great, so, we talked about 238 a lot and essentially this rule allows us to ensure agencies are in compliance with passing through that rate increase. The department ask for an increase to the rates for personal care homemaker which will be effective January 1. In order for us to be in compliance with that and the porting of monitoring requirements we are here today as final document took so Senate Bill 238 requires that compensation is passed through directly to the workers providing the

services. We occurred -- heard a lot from her partners and other people and we have incorporated a lot of the feedback

into the rule. Essentially there are a couple places where we differ and that comes down to unemployment insurance that we do not believe this is a direct benefit and we also have to be in compliance with 1407 which is a bill from 2018 which we are now just starting reporting requirements on. We want to maintain consistency between those two bills because they are reporting tools and they are the same. So with that I would like to open up to any questions if there are any.

Any questions from the board?

Is there a variance between let me rephrase that. The argument, the discussion, the feedback, the answers, as is consistent with 1407 and how the department is responding? Unemployment is at the same secure?

Yes, it is the same. We did hear some of the same feedback. We are maintaining [Inaudible].

Any other questions

1407

This is Mr. Pump. This is the same kind of process and legislature with funds going to the worker. In that discussion the same kind of questions. Is that an employee benefit? Is that not an employee benefit.

That was a big dialogue we had.

So I'm just curious, what is covered? Long-term, short-term? Narrow insurance quick

This is a huge employer cost. What pieces if any are covered.

So, in our

rule we have specific things outlined. In terms of what could be considered compensation so if we go to the document 6, on page -- compensation is defined here meeting any form of monetary payment including bonuses and other insurance programs.

[Captioners transitioning]

I believe, I think the big question has been, the reporting of this. There is a concern that the department would get employee details about the conversation, if that's incorrect we will get the adjutant number of how each agency has been in compliance. They can use the funds in a way

that benefits their care workers and they have to demonstrate that to us. >>

Any questions?

No thank you. >> Anything else you want to add?

I have nothing.

We will start with Miss Mary, if you want to come forward. >>

We will go in order. We appreciate that. We will move on. The next testimony, please come forward. Nice to see you again. >> Hello. I work for a home health agency. I your supporting this with one exception, the way compensation is defined, is the way it is defined in the statute. It is based on the work done on the legislation, to get this piece of legislation, nobody would go out of business because of the way the original bill started off it was 77% of the rate had to be paid in direct wages. There was no personal care agency that would have stayed in business.

We worked the bill to different way so it is compensation will be based on House Bill 18 1407 which is a 6.5% increase for support workers, we did that because the JBC bill had a discussion about what compensation was. In the discussion, things like unemployment insurance, they were believed to be not a direct benefit to employees because an employment insurance is collected if you lose your job.

For employees, it is not a direct benefit. It had to be more narrow and had to be a direct benefit to the employee. That eliminated some of the things that the employers had to do.

I support the way this is written, my only issue is when you get to page 3, what we have to submit upon request, are the county records. The way that all the other documentation that we are to submit should cover everything to show how we have paid the wages of all employees and how we have used this increase, as compensation for employees, the accounting records go into things that go beyond the scope of Medicaid.

If you do private pay, home health, it goes beyond the scope of the bill. And that is homemaking services, and personal care services. It has nothing to do with attendant services, CNA nursing, all of that is in a company's accounting record. We are overstepping into some privacy issues around privately held companies. >> We are delving into something that goes a little farther in my opinion. We should be able to find different ways to justify how we use those increased wages and the forms will be the ones that we use the most, and the documentation of insurance costs, and the other forms of compensation, it is debatable .

It is a matter of parsing that out to just that sliver of the rating increase. That will be -- that is already fixable to get to show how we use what is really going to be -- I believe it is \$.90 per hour and we have to parse that out. Going with the county records goes too far. But

for compensation, this is exactly the way the budget committed for 1407. In the way it was written into statute, thank you.

Miss Thatcher, anything to say?

I think that is line 33.

Thank you. I'm going to defer to Tony. Tony is the enforcer. It would be helpful to hear from him on what we will see.

Okay. In terms of the items listed here, then maybe looked at for the audit, those are necessarily reported on the reporting tool. That is it. The entity comes up for whatever reason. They have to be audited and we want to check the records to see how they passed through the increase. This is a standard documentation.

We will look at all of these items, we are saying these are some of the items that can be looked at during an audit. Records that are kept for the IRS we talk about revenue to review, we are not trying to re-create the wheel, we use the most expedient way to get to how the increase was used. We want to list what could be looked at.

Thank you. Any questions from the board? Any questions on the phone?

No thank you.

Thank you. We will move on, we have another testimony. >> Good morning. Thank you for the opportunity to address you. I want to reiterate I support -- I am with people care health services. We will provide Medicaid personal care and homemaking services in all 64 counties statewide. We provide help for children with disabilities, for adults, including the frail and elderly.

We agree with the spirit of SB 238, as well as with the spirit of this rulemaking. We need to find a way to provide better compensation for caregivers to enable a livable wage and to ensure that we have a way to continue to attract workers in this space and this career. We continue to meet the requirements the Medicaid consumers need from long-term services and supports, amid challenging demographics. >> There are two areas with the proposed rulemaking that I disagree with. One of which, related to the noninclusion. And the definition of compensation. The second is the potential for making employee private and personal information accessible.

Especially through a compliance audit, regarding unemployment insurance, Medicaid homecare agencies need to balance the ability to cover operating costs regardless of the source. They have to balance those costs with the availability of government reimbursement.

That means that the cost increases cross three main areas which are prominent within the agency Number one, direct care wages. Number two, administrative costs to the other regulatory requirements, for care management, quality management, labor practices, training, claims processing, liability insurance, workers compensation insurance.

The third primary area is the general operating expenses which includes things like office rents, recruiting, IT systems including the upcoming EBV mandate.

When all three of the areas continue to increase, I tend to look at the home care agencies in the way similar to [Indiscernible] a flowerpot with three flowers and there is barely enough water to keep them alive. If you take some water and add a little bit more to one of the flowers, take it away from the other two, the other two will wither away.

You have to maintain the sustenance and the resources necessary to keep all three flowers alive. The same thing with a home care agency, we need to make sure we have the available resources to cover the increasing needs in all areas. That means maintaining a balance.

With regard to the unemployment insurance costs specifically, they will increase at direct care worker wages increase. And by not allowing the requested rate increase to CMS, help cover those rising unemployment cost, the proposed rulemaking mandates increased unreimbursed costs which effectively takes resources away from home care agencies and the ability to cover the increasing cost to comply with the other regulatory requirements.

>> Agencies who cannot cover all the costs will decline to participate in delivering personal care and homemaking services under the Medicaid waiver program.

Ultimately that would mean reduced access for Medicaid consumers and reduced ability for those consumers to maintain their health and the independence in their homes and communities. >> That was my point with unemployment insurance. Quickly on the second point, employee privacy, in the case of a compliance audit under this rulemaking employee personal information and compensation information and whether a caregiver is a family member of the consumer must be safeguarded and must be remaining private.

It allows like access to any of the information would unnecessarily enforce employees and expose them to potential criminal activity including identity theft, financial scams and physical harm. >> Any questions?

I am confused why have this become public records if this is an internal audit by Medicaid? I'm confused about the public access portion. It would be a Medicaid compliance officer who would be auditing the records and would not be a stalker but would be involved. Why is this public ?

It wouldn't. This the financial monitoring unit during the audit. It would not be public.

If the tax records are audited, there has to be financial oversight. It would be protected just like it always is.

Yes. And not open to open Colorado records. The age will -- any other dialogue?

We have another public testimony. Melissa Benjamin? >>
Good morning. Please introduce yourself.

My name is Melissa Benjamin. I have been at your provider for 17 years. I'm a trained EMT and a first-aid CPR instructor. I hope the organization known as Colorado caregivers unite, it is made up of providers like myself who have sought for the last five years to raise standards in care for the people providing it and the people receiving it. The relationship is symbiotic.

I am here to address some of the concerns of Senate Bill 19 38, it raises wages for home care providers in the state of Colorado. The reason why we fought for that is because so many providers are struggling to make ends meet. With the high cost of living, things happen to care providers like if they don't make a living wage and the tire goes flat, they cannot get a new one. That's what I mean by the relationship for care providers and people needing care is symbiotic.

What I am hearing from the agency association is that there's a concern with the cost of unemployment insurance and a 100% wage past to the worker, none of that went to the agencies to provide this benefit. >> I want to shed some light on that. The workforce, three things come to mind, regarding unemployment insurance, workers --
we do not put in for unemployment insurance. Every time we do we get a fight. We don't have the means to continue that fight to get the unemployment insurance. We don't have the means to fight these employers. Once it is the night we give up.

Many workers and healthcare workers are on public assistance. Colorado, Colorado works program, you do not get those benefits unless you work. People will not risk losing that subsidy for mistakes to get unemployment insurance. We are not.

Three, we don't apply for these benefits because we get the night. We get denied. They could interfere with our subsidy from the state and we don't apply for this benefit -- because unemployment insurance pays 60% of your wages. If you're already making minimum wage, what is 60% of that? Maybe a check of \$250 a week. How will you pay rent? A one bedroom apartment is \$1000. Why does this wage passed through?

You want to talk about flowers wilting in a vase, we are wilting. We are struggling to get to the clients homes, put gas in our car and provide care. When the Senate bill came out, we pushed to make it that 1407, everyone agreed on this. Let's pass that through. This feels like a push against workers because they want to wage increase. A wage increase that they desperately need.

There is an 82% turnover in home care and there are many reasons why. That means 80% of those workers will be looking for another job and in another agency.

I understand agencies have a bottom line. They need to pay overhead, care workers need to be pay their rent. I just talked to a caregiver worker this week and I asked her for her address. She had me meet her at a fast food restaurant. She said I do not have an address. I am homeless.

We are talking about overhead versus care providers who are trying to make it to work to take care of our most vulnerable being able to pay rent. This needs to go to the workforce that's why we fought for it. It wasn't out of greed. It was out of necessity. That is my testimony.

Thank you. Any questions? >> No thank you. >> I want to thank you for your testimony.

The reality of the front-line workers, we are running on fumes. I live it every day. Thank you. That took some guts to come in and say what she said. Thank you.

Thank you, Miss Blakely.

I want to understand that we talk about the regulations, 85% increase that goes to the direct care costs. The other 50% goes to the three flowerpots? >> The bill that was passed has a three year lifespan. The first year, the increase that requested, 100% has to be passed through as compensation. The next year, any further rate increases, 85% will be passed through. There is some room for those employers to recoup some of the increase for operating expenses.

Thank you. >>

I wanted to thank you for your testimony. I do not hear directly from individuals .

Thank you. Okay. We will entertain a motion. >> For the final approval, revision to the medical assistance rule, concerning increase of the reimbursement rate reserved for compensation of direct care workers, all those in favor?

Aye.

Opposed? Abstain? Miss Blakely?

Aye.

Motion passes.

Document number seven, okay. Welcome. Good morning. >> Please introduce yourself to the board.

Good morning. I am with special financing. I am joined by my colleague.

Thank you. I am with the special financing division. To give a refresher, on why this rule is supposed, it applies to the implementation of House Bill 001. In the hospital expenditure report. It came out in the General assembly session. The department's -- it has been compiled as a data set. Legislation is specific on what is required at the department and hospitals and directs us to collect the data and directs hospitals. There are not many changes to the proposed rule between the last board meeting and now. Changes may come from suggestions. They are highlighted in the document.

The language will reflect the statute, that is on page 2 , lines 24 through 37. Thank you for your public service. I can answer any questions you may have.

Any questions from the board? >> It looks like there are not many changes. Any questions on the phone?

No thank you.

No thank you.

Any testimony? >> We will entertain a motion.

The final approval of document number seven, revision to the medical assistance rule concerning hospital expenditure report data collection, section 8.4000.

>> All those in favor?

Aye.

Opposed? Miss Blakely?

Aye.

Aye.

The motion passes.

We have completed the final adoption. Thank you very much. We will head into the initial approval agenda. >> Document number eight, hello. Please introduce yourself to the board.

Thank you. I am the conflict management specialist with the office of community living. We were here in June. We present that you case management regulations to comply. It requires the department to create new case manager agencies complications. The regulations are specific to each CBS waiver service for individuals with disabilities. The regulations were adopted on August 30th.

Today I will present those management regulations, the sections include home services , and children services , the document includes the case management section for the waivers to include programs. The department

received a request from stakeholders for review and changes the week of the final adoption.

Because of the time constraint we could not make those changes. We made a commitment to the stakeholders to come back to the board to present the changes. That is why we are here today.

This rule makes technical changes to align definitions and citations and language. The changes you will see include consist the dose -- the alignment of the citations, capitalization of terms throughout the document Alignment of definitions in each section.

We made a change to the definition of organized healthcare delivery systems, we have the cleared as to ensure the correct agency was stated to provide that service. We have made changes within a .519, it includes formats and language for consistency. Thank you for your time. I can answer any questions. >> Any questions from the board? >> Thank you for taking your time to review in this last week and being committed to capitalization references . Thank you.

Any questions or statements on the phone?

No thank you. >> No one signed up for testimony. >> I will entertain a motion. >> The revision to the medical assistance rule concerning case management section modifications, incorporating the statements are contained in the record.

All those in favor?

Aye.

Abstain? Miss Blakely?

Aye.

Aye.

The motion passes.

Document nine, Mr. David Smith. >> Please introduce yourself. We can review document nine. >> Good morning. My name is David Smith. I manage the third-party liability and recovery section at the department.

I am pleased to bring a rule regarding pooled trusts. I give you a preview regarding Medicaid trust in September. To refresh your recollection, the general rule regarding trusts under federal law is that trusts are countable assets for purposes of eligibility. >> Another overarching theme is that Medicaid clients are expected to contribute to the cost of their care. You can see that scattered throughout the statute in a number of ways. The state recovery, for example, a client comes on to Medicaid, the home is an exempt asset. The state recovers the money from the home following their death.

We see that in the Medicaid as the payer of last resort rubric. If you have commercial health coverage, you will exhaust that coverage to avail yourself for Medicaid benefits.

McKay supports trust, additions to the trust are considered exempt. With respect to those programs, they require an asset test.

I want to go over some reasons why we bring this amendment today.

You can see where the department is going with the policy. >> The current state of the law now is that for additions to the trust, if your age 65 or older, the statute is silent as to whether or not you can establish the pooled trust. However, federal law requires the department looks at that transfer of the transfer of assets provision. They can determine whether or not there are considerations that will be received.

Operationally, in my area it has been a difficult application of the law. It's caused a lot of court cases but also the current operation around this rubric is that in the department, we are not compliant with CMS and their interpretation of the law is announced in the 2009 Medicaid director letter.

I believe you have a copy of that.

This letter goes on to note that transfers of assets, are not exempt and for the department to be compliant, states are expected to fly the transfer provisions. I mentioned many times, we have been involved in litigation, the most recent judicial review highlighted the fact that our rule and ability to apply the rule is problematic and so the department determined rather than appealing that judicial review, the best course of action would be to fix the problem. >>

The other reason why we bring this forward is that the status quo is just not workable. It is not workable but also it is not workable because it causes a lot of burden on my small number of employees. Let me give you an example.

The current rule allows folks to rebut the presumption that the transfer was made without your consideration. The way that looks often times is that the pooled trust entity will submit a spending plan. That evidence is intended to rebut the presumption so what is the plan? It describes the pooled trust entity and the attention to spend the money in the trust on behalf of the individual. >> This is tricky. It's not really clear guidance as to what we should look at in these plans to determine whether or not there consideration is received. What the individual is putting into the trust, that is the same as that what they will get out of the trust.

It is burdensome because if the plan is fixed in time, at the conception of the trust, in order for us to really comply with our responsibilities under federal law, we need to go back and look at the trust, and do that one an annual basis. We can see whether or not the Medicaid individual is receiving care considerations for the monies that that Medicaid individual placed in the trust.

That's a lot of work. >> I'm hoping that you get somewhat of a clear picture of why we are deciding at this juncture to change or amend the rule.

With that, I would like to turn this over to Tiffany Walker, the trust offers are for the department.

I will go into what the rule actually accomplishes and what it is changing. The proposed rule you have was presented to stakeholders in May of 2019, the first thing it accomplishes, it prohibits any transfers it to pull trusts at the age of 65. That has been problematic. I want to mention this will apply to first party trusts not third-party meaning it will only apply to the trust created from funds from the beneficiary rather than from a family member or other individuals. This will not prohibit somebody who created the pooled trusts prior to 65. Retaining that trust will not be able to make any additional transfers. The change reconciles the difference between the disability trust rules and the pooled trusts rules which otherwise they will operate similarly and have similar purposes. The second thing that the change is is that it will require upon termination of the pooled trusts subaccount which generally occurs when a beneficiary dies, the pooled trust entity will have to omit the lesser of 50% of the balance of the subaccount for an amount equal to the local assistance benefits paid on behalf of that benefit if the amount is less than 50%.

Without this rule change, pooled trusts have the right to retain the entire balance of the subaccount when a beneficiary dies and they have not been remitting any portion of the balance back to the department.

This payback provision applies to first party pooled trusts.

>> We believe it is not operationally impossible for a pooled trust organization to omit the balance in fact we had few organizations who are operating in Colorado who remit the balance. Some of the stakeholders you would hear from today do not.

Pooled trusts organizations receive compensation for the administration services.

We agree the entire cost, we are asking to remit 50% of the balance rather than the entire balance. The guidance that David mentioned earlier, it indicates it is the intention that only a portion of the balance is retained by the entity rather than the entire balance.

23 other states have adopted rules requiring a percentage of the payback to be remitted to the state upon the beneficiary's death the states require 100% meaning the pooled trust entities are only allowed to retain a small amount of this balance.

The rest goes back to the state. When I spoke to you last time, there was an issue that was raised regarding stakeholder outreach. I want to walk you through what that looks like. I can give you some level of comfort that the department has upheld its responsibility to reach out to interested parties.

We released the rule draft back in May in a meeting . Subsequently , we mailed the draft to 15 other parties including eight other entities. That happened back in May. >> The first discussion of the department's draft rule took place at the public rule meeting on September 23rd. This followed my presentation on trusts.

We had a good discussion on the public rule meeting. We needed time to convene and exchange ideas. That's why I am talking to you now. >> One of the organizations did submit some proposals at that October 7th meeting. That was in response to the proposals and in accordance with our discussions, the department followed up with proposals.

I would like to highlight the fact that the compromised proposals that the department offered would allow for individuals age 65 or older to establish pooled trusts .

We were able to come up with a framework where the department felt comfortable that it was complying with the law, and being responsible to the department and to the taxpayers. >> Unfortunately these two options were rejected by the board. I will characterize the counteroffers we have received following that meeting. They were not really meaningful in terms of the distance that the department went relative to our original version.

My speculation is that the sticking point is the payback provision. I'm sure, the folks behind me will have a lot to say about that. I will not steal their thunder.

I have noticed the stakeholders contentions that there are many arguments around the illegality of the department's proposal, I have seen arguments , I have seen arguments regarding our state statutory authority, I will know in this regard that I've been working with the agency for this entire period and I will not sit here today if they [Indiscernible] >> The stakeholders will talk to you today , this is the fund that retains the remaining balances at the determination of the disabled trust.

With these monies, we provide services and fills a vital gap in the state of Colorado for providing services. I will note that the department acknowledges and is not disputing the good work that they did with the money.

I think this is not really the issue today.

I think we have a fundamental difference in how we look at the money. I wanted to talk to you about that.

As I noted initially, Medicaid beneficiaries are expected to pay money towards the cost of their care. Assets placed in a trust and use following termination should be used to offset the costs of these high cost individuals.

As Tiffany noted, pooled trusts perform a significant function relative to disability trust. These are referred to as payback trusts.

Currently today we received any remaining balance from disability trust and these monies go back to the program and enrich the benefit of the program. >> I would note that these remaining balances represent assets that have not been spent, they are not spent on the chair of the beneficiary. As such, retention by an organization places the burden on the rest of the 1.3 million individuals served by the Medicaid program. I need to emphasize that I have countered with a fine work that they do with this fund, I'm not asking for the entire remaining balance I asked for 50%. I am hoping here today, and I challenge them to describe to me why splitting this evenly is not fair. As Tiffany noted, in 2009, the CMS letter contemplated that the pooled trust organization will retain some of these monies and the department will be paid back. >> I believe it's only fair.

I have also heard throughout the course of the discussion, this is a small amount of money. David, you're talking about \$250,000. Medicaid is an \$11 billion program. What do you care about this small amount of money? >> Who is talking? >> This is David Smith. >> Who asked the question? >> He is the only person talking.

Thank you.

I am arguing today that \$250,000 is a meaningful amount of money. It provides context, \$250,000 represents the annual cost of eight clients. Conversely, represents the cost of 56 adults. The numbers I am using for this, are from the recently released governor's budget on November 1st. Disabled individuals, they are budgeted at \$32,469 on an annual basis.

With respect to the adults, the annual cost is \$4500 per year. >> While \$250,000 may seem like a small amount of money compared to \$11 billion, I am talking about access to care. It is good policy for these monies to be returned to the department to promote access to care.

In conclusion, as I've stated, the current rule and the status quo is legally problematic. There is an unnecessary burden on my employees. Moreover, the status quo is not in accordance with the department's direction.

I would also like to note that the strategy is to strike down the rule and retain the status quo. The number of presenters are lined up to oppose the rule, there was no intention to come to the table to negotiate in good faith. Rather, retain the status quo.

I urge the sport to meet the rule to final adoption.

Thank you, Mr. Smith. Thank you, Miss Walker. Any discussion from the board? Any questions/statements?

I am curious with the CMS letter, it was over 10 years ago. Why now? What has sparked this change? This is from February, 2009. What has happened differently in 10.5 years? Why is this important today?

That's an excellent question. Over the*of time, we have been litigating this issue administratively. I think what place is this more on the front burner are the court cases that are coming down in other areas of the country that are relying on the guidance from CMS in this letter. I would also remind the board that this is not my area but, CMS has been increasing its enforcement -- I don't think that that was standing the age of the letter and given that current court decisions, I don't think this letter is stale. >> There is current litigation that this will help the department.

Let me clarify.

We received a judicial review in July, 2018, I'm here today to address in part, the guidance we received from the decision. We are coming off the deals of that decision. The judicial review -- that has sparked this deeper dive. >> A lot of this conversation has revolved around CFP. There are other companies. Has there been an engagement with them/feedback with them? Anything you can share?

Mr. Smith? >> We released the draft to all the organizations back in May. We have not heard from other places. We heard from another pooled trust organization who cited -- who cited their position.

We received payback from three pooled trust organizations.

They are establishing over 65 pooled trusts . This does not impact those organizations, as much as it does CFP D.

The payback will affect all of them. Principally, I have only received comments from CFP.

You mentioned the administrative litigation. Has that involved other pooled trusts?

>> Two of the cases predate my position here at the department which is 10 years this month.

The most recent case did. Yes. Didn't involve any other company?

It did not.

Thank you.

[Captioners transitioning]

I DO HAVE A QUESTION. DAVID, WHO USES, who tends to go to pool trust?

Want answer that Tiffany?

Is a legal question.

It's Miss Walker. Anybody who meets the disability definition, the Social Security criteria can establish a pool trust, currently at any age, if they are over 65 you just have to go by the presumption it was not a transfer by consideration by creating it. There is no limit on the type of person other than the fact have to meet that Social Security definition of disability.

Did that answer your question?

Yeah. So what has the department done to figure out if this is the right direction? Like a process analysis or some sort of evaluation? So they know this is worth time and energy to do. >> We are currently developing the cost-benefit analysis, quite frankly, there are three proposals out there right now. There's the version of the rule I'm bringing before the board today. But then there are also proposals that we submitted to the rest of the stakeholders and CFPD. I just want to plant the seed that there is not only one solution, but we are currently in the process of taking the information that CFPD has presented to the department and factoring that in to their existing cost-benefit analysis reflected in the OP pages.

I have one thing to add. This is Tiffany. As far as numerical representation of what benefit, the department would receive by implementing the payback provision, it is really speculative because we have not, we don't have a lot of data on what actual amounts are remaining in the trust as far as the entities that are achieving them. So David mentioned that it could be, it could be quite a bit more when you look at all pooled trust organizations operating in Colorado collectively.

Okay.

Just one more, I should try to understand, the landscape. Out of all the pooled trust companies, you may not know the answer this. What percent is represented by CFPD.

I estimate between ...

Mr. Smith.

Is to become thank you. I would estimate between 60 and 70%, we don't have accurate data.

I think we would like to move forward if we can with public testimony. We receive requests already so we will go in the order that we received those requests. So far, we have 18 to testify. In order to hear everyone we are going to limit testimony.

We will keep room free at the table. I don't mean all 18 most of their. We will go one by one.

Art, just so I'm clear, we are going to limit testimony to three minutes, I want to make sure every single person who has signed up for testimony has a opportunity to speak. Okay? All right, here we go. Susie Germany. Would you please come to the table and introduced yourself.

Of morning meta-president and members of the board. My name is Susie Germany, I'm an elder law probate attorney and a public administrator for the 17th judicial District I've been a board member of CFPD for 13 years. I'm here today to testify against the proposed changes to these regulations. Regarding full trust, as I believe that if adopted they would be void and unenforceable because this issue is being raised by the department in the wrong forum. For some background in 1993, which is 26 years ago, the Omnibus

budget reconciliation act, the federal statute that was passed and enabled the creation of pooled trust, 25 years ago the Colorado statute was enacted regarding pooled trusts and that is when CFPD was worked. Another the federal statute for the state statute imposed any age restrictions on who can contribute to a pooled trust and trustees have been given discretion to obtain balances of the trust when they been terminated. One of the many issues here is whether this is the correct form to make substantive sweeping changes to a Colorado statute. The memo submitted by Conover law what you all should have received, that was submitted on behalf of CFPD provides clear legal evidence of this. Looking at this from the thousands of you, the rules and regulations must apply the current statutes and in this case, the probate code, established case law says regulation cannot amend Gusman, modify or contravene existing statutes. That is well-established in the law. Regulations and rules however can be used to clarify a statute but not make major policy changes to it. Courts have a duty then to invalidate regulations that conflict with the statute. The crux of the problem with this rule is that it is not consistent with the legislative intent of the existing statute in Colorado that allows for [indiscernible]. The proper procedure to address the issue regarding retention of the trust remainders and age restrictions would be to present a legislative amendment, not through a rulemaking process. This proposal makes major policy changes to the existing statute and simply put, the department cannot legislate to the rulemaking process. The existing statute, cannot be substantively modified this way, it would exceed the departments rulemaking authority and power, and is circumventing well-established statutory authority and it would be an improper use of the rulemaking process. Because of this issue is being raised in the wrong form, I am requesting that this proposed change to the regulations be withdrawn immediately, this matter should be brought to the legislature. Once it is through the legislative process, then and only then I believe with necessary rulemaking apply.

2:53, that was amazing.

[Laughter]

Spot on. Thank you Mr. many. I want to point out, we have received, for all those in the room, we have received every single piece of this

decoder feedback directly and we also headed here at the table, in the references that you've just made, we have that. Any questions? From his Germany before I move on? Okay thank you very much. We will go to Mr. Kelly. Mr. Aaron Kelly. Please introduce yourself to the board and you can start your testimony.

Good morning, my name is Eric Kelly, I'm an elder law attorney in Denver. I'm also the cochair of the [indiscernible] of the Bar Association. On behalf of the Bar Association, his opposition to both of these changes, they did have a chance to review both of these changes, it took about a not just a vote of the elder law section, the Medicaid subcommittee, across the whole Bar Association. They did state their opposition to it. They are opposed to it for a lot of reasons. I would like to focus my testimony today along the same lines as Ms. Germany, that essentially this is the kind of change that is more appropriate for the legislature than for any administrative body including this one. As you heard from Mr. Smith earlier today, there is a whole statutory claim framework regarding Medicaid trust, under the Colorado probate code, section 1514 [indiscernible] and for .9, notably under filter .8, with disability trust, we have a clear-cut age restriction, no contributions, and there is no such restriction. And so this is, to enact this, would be to contravene that whole statutory framework. And I'd also note that Colorado primer, mirrors the federal framework. The same sort of where you have a clear-cut age restriction for disability trust and no such restriction for pooled trusts, with respect to the 50% of payback provision, if you read the regulatory analysis by the department, they talk about the ambiguity that needs to be cleared up., But frankly there is no ambiguity. The statute says that to the extent that amounts are not retained, by the trust, the rest goes to the department and will Scott does not say the department gets a cut, pooled trust gets a cut constantly says to the extent they are not retained by the trust, goes to the department. As Mr. Smith said, earlier today, and in that analysis, so far, it has been that the pooled trust has retained 100% of these funds. And certainly at the statute reads that way. But I think, with more concerning about this, when we have the stakeholder meetings, we've had several of the now. When asked, where did you come up this number? Why is it 50-50 wise and it 64 6238, and the response we got again and again, is this fair, that's fairness. 52, 50 does, we have a lot of clients to take care of. That's a perfectly appropriate view. It's a kind of argument that should be made in front of the legislature, it is a policy decision. What matters, where the funds, better spent, on a better spent with the charitable fund. The reality is, that's a decision, fairness is a decision that is not for a public agency to make cuts not a decision that a private attorney should make, is frankly not a decision that an administered body should make. It's a decision that elected representative should make. On Capitol Hill,.

Thank you Mr. Kelly. Okay. We are going to move on to this Virginia Frazier able.

She is actually not present. She had an emergency.

Your pinchhitting.'s okay.

I was asked to pinch-hit.

Can you tell us your name please.

My name is Jerry Clayton, I'm an elder law attorney practicing in all areas of probably, I'm also a member of the Colorado Bar Association and previously served as the chair of the elder law section. I also serve, having been appointed by the Colorado Supreme Court to the Supreme Court rules probate committee, and also appointed me to the office of public guardianship for which I served a year as the chair of the organization. Today however I am pinchhitting and I'm testifying on my individual behalf. With a limited amount of time that we have I would like to address the question that was asked earlier, why now? And that's a long answer. The stress of been around since 1993, people of all ages have contributed to these trusts. The department acknowledges that there is no age restriction, there is no payback requirement, and that the trusts are allowed under federal and state law to retain the entirety of those funds, as well as the individuals age 65 and older, discriminate against by age, this issue of litigation has been going on for many years, and approximately 2012, we are going to prohibit anybody age 65 or older from contributing to a pooled trust, we're going to make the determination, that a transfer without their consideration has occurred, I'm really establishing and funding that trust. As a result of that, there were stakeholder meetings, and ultimately in 2014, the Colorado fun for people with disabilities supported by the Bar Association, supported by the disability community, ran legislation, and that legislation at the time of testimony in support of that the department admitted that they have a policy in favor of disabled individuals and that it was their intent not to deprive those individuals but that the transfer without their consideration and Elsa had to have occur, that legislation did not pass, ultimately, many cases were brought, and I was one of the attorneys who brought suit against the department. Mind you, I am very grateful to the department for all the work it does supporting our mutual clients, the elderly and disabled. And I thank them for that. On this issue however I am completely opposed and I think they are taking a position adverse to our disabled community, in opposition to what the federal law says or the state law says. That litigation, and they don't know if that is part of your packet because I'm pinchhitting, if you have a copy of the District Court case that created the law, that decision came out in July 2018. And essentially, boiling it way down, the District Court found that the department's position was arbitrary and capricious unlawful and set aside that action. Very significant, in July 2018, after that came down the department, I think it was November 1 of 2018, went to the General assembly, and added the pooled trust as part of its regulatory agenda. A reasonable mind could conclude that they were going to clarify the law in accordance with that District Court order, that is not what happened. We have this roll call eviscerating what the District Court said. And completely opposed to this, I know I'm under a time when women had for the answer any questions about the history, of what has happened over the years,

Thank you. Yes you kept your time limit. Thank you very much. I think we will continue moving forward if that's okay so we can hear everyone. Great. Let's go on to Mr. Carl glassine.

I'm an attorney in private practice, the emphasis is elder law. I been doing that for about 30 of the last 34 years. I wanted to talk a little bit about the particular case. I was involved in, working with we will, Christine, prior to the case being denied by the department. We're talking numbers. It has an impact on the individuals. There seems to be some concerned that, let's look at this case, she was married, divorced with two grown children, she had a rough childhood, a bad marriage, she was working as a beautician. But sought greater stability, she went back to school to get advanced degrees. She was starting as a dishwasher, and United Airlines, and worked her way up as her credentials increase, she was involved with the computer programming for the Galileo project with United. After 911, the airline industry started to cool off, she was concerned and distressed, a major slowdown, but she and her domestic partner carried on. 2005 when she was, she suffered a brain injury, they deemed it, encephalopathy she was a coma for seven days, and shortly after that was in rehab. She had limited mobility, could recognize her adult children, others close to her. But in the rehab facility she fell out of the chair, struck her head, and 50 more stitches and complications. At that point she was quadriplegic and largely nonverbal. Her partner became her guardian, her children took on the role, they thought he would misappropriate her funds. Third-party conservator manage the assets. For the next eight years, they pay their own way. Million dollars of their own assets to pay for her care privately. They were always somewhat unconventional. They did not want to be married. They lived together and purchased a house together with no separate agreements about how to work it out..Put his job as a programmer devoted 10 to 14 hours per day to her, seven days per week. He worked with her on her exercises, she was feeding her even though sometimes this was against medical advice. Took her home for the weekends. Will this was going on, in the nursing home, she was left in another wheelchair, incorrectly secure, only the lower legs and she fell over breaking both tibia's. Despite all of this the carried on. Eventually she regained the ability to talk, she has a wicked sense of humor, she regained the ability to use her arms and theater self, and the routine is, they spent time together, several days per week on the weekends, he takes her home to the house which is for her home, not the nursing home, they have an old conversion fanned with a wheelchair lift, they could've used the money that they had to buy a new van. They could've sheltered additional funds by getting married so there was a community spouse resource allowance, they do not want to do that. They wanted to do this on there is as much as possible. 2013, the conservative thought, can I just get through this? The conservator, to allow her to put the last \$29,000 in the pooled trust account. Unfortunately that petition was filed by once in two days after her 65th birthday. Because of that the department denied her eligibility. And the appeal went up to the administrative [indiscernible]. The department was found to taken an arbitrary capricious position on this, that it was not [indiscernible] consideration. But because the decision is not binding on the department, their position was we don't have to abide by that. The

pill continued. This process took from 2013 to July 31 2018. And at the district court level, she prevailed. And that judge said this is arbitrary and capricious.

And wrap it up?

I will try. We will skip the other cases that we would love for you to know about. But this is a program that is working. There is a benefit, had she just spent the dollars based on the figures for skilled nursing it would've lasted three months. In this particular situation, six years down the road, she still has a cushion, she has a life in front of her, but if they were down to \$2000, there will be little bear. Next on the Wilcher goes on the fritz, I understand the department's concern. But I would tell you that this is inappropriate venue to try and fix that problem and is going to have a significant impact on individuals 65 and older. It is denying it will protection to those people. The only reason that folks over 65 would be prohibited from transferring and using this trust is because of age. And that's just not appropriate. It's not fair.

Thank you.

Thank you very much.

I do want to ask, to be fair to everyone, if we allows him to go over another's, please be respectful of our three-minute allocation. Ms. Sandra Sickler.

Thank you for the opportunity. I am a member of the Colorado chapter of the national Association of elder law attorneys, I'm a private attorney practicing here in the area. I would like to echo the position expressed today by the others who do not support the proposed rule change, regarding the proposed rule change that would prohibit individuals 65 and older from establishing or transferring assets to a pooled trust, it is clear from our analysis, that the probate code, does not impose an age limit on the formation of or the contributions to a pooled trust. With respect to the payback provisions that up and discussed, the Colorado generally assembly expressly permitted trust administrators to retain the remaining balances, without limitation, pursuant to 1514 412.9, broadening the analysis to courts outside of Colorado, the third Circuit Court, that retaining the residual in a pooled trust enables the trust to cover administrative fees and other overhead without increasing charges on the accounts of the living beneficiaries. The majority of states across the U.S. have not adopted provisions that restrict individuals 65 and older from establishing or transferring assets to a pooled trust nor do the majority of the states require that a pooled trust permit a portion of the balance to the state. Upon the passing. You heard today, testimony from the department, that says they are currently developing the cost-benefit analysis. Regarding the payback provision and that the numbers are really speculative. In light of these points, I would urge the medical services board not to move the roll forward, for final adoption, because it does not appear that that analysis has been finalized and that you have the day before you. To make any kind of decision.

Thank you very much. Second would like to call forward Miss Kelsey Wesco.

Good morning.

I will try to get quickly and not repeat what has been said. I serve as the Colorado legal assistance for elders. It is a nonprofit organization and our mission is to advocate for legal and human rights for people with disabilities. Older people. Of people who lack representation, education and [indiscernible]. I'm here to express our very strong opposition to this regulation. We oppose it for many reasons.

We have two letters in front of us.

Others have testified, but I want to do is focus on the fact that state and federal law allows for 100% of the remainder. To emphasize, to change this is a major policy decision because Congress did this pick these are unique feature. U.S. Congress did this, and the reconciliation mission act of 93. In that act, of these three, the pooled trust is the only one that has allowed to retain the remainder. These trust are essentially in the same section. If Congress intended to limit the amount they could pertain, they could've written it into the statute as it did with the other two types of trusts. Instead they chose to allow them to retain the remainder but putting restrictions on it. Congress could've chosen to do this different, could've chosen to allow the trust to retain only a portion of the remainder, or require that all funds necessary go to [indiscernible]. It did not. They chose to allow the nonprofits who submission it is whose mission it is to offer the pooled trust, to retain the remainder. Is behaving thoughtfully and rationally. As the fund has demonstrated for 25 years, it may retain the remainder because those funds will be used to help people with disabilities. I suspect the Congress minute to be a higher purpose. Pool trust are operating as Congress intended to operate. And I want to be in tiredly clear that taking these funds will harm people with disabilities. I hope you are very carefully considering the implications of the rule.

Thank you.

We will go through a couple more and I will give everybody a break. Is that okay?

Very appropriate.

I would like to call forward Mr. Eric Solis.

Good morning Madam President, members of the board. I practice law in the state for 46 years, helped found the Colorado fun for people with

disabilities, and served on the board, I been the past president, currently I [indiscernible] member of the Colorado trial lawyers Association, my private practice I deal with pool trust frequently. Was going to talk to about the uniform trust code act, time does not permit me to talk to about that. I would like to submit a memorandum of why I think this regulation, would be in conflict with [indiscernible]. Time does not permit me to go through that. What I would like to address is some the questions about cost-benefit analysis. And the difficulty that the department seems to have in addressing transfers. Basically, cost-benefit analysis I deal a lot with personal injury attorneys, clients over 65, they may be nursing home in this case is, they may be car accidents, they may be [indiscernible], and they are always asking what can we do to benefit these people because if I recovered money, they are on Medicaid, eliminating, this option, there is no other option. And when a lawyer brings a case, what happens, the department has a Medicaid lien, and they pay off the lien, and then the remaining amount, after costs and fees and so forth, we go into the pool trust. So by passing this, preventing people from joining the pool trust, what are you going to do? In my opinion, this has not been studied but in my opinion, based on what I see, you will lose more money than you will gain whatever that number is, whatever you are going to prevent, first of all, if these people don't do these cases, they are already on Medicaid, your saving any Medicaid dollars, they are still on Medicaid. They don't get the money, the lawyer doesn't bring the case, and, nothing is reimbursed. That does not make sense to me from the cost-benefit analysis. I think this should be studied before you embark on this rule change. And briefly let me tell you about transfers, for consideration, this has been the law and Medicaid ever since I have seen Medicaid. It is done routinely in the department, transfers are for consideration always looked at, this is no different here than it is in the other context. If they are having difficulties doing this work, maybe the deeper people to do the work. Not to take it on a people who are disabled and poor, who are over 65. They can analyze cases, for consideration. It is not that hard to do. It is done all of the time. So this is a, I would say, I think if you will look at the records you will see the reason this rule is in front of you is because they lost the case and rather than appeal it, and come up with some other thing or go to the legislature, you're being presented with this rule. It is not a good rule, it is not good public policy, I think you should table it, and do further study about the best way to approach this. Thank you for your time.

Thank you. I would like to call forward Miss Arlene Belanger.

Good morning.

Good morning. My name is Arlene Beringer, and I'm an elder law attorney with Gladstone O'Brien in Denver, I'm also a past chair of the elder law section of the Bar Association and I'm currently a board member of COPD. I'm here to testify in opposition to the regulations that you have before you. Regards to 65 and older issue in the retention issue. In my few minutes, I want to address the master trust agreement, this is the governing document for all of the trust in which

they serve as trustee. You have heard Mr. Smith estimate, represents about 60 to 70% of all the pool trust you have in Colorado. I think it's important to look at the master trust document, and recognize the fact that is consistent with Colorado law and that Medicaid, the department has approved it, and specifically approved that it does, it is, it does conform with Colorado law as it exists right now. So they have agreed that the master trust agreement does conform with Colorado law. What does the master trust agreement say? I do have copies of that that I would like to leave here and submit today. You're welcome to look at them now if you would like to but I will leave them here. The master trust document says, that upon termination of the trust, the amount remaining in the beneficiary subtrust, upon determination termination, the amount shall be deemed surplus trust property, and shall be retained by the trust. So CFPD shall retain these amounts. This is in the master trust document that you have here, and approved by Medicaid, we also have a letter from the department, saying that they explicitly approve the provisions of this trust, they are compliant with Colorado law. What that mean? It means CFPD in his discretion, according to Colorado law, they choose to keep 100% of the retention. Any regulation would be abrogating Colorado law, if we change that, the department can choose to take up to 50% of that. It is important to note that it was originally proven Medicaid in 1994, their sense been for amendments, and the master trust, each amendment was approved by the department, in 2000, 2008, 2010, and 2011 as well. Also of note, Social Security administration has approved master trust. That it is compliant with federal law, and this is with explicit provisions in it that they may take 100% in their discretion of the retention. It also has provisions for 65 and over, it does not prohibit trust from being established or funded by people 65 and over. I'd also like to point out that, any amendment to the trust agreement must be compliant with Colorado law, you might ask, why can't make out they have done for minutes why can't they just go in and amend the trust? To be consistent with what the department is claiming in their proposed regulations. But the provisions in the master trust provide that any amendments must carry out the purpose and intent of the law. Again, the regulations that are proposed, violate existing law so we cannot just go in and amend the trust. Delete my last point, I want to address the fact that the department's proposed regulatory change would unilaterally and retroactively alter a binding contract, finding it a revocable contract between CFPD and its beneficiaries. In part, by the process, and join in the trust, again, in that agreement, signed by both CFPD and beneficiary representative, they have a provision in their, that they shall retain proceeds upon death of beneficiary. I know my time is up, thank you very much for your time. I urge medical services to withdraw the rule and allow the legislature to address this issue. I have for your consideration the last version of the agreement, as well as the letter from the department approving the master trust agreement, and that it is compliant with existing Colorado law. Thank you.

Thank you. Like to introduce, Miss Megan Brennan.

Good morning.

Good morning madam chair and members of the medical services for. And the executive director of CFPD, my testimony, I tried to cut it down and cut it down. It's right at five minutes. I would to do my best to get through this in three. I want to let you know that CFPD in addition to serving as the largest longest standing pool trust for the last 25 years, we also provide a myriad of other services including serving as an organizational representative payee, and as court-appointed Conservatory and providing case management as part of all of our trust services. In addition to a separate contract funded by in which we support people with [indiscernible] or expensing homelessness in Denver. And providing intense case management to connect them to services. This issue that we are looking at today is very legal and very complex. But at the end of every, one of these arguments, is a person. And so I want to talk to you about those people, that we serve today. First of all, I want to make three points, one point is that, as is clear, we are opposed to these regulations. Secondly, we have been actively engaged in the stakeholder process, you will see in the six-page letter that I wrote to you, outlined all of the exhibits and included in that is the four proposals that CFPD submitted to the department as part of the stakeholder process. And then finally, as you've already seen in the written testimony, that has been coming in since September, and the written testimony today, and a testimony to follow today, this change will have a substantial negative impact on over 1200 people that are currently served by CFPD, these are people who have disabilities, all types, of all ages, and are across the state of Colorado. In the departments regulatory analysis of the regulation, they were asked to give the probable quantitative and qualitative impact to the proposed rule, economic or otherwise, upon the affected classes of people. The department answered in three simple sentences. Those sentences essentially said, that the revenues of the trust companies may decrease, that these impacted companies may have to change their business practices or develop other revenue sources. And that the stress would no longer be available to people over the age of 65. You will see in my letter, I gave you 17 points for consideration. Many of those copyleft examples, of the services that we are constantly being asked to provide. We get requests and referrals from Adult Protective Services, from the courts to the public administrators, from families, especially aging families, and Social Security themselves, from Medicaid, community centered boards, numerous advocacy agencies, and the list goes on and on. All of these entities will be impacted as change goes through. Because someone will have to pick up the services that we are currently providing. One of the best examples is that CPD operates, to my knowledge, what is the largest organizational representative payee program. That does not require a connection to another service. And in that program, 110 individuals, we consistently have at least 20 people on her wedding this. Without a representative payee, that the social security and ministration has deemed that he the person simply does not have access to their Social Security income, which means they have no way to meet their basic needs, food and shelter, clothing, and medical care. In addition to that, they provide case management to all of our trust fund beneficiaries, that case management not only provides access to the trust funds that we hold for them, but it maintains their Social Security and Medicaid benefits

through appropriate test trust is rations. And enhances the quality of life, and oftentimes keeps them in their community and out of dedicated facilities. We could operate differently, we could be like the eight or nine other trusts that have been here today, but we don't. Because we are a local organization that is filling the deeds that we hear about on a day-to-day basis, that is impacting those with disabilities here in Colorado. And I want to end by saying that, the very first individual who funded a trust 25 years ago was 88 years old, and she was injured in a nursing facility. She set up a pool trust for \$12,500, not a lot of money, a huge difference to her in compensating for the damages that she received. Thank you.

Thank you. I think with that I would like to call a 10 minute recess that be okay? For everyone to get a break. And not discuss his role but just have a break.

>> [The meeting is on a 10 minute break until 11:25 a.m. Mountain.]

[Captioners transitioning.]

[Captioner standing by] >> Okay, let's work with testimony. We have Ms. Heidi Haynes.

Good morning and thank you. [Indiscernible] it is important to note that individuals need to have these options available to them more than ever. Adults with disabilities, and developable [Indiscernible] people with disabilities already in the population, with additional barriers. And participating in limited options as they are available to them and aging. That is the main point I want to make. Thank you. I am happy to answer any questions. >> I appreciate your having a different aspect than we have already heard. >>

I appreciate your not asking me any legal questions. [Laughter]

Okay, I will call forward Mr. right. Good morning. >> I am the director of the color [Indiscernible] I am a parent of a 32-year-old [Indiscernible] the comprehensive services waiver. It is to support the -- to have a passionate advocate for my daughter and human services and the civil rights people. Not just for my daughter but her peers, her colleagues, the 80,000 people in the state with a disability. Register, uncompensated [Indiscernible] state legislator focusing on human services and civil rights I am also, the Colorado develop mental disabilities Council, I served. [Indiscernible] I want to talk as a prospective professional. I am a retired certified planner, and I am specialized working with families that have a level of disability. And how they can provide lifetime support, and usually a child would require. I am a nationally known expert in the subject, nationally X knowledge speaker. And I published a book. It is the professional guy to the planning. During my professional practice, a concerning trend about 10 years ago, was banks began raising the asset minimum for trust, including special needs trust. The last national bank locally went to \$1 million, several years ago. The Colorado banks began to raise their asset minimums to \$300,000, and few cases \$500,000. Most middle class, third party special needs trust typically fund and arrange a \$200,000

to \$500,000, usually with life insurance. Almost always they fund much lower because unless there is a salmon or lawsuit, these people do not have much money.

Several years ago American national bank, [Indiscernible] more recently so that Colorado state bank and several other local banks have dissipated through mergers and acquisitions. It is getting to the point where middle class families of people with disability have trouble finding financial institution to take a third-party trust. And this is where Colorado comes in. An average of \$60,000. They cannot find the financial institute that will take their trust they have no place else to go. Another need that Colorado fund needs, more than half of the children with intellectual disability, absent from a medical condition, now with both parents. My daughter with down syndrome, will probably outlive me 20 years. [Indiscernible] this is a much needed service, especially for a single parent with no extended family to take over when they cannot continue. And sometimes these single parents, or single moms who cannot afford to pay, to pay a professional. Smack >> Last November, I attended a joint budget meeting and the office [Indiscernible] there was a passionate plea as a state we have an obligation to help a vulnerable population of no fault of their own. [Indiscernible] it is easy to get lost in the legal news getting thrown around. I would like to bring this to a point. The point of basic human decency. We have an obligation as a state to help those who most need our help, to no fault of their own. And that is why it is incomprehensible the State Department would \$10 million of funding, [Indiscernible] . Thank you.

Thank you very much. We will move on to Mr. Scott Christian. >> Good morning. Thank you for allowing me to address the committee my name is Scott Christian, I am a board member and Treasurer of the Colorado guardianship association. A.k.a. CGA. We are chapter of the national guardianship association, we are not a proper educational organization certainly the professionals that serve the disabled, this community and communities all over the country, they are members, professional gardens, professional conservatives, care managers, occur -- caregivers to share information. And help improve services to the disabled community. I am appearing today on behalf of the CGA, in support of the position of Colorado people with disabilities. Regarding the proposed regulation changes. The position I think has been adequately described, and I will not go into that again. Rather I would like to spend my time telling you about Patricia. She is known by Pat. Pat is a client of mine, she is 70 years old, and she has cerebral degenerative ataxia. I would like to read an excerpt recently before although she lives alone, activities of daily living can cause to epic and difficult,. -- 's significant difficulties. Pat must use her electric wheelchair to go to the grocery store, and rely on friends and family. Unable to write clearly and difficult having paying bills, and unable to drive for 18 years due to her disease. Now Pat clearly requires a significant amount of healthcare services, as well as other services around the house and so forth. If Pat is allowed to enter the pooled trust with her remaining funds, she will qualify for Medicare, get some assistance she needs on those services, and this will allow her to use her funds from the pooled trust for those at home services that she needs so

desperately. This will likely allow her to stay in her home for the foreseeable future alternatively, if she is not allowed she will not qualify for Medicaid, her only alternative will be to spend down limited resources. She will need to pay for many healthcare services out of pocket, that could otherwise be provided or covered by Medicaid with no resources to pay for the assistance around the home, she will have no choice but to go to a facility and ultimately end up on a Medicaid long-term care program it is my belief that allowing patent to the pooled trust will significantly delay the need for Medicaid long-term care, and will save Medicaid tens of thousand dollars is not hundreds of thousand dollars over the Pat's remaining life. I will go off script with my remaining time, I am not an attorney, and I cannot address transfer without consideration that is the -- it is out of my league but I have heard the term fair tossed around this morning. And to me, as an observer, it does not seem fair that a woman, or a person, in general, who is under age 65, in this situation, can be allowed to enter the pool and retain their residence where they can live out their lives as long as possible, whereas Pat, who happens to be over 65 is not going to be allowed to do that. It does not seem fair. That is all I have, thank you for your time.

I would like to call for Mr. Frank Azor. >>

Good morning. I am device present of the Colorado fund for people with disabilities. I want to tell you a story about why desk to one of my clients but she is typical of many the people we serve. This misguided proposed rule past many of our efforts and it needs to stop. We might need to lay off a few people of this happens, but they are smart people and highly trained they will find jobs. People like Hamlet that I will tell you about, continue to fall between the cracks. A 53-year-old woman, determined eligible for long-term Medicaid, home and healthcare and community-based services, using the DDD waiver. Most of her life spent in hospital and incarcerated, and varies medical illnesses. They began serving her in 2016. [Indiscernible] for those of you who do not know, managing Social Security benefits for her. [Indiscernible - low volume] she has been discharged 12 times since her mid-20s from Colorado mental health Institute, Fort Logan, incarcerated a number times, homeless, these people are really hard to serve. And in 2010, her guardian resigned. And there was no replacement. She was homeless at the time but you can imagine how hard. [Indiscernible] this is when we came on board as a [Indiscernible] mission support group in addition to our charitable fund. We gave all the things necessary, we attended court hearings, worked tirelessly, got her into a Catholic charity Samaritan house. They have helped budget and plan occasionally she could stay in a hotel or buy groceries. But if she does not have all those, our charitable fund pays for. Needless to say Pamela did not have a lot of faith, and she's now in a safe home. We got her involved in a host home program who -- the first time in her life, a host home for some of you, it is a family situation, where one person or two people will have four or five disabled adults living in them in a homely environment. This is the first time she has ever had a stable place like that. We have seen the efforts of our charitable program get her involved in this program. The intensive case management oversight of social funds, it has reduced the amount of hospitalization. Often times ER, psych hold, crisis [Indiscernible] on the road to being

stable we cannot solve all the homeless problem in Denver but we can make a big dent, to the lives of many of the people, like Pamela through the use of our charitable fund these are people we see on the street every day with signs, with all of their belongings in the park. This misguided rule change passes it will set back much of our efforts. Thank you.

Thank you.

Mr. Christopher Brock. Some good morning . >> Good morning. My name is Chris rock I am an elderly trust estate attorney that I am here today as a disabled individual and on behalf of the Colorado Cross disability coalition, for those on the phone I am a decent paralytic, and I became paralyzed at 18 when I fell out of a tree. I am a post to the proposed regulation for the reasons everyone states also because the charitable fund, it does a lot of great things for low income individuals in this disabled community. [Indiscernible] I'm concerned about further gaps and services for these individuals. Especially those with family members who can be not be [Indiscernible] or assist with housing. In a nutshell, as a disabled individual, I do not necessarily want to be on Medicaid, and I do not want someone controlling my asset. I will chair does not affect my ability to do my finances for me or to pay my bills. Or to live on my life. But when I am over the age of 65, and I am disabled and I have

\$7 million in assets, I will go with private health insurance, that way I do not need to deal with Medicaid restrictions, or someone else having to control my assets. But if I am 65 and disabled, and I only have a \$40,000 IRA, and \$10,000 savings account, my options for health insurance are quite limited, as except for Medicaid. So having the option to have spent down the IRA, and the savings account, in order to get below the asset limit to get on Medicaid, that is pretty devastating what happens if I spend down assets, and all of a sudden my car blows a gasket and I need to spend \$4000, or my house needs a new roof? What do I do? Having the option of getting on Medicaid by giving my small mistake to [Indiscernible] who can use it for my benefit is very important. It allows me to keep some dignity, not go through my children for a couple thousand dollars to pay for a roof, or going to a credit card. It gives me dignity and it allows me to make my home, as myself whole. While still receiving vital Medicaid benefits. Please keep people's dignity with disabilities like me and mine, considering these regulations. Please think about who was really affected these regulations. Thank you.

Thank you. I will bring forth Mr. Peter [Indiscernible] >> Good morning. Thank you for your time today. My name is Peter and I am a financial advisor, I built the largest specialty trust shop in Colorado, now work with national pool all over the country there was a question early as to what do other national pool trust operate in the state? How do they administer charitable funds? I can say, eight folks that I work with personally with six they do not do anything, they do not have caseworkers in Colorado, they do not spend charitable funds in Colorado, we know that is not the case. You have heard that. The fact that they keep 0% of their charitable remainder fund, that makes sense because they contribute 0% of their charitable funds. To the state of

Colorado people disabilities. I will be brief, the next thing I want to talk about is the analysis that says that trust companies on the impacted [Indiscernible] what does that mean? That means you have to cut staff, effectively less people with disabilities serve. He would have to cut programs which effectively means less disability serve or if you want to keep, you need to raise fees. We are talking about raising fees, a low income people with disabilities, this is all the money they have that is a super idea, let the record show that is sarcasm. And that is all that I have. Unless you have any questions. >> Ms. Eileen Doughty. >> Good mining.

-- Good morning. I am the director of the [Indiscernible] society and I have been the director since 1982 most people know me as very passionate advocate for older adults. And I testified over the last 30 years many times in front of the sport, it has been a wild since I've been here. I guess I would like to talk about three issues this morning. One is that passionate advocate for people five and older, by carving people 65 and over out of opportunity for pulled trust, that is extremely discriminatory. We have worked many many years to eliminate discrimination in this country. And by eliminating people 65 and over to participate in this, I see that as a negative. Secondly, I think I would like you to walk through a moment down the life of the 65-year-old, who at 65 in one day, and if this individual was so unfortunate as to need a trust, he had been in a really bad situation. His spouse had died, and there was a \$10,000 life insurance that he was the beneficiary of. Which was put into a pulled trust, he would be able to keep it. The gentleman has not been able to stay in his own home, because he cannot take care of himself and he is in a nursing home bird so he cannot put his money and he pulled trust, as we would have to take him off of Medicaid. And for about 30 days, maybe 32 or 33, he would pay privately with his \$10,000 and then we would stop the process all over again, by applying for Medicaid because he would need to start that process again. Because he has a small amount of money. I would really like to do with his money, he would like to go the [Indiscernible] and he would like to see the Nutcracker. But he is in a nursing home and he does not have the money he has a pair of sweats but I'm not a winter coat, he does not have any shoes, he has known those types of things that would allow him to do and/or go to the ballet.. The department spent many

hours doing person centered care and we would ask how we can use this dollar? It focuses on the fact that we will look at the individual, we will help them to do things that they want to be able to do it the other thing is that, if he loses his Medicaid, and pays privately for one month, basically he also does not enjoy the quality of life that could be brought to him based on a few things like going to the ballet, maybe getting a nice pair of pants, or whatever else it is that he would like to engage. So really, I would like you, and your consideration of this whole proposed rule, to look at carving out seniors, it is not a good thing. And it might leave the state open for additional lawsuit. And in the federal mandates of delivery person centered care, which is required by Medicaid, I would like to continue to be able to have people use these funds to receive better or more person centered care. Thank you for your help.

Thank you. >> [Indiscernible - multiple speakers]

Let's bring forward our final testimony, Mr. Ryan [Indiscernible] >>
Just for the record, this is a lot of names to pronounce. [Laughter]
this has been a lot of effort. Welcome.

Thank you committee members, my name is Ryan Zeiger and I am a chairman of personal assistant service of Colorado, the home health agency serving children, adults and seniors with disabilities. And we have done for over 27 years but I am a licensed certified nurse aide and still practice in the field at times there have been many good legal and other explanations for why we should oppose this regulation change. I will talk about the practical on the ground positives of the work and similar organizations do that with this regulation change it would be disrupted. Other organizations like help individuals by bringing expertise and sanity to the complex world of disability, providing guidance in areas often perceived as black holes. And for families and individuals, struggling to survive each and every day. I personally provide sine business to individuals with

congenital disabilities, for many years. And despite the challenges the individual faced every day with the support of see it -- they are still are able to live in a community and live a life fully engaged in the community. Through the file full guidance, financial guidance, private provided by CF PD. And it allowed her and still allows her to for nursing home placement I have no doubt without that support she would currently and been in nursing home for number of years. I know that without that support she would be in a nursing home and I want to remind everyone a nursing home, at a minimum \$50,000 more per year first these services use it second there is no more daunting question in the life of a parent of the child with a disability then what happens to my child when I am no longer here? And time again we server number of children and families, and they have offered guidance and to bring calm to chaos but I want to quote an actual parent reached out to me, thanking me for connecting her to. CF PD was amazing, see if the connectedness to care managers, for medical oversight and guardianship. That was a huge relief to find. Especially for up parent contemplating what happens to my severely disabled child.

I am extremely helpful, thank you so much for talking with me that day about trust and connected me with resources so we can redo documents and have peace of mind that now fits with our situation. I literally have parents tell me that John five change the course of their lives as well by reducing chaos and stress and imagine the associated health complications that come with that stress. I see it everyday. I want to share in the past couple of years that we couple operated. -- Collaborated. Anyone here who would have a chance to observe the value of those sessions. And would strongly oppose this regulation. If the rule passes, and CFPD and similar organizations lose organization work, I have no doubt that any resources gained by Medicaid at the expense of the organizations like CFPD will increase healthcare expenditures, and other ways. Like avoidable nursing home placement you probably did the math, it doesn't take many to make up for the \$250,000. Finally I want to says a taxpayer who is interested in good stewardship of my tax dollar, I am very comfortable with this continued investment thank you and please vote against it.

Thank you Mr. Zeiger.

Okay we will take you to testify and why we allow thank you for your comments.

I would like to pause for a moment, we have not had the opportunity for phone partners any questions that we would like to attract -- [Indiscernible] based off the testimony you just heard? I will open it up. Any comments or questions? >> I appreciate tremendously everyone coming in today testifying. Actually the most testimony we have ever had. [Indiscernible] I am concerned. We have our first page talking about stakeholder comments. It says here, comments received from stakeholders from the proposed rule, [Indiscernible - low volume] there is so much commentary. That is concerning to me as a board member. Because what I see this, and all other rules from those they cold or comments, that helps me understand the process.

It shows dates and meetings, but I do not have documentation from stakeholders dating back from September. I am confused how there can be no stakeholder commentary yet we have so much concerning for me as a board member. I am delighted that everyone came in today to talk. I am concerned about the process from my perspective. >>

Anyone else? >> Thank you, thank you to the presenters as well, it has been a long morning for the board to wrap their minds up around everything that goes on. As you know we are not focused on this regulation specifically the better documentation of the presentation today was very helpful.

I am a little bit confused on how we got here, and how the school got here, when I have heard so many testimonies against pushing this power. I am not sure if this is the right place and right time to be here with us. Jennifer, they are talking about conversations about breaking the law, or it is against legislation for to be at the table I know that is not what we do here. So I am concerned and confused as to how you got here from the beginning. Those are my initial thoughts.

Thank you. We will refer to [Indiscernible] in terms of addressing that concern that you have and then we can talk to Chris about how to process this and bring the rule forward. >> In terms of obviously this rule has ran through the Attorney General office. Can you speak to whether you feel like rule is within and/or appropriate to bring to the medical ward. >> I am not exactly sure what you are asking, but any rule before the board goes to the attorney general office and we approved for rulemaking authority. It is not like you are asking for -- [Indiscernible] smacked what I am confused about because I know that happens, I have been on the board for a long time, but what I hear comments about the presenters, they are saying that it goes against legislation. And it should not be here I am asking what is going on and why support here? If your office has determined that is okay. And that is what Mr. Smith said, he has passed it through, and I am hearing comments that this cannot be true. Or goes against legislative process. I just want to make sure that I am understanding that is the case, and it has gone through your department, and okay legislatively. Smoke yes it has been approved.

Yes it has been approved. It is a drastic policy change and more appropriate in front of the legislature. [Indiscernible] >> Do you need to answer any further questions in regard to why it is being brought now?

No. >>

Hearing that this is not within the scope of the medical services board, and it is recommended that is a legislative issue. Have the same question. Not a rulemaking decision but a health and policy decision. My question is what the Attorney General office recommendation related to this? >> [Indiscernible - multiple speakers] I have the same question. Smith I do not want to get -- forget about the phone folks. [Indiscernible] do you have any statements or questions? >> I am sorry, this is Dr. freely, I cannot quite hear, multiple people talking on the last discussion. I think the answer is yes, this is going to be an attorney general, and they recommended that Ms. Weaver, if I could just hear her answer that alone that would be helpful to me.

Let me clarify. The Attorney General does not recommend the rule. We review it, or compliance with law. But we do not recommend the policy.

Thank you. [Indiscernible] appropriately

blessed, so to speak, to come to us. >> What we can address, this has gone through the same channels as every rule that we review. On a monthly basis. And it has been reviewed by the Attorney General office already. >> This is the first time that we have had, I guess, testimony regarding changing. That this is truly a role. All of us as board members want to make sure that we are listening to this and something we should be. That is the difference in the question. [Indiscernible - low volume]

We all have that question.

Okay.

Hello. This is Dr. [Indiscernible]. >> Please share your comment and/or question with us.

It is a comment and a reflection of the last couple of hours. And just my opinion. If one of our first rule is to do no harm, it appears to me that the harm we would do bypassing this rule is greater than not passing it today. That is my comment.

Okay, thank you. >> This is Kristi. >> We will do you first of that is okay, Kristi.

That is fine I heard with

the doctor said and I am still not clear that it should not be going to legislation since it was initially stated that initially initiated. I have concerns about this rule. And it is communicated today that I feel like three law cases or lawsuits in 10 years -- I do not know that causes this type of change. And it feels to me, and this is a personal note, it is the greatest fear of any parent with a kid with special needs, my daughter at 37, yes we have another sibling that

will take over, but it is a huge concern of any size, the financial on the support of a kid after a parent might pass. And to have good working things in place, for those that do not have siblings or do not have other family members that will cover for them. Undoing that is not smart on our part. That is my feeling. Four okay .

Okay, thank you. Smith I have a comment. I am incredibly sensitive to the discussion that we have had so far in regard to being here at this committee. And all of our stakeholders, the majority of the stakeholders have said that again and again. There is certainly that stakeholder feedback that I am sensitive to. My question Mr. Smith, it is around the work that your department has done. In regard to the cost analysis and the work that has been done. Please explain that more, because at this point, [Indiscernible] >> I am jumping the gun. I appreciate your question and I am happy to answer it. We have been analyzing the cost-benefit analysis based upon the data that we have in-house. And to think about the data points that we get, we received the transfer agreements from CFPD, and we have an initial deposit, often times we will have an accounting, we will have some idea of the residual balance. I am trying to give you a flavor of the data that we have in-house. A lot of the information that you have heard today, is not data that I have in house. During our stakeholder engagement, I have pleaded with CFPD to provide me with data that would establish the benefit of these additional services, so that I can in turn factor them into existing cost-benefit analysis. And Kumble up with a more accurate picture -- come up. A lot of the data is not in my shop and I do not have access to the books. I have no regulatory authority to open those books we are left with having to analyze based on what we have. So consequently, I was left with the policy decision, well gee, 50-50 sounds fair, it should not impair CFPD existing services, because you have heard the executive director for CFPD testified that the fees that they take on existing trust accounts, do not pay for 100% of the operations, and that they take money from the charitable fund to intern help plan the shortfall. So I know the rough strokes of what we are talking about here, but I do not have the actual data to factor into the cost-benefit analysis. Similarly, your testimony today regarding folks do not need personal injury lawsuits. That is 100% conjecture . Have we received any data that personal attorney injuries will not take this lawsuit? As it so happens, the group reported to me, I have been doing this for 10 years, and I am here to testify today that this is not a significant portion of the departments [Indiscernible]. Again, I come back to the point that, I would love to have an Excel spreadsheet, with numbers, to put a finer point on our analysis, but without CFPD providing me with the information, I can only analyze what the data I have.

This is Tiffany Walker . I have one small thing to rapid the cost-benefit analysis is not due until December 3rd. We are still working on getting better numbers.

Thank you.

Ms. Johnson. There are actually three proposals on the table, as a rule, and a couple of other options. Can you remind folks of those other options?

Yes.

This is Tiffany Walker. One of the proposals, which I think may find the most persuasive, is to put a ceiling on the amount of these individuals and what they can have an and over 65 pooled trust, provide testimony about smaller amounts and how it would benefit the community to be able to put a little bit aside, in order to supplement care. I think that we do not have an issue doing so. However, in order to move forward with that proposal, we are looking for the support of the stakeholders, and we could not come to some sort of agreement on that.

>>

One was to place a ceiling, the second, which I think we have a lot of stakeholder opposition, is to kind of have some sort of catch on , I guess you can have this pooled trust, it allows for over 65 transfers, but the idea needs to be actually sound, and you will spend a certain amount of dollars each year, for your lifetime, and the ideas that you would have no balance but in order to receive care consideration, I give you something in exchange for equal value. In order to make sure that this is sound, we said if you do happen to not spend what you planned on spending, we want that difference back to the department. >> Isn't that what you are asking for anyway? If you do not spend it all we want the money back?

[Indiscernible] you might get that wrong but I am curious, that sounds like the same role as before. Unless I misunderstood. >> This is Tiffany Walker, we are talking about the over 65 transfers. Not the payback side. But to allow over 65 transfers, it will be a penalty on an annual basis. Of the difference in the amount you said you would spend, versus what you actually spend.

Right now, over 65 [Indiscernible] is that going to change?

We will still allow the pooled trust. There will be a penalty imposed should you not spend. >> Can you collaborate on why it needs to be a cap? What area are you concerned about?

Mr. Smith . >> The cap we felt would help us with our fiscal responsibility to taxpayers meanwhile, having a cap set at such an amount would allow folks over age 65, to establish these pooled trust. A lot of the testimony regarding over 65 population. [Indiscernible] presentation from parents. Folks who feel like , and the disability folks, they feel like they need some sort of vehicle to help improve their lives but we feel that being fiscally responsible, we could allow this framework to proceed by imposing a cap, and we have heard testimony from CFPD, that the average joint agreement is set up with 33,000 \$500. -- \$33,500. That gives you some idea of the zone in which we are looking to set that cap. My concern with opening up that cap, is these charts can be used as a vehicle to shelter assets, not fiscally responsible.

Such balances would be [Indiscernible]. And for the departments right under the Medicaid state recovery program. We are trying to be responsible with the dollars that we have.

So I understand that the argument is a fiscally responsible decision. Where is the cost-benefit analysis? Where is proof that this will be cheaper for the department? If that is even it forget about quality of life for a second, where is there proof that this will be? [Indiscernible] we will never have proof of less ability claims. Where is the departments evidence that when you come back programs, people do not go to the hospital, they cost less Medicaid? Where is it? I find it incredibly hard to believe that I want evidence showing me that, because I know these low dollar programs. I need evidence that \$11 million budget will be impacted, in a significant way. I need evidence to make this change. I think legislative would be a perfect base for this to be argued, but in the small, rule-making body, this does not make any sense to me. And I see no evidence of the fear of the cost. I do not get it I really do not understand. And the arguments being made about the urgency and/or the need other than litigation, which has already occurred this is very confusing to me, and he feels an appropriate. That is my opinion. And I am stating it. >> For everyone's knowledge, and the members of the board that have had to leave earlier, [Indiscernible] what I would like to do, [Indiscernible - multiple speakers]

I am wondering, do we need to call Megan back up to clarify anything that has been said in the last 15 minutes or so?

I do not think so. I am looking at the heads around and the answer is no. [Indiscernible] the guidance is next steps. Our options are based off the dialogue and opposition that the department could eventually pull the rule from the table, or we can decide as a board, that we feel like the rule needs to be tabled we can vote and if it turns and opposition, that kills the rule which they would have to start from ground zero. Or we can fill and we can pastoral I want the board to understand what the options are, so we can consider moving forward.

I would like to ask a question as I was first reading the role, about the age 65 Inca is it because people get off Medicaid and onto Medicare? But then it seems like there is still a Medicaid after age 65. Is something changing? >> I'm sorry, we are getting major feedback on the phone buzzing and I am not sure what that is. But it is making it hard to hear the meeting now. Thank you.

I am hearing it as well.

Hold on, can I ask all the phone crew, please mute. We have had pet -- several people joining on the phone. Please mute your phone to see if that helps. >> The age 65 thing seems like a huge part of this. [Indiscernible] >> I am going to hang up and call back in and see if that addresses it. [Indiscernible] >> [No audio] >> Okay. Does anybody hear the buzzing? You can unmute yourself. We are trying to fix a technical problem. Did the buzzing stop?

It has for me, this is Pat.

Okay, thank you. >> Okay we can continue to resume. We are going to do Ms. Weaver and then Ms. Johnson. >> Have they made up 65 out of the air? Where does it come under? Is it the federal statute? It is in federal statute with the transfer without consent -- fair consideration that occurs with individuals over 65. It is not a made-up number.

The federal legislation does not clarify the analysis.

Yes. [Indiscernible - multiple speakers] >> [Indiscernible] and there has been no further analysis on that. From CMS are the federal government. And the only other think we have's recent court cases that a comedown and other states which basically have said, it is without consideration and they will oppose a penalty period. It was at a lower court and it was very fact specific. >> Those 65 number is not justifiable, any transfer for anyone whether a trust or not a trust and it is in the transfer section. It applies to other situations as well. >> There is a theme for people who have had the pooled trust before they turn age five. And then it needs to be evaluated -- 65. This is Tiffany Walker. It only applies to anything they transferred into post-65 not anything prior to age 65. >> It seems like that space, it is confusing and we will cut it off, but maybe we should dive into it. [Indiscernible] >> Okay, Ms. Johnson heard

I want to ask staff with the option on the table is the department, whether they could take most four Bascom [Indiscernible - multiple speakers]

This is David Smith. Given what I heard today, I would like to hold the role.

I think the board is in favor of support of that decision. A sound decision.

Okay, then that allows us, we do not need to do anything.

Okay, let's move forward and finish up we have the consent agenda and motion.

I second. Smith we will add document eight. All in favor say aye, I.

Ms. Blakely.

I agree. I am wondering the timeline for the [Indiscernible - low volume] >>

Can you fill on the consent agenda?

I.

I.

Dr. Givens?

I.

Misuse?

I.

Motion passes. I will take a closing. >> [Indiscernible - low volume]
I second. >> All in favor please say I.

I .

A this is Dr. freely.

Okay. We have open forum comments . [Indiscernible - multiple speakers]
>> We have people signed up let's see if they are in the room. The first is Lauren [Indiscernible].

She's no longer here.

And then Ms. Sherry [Indiscernible]

She left as well. >> We have heard from both of them. [Indiscernible - multiple speakers]

unfortunately Ms. Johnson it is between us and the [Indiscernible]. [Laughter] >> Before Tracy does her thing, I would like to ask the plan as far as the pooling, and the timeline?

There is no timeline when the department pools it is at their discretion. We do not know if the timeline is what I have seen with heads shaking here.

Okay, thank you very much. >> We would start from the beginning again. We do not have a tabled rule, we would have a new rule from the beginning.

This is Chris, not entirely true, it has been noticed. So there is 120 days 180 days.

The board needs to tabled the role.

We did not tabled, they pulled it.

I can prevent a no vote. >> The department pulled the role, we did not ask for. They have chose to do it. So is there a different timeline? [Indiscernible - multiple speakers]

We will look at the notice in regard to the role. And then we will provide the information for everyone none of us are aware of the timeline.

Okay, is that okay?

I appreciate that. Drumroll, Tracy.

Exciting.

Substance abuse

order [Indiscernible] we have just submitted a waiver. >> What, that is huge. Plus Mac >> [Applause] >> You will eventually see that. It will take a minute to get here. >> There are a lot of things that need to happen between now and July. >> In addition to the rulemaking, here, there will be rulemaking a human services, there is going to be an effort to increase capacity. When there is not a funding source we need capacity and there's going to be a big effort. You will be hearing about that as well. There is going to be an electronic newsletter, if you want to stay connected with the issue, just let Chris know and he will make sure you get signed up. We are very excited about it.

Now we will have a continuum heard the American Society of addiction medicine, has a continuum of services which we are trying to align with, that is a part of some of the rulemaking is to make sure we are in line with that. We should now have it completed. Very exciting.

We have the CMS waiver, allowing the state to cover services. Rulemaking, but is there a budget? >> That is in the current budget. November 1. There was legislation passed that started this process in 2018. We are getting along.

There is an amendment aspect the waiver part is to allow people to stay more than 15 days in [Indiscernible] institution. >> We have a 15 day limit and this will allow people to stay longer.

Yes, very exciting. >> A little bit more in the weeds, but also exciting, is we have a process called the Medicaid Vita rate review process. On a five-year cycle we have provider rates, and we look at where we are relative to benchmark, or is a Medicare equivalent of the service, which is not always available for kids. And where we are relative to the benchmark. We looked at this year, is ambulatory surgery centers, fee-for-service behavioral health, child care facilities, psychiatric, special connections, dialysis treatment and durable medical equipment and [Indiscernible] we did not need additional research, the recommendations were put into the governor's budget. Some providers will see rate increases. Next year we will look at a bunch of services, and I will write them up and then you can go. Prosthetics, [Indiscernible] eyeglasses, vision, private nurses, physical and occupational therapy, speech therapy, pediatric personal care, pediatric aerial health. And behavioral therapy.

We are trying to make it so it has a continuum of services. Anyway, that is my update.

Thank you. With that, thank you everyone who has stayed on the call. We will see you next month.

Thank you. Nice job, that was a hard meeting. Thank you.

Adjourned.

[Event Concluded] >>