STATE OF VERMONT

HOUSE COMMITTEE ON HEALTH CARE

Re: Senate Bill 115

Date: March 29, 2007

Type of Committee Meeting: Standard

Committee Members:

Rep. Steven Maier, Chair
Rep. Francis McFaun
Rep. William Keogh
Rep. Virginia McCormack
Rep. Pat O'Donnell
Rep. Scott Wheeler
Rep. Harry Chen, Vice-Chair
Rep. Sarah Copeland-Hanzas
Rep. Lucy Leriche
Rep. Virginia Milkey
Rep. Hilde Ojibway

CD No.: 07-123/T1

Esquire Job No. 887537

PROCEEDINGS

- - -

CD 123/TRACK 1

MS. LUNGE: -- Thursday can look at the doctor's prescribing patterns and say, oh, this doctor, you know, prescribes a lot of brand name drugs. Maybe we should make sure that we visit this person because it -- he seems like he's really open to brand name drugs or new drugs or, you know, whatever. So the information is then used in that way to market to particular physicians.

ATTENDEE 1: And this is saying that all those things you just said would be prohibited then, or certain things would be okay still?

MS. LUNGE: What the New Hampshire law does, which is what this started out as -- says is that selling -- and again, it's -- because we're Vermont, we can only regulate Vermont.

So it says Vermont-based information for Vermont doctors or Vermont prescriptions may not be sold to the company that combines the information for commercial purposes such as advertising and marketing.

It would allow that information to be sold for research purposes or other non-commercial or non-marketing-type purposes. The testimony in the senate was basically that, well -- but there is not enough of a market in those uses, so if we -- we, the company that combines the data, can't sell it for marketing and advertising, then there is not going to be a market and we just aren't going to do it because it's not profitable enough for us. So that was kind of the back and forth.

So you have the doctors saying we don't want our information being shared and used in this way, and other folks saying, well, you know, if we don't use it for this type of purpose where the money is, why would we do it at all. So that was kind of the tension in the community.

FEMALE ATTENDEE 1: Well, if the doctors are saying that they don't want it sold and they are the members of the American Medical Association, then it's --

MS. LUNGE: Well, the --

FEMALE ATTENDEE 1: -- like why don't they just shut it off at the spicket?

MS. LUNGE: The testimony from the Vermont Medical Society is that only five percent of

Vermont doctors are AMA members, so they don't have a big presence or influence in the AMA, so that's not really an option for Vermont-based physicians. Although certainly that, you know, in theory is an option if all the Vermont physicians were to join the AMA and then lead a movement to change that.

FEMALE ATTENDEE 1: But the AMA -- okay. So only five percent are members but --

ATTENDEE 2: The AMA gets money for selling --

ATTENDEE 3: Yeah, they --

MS. LUNGE: Right. They get --

ATTENDEE 2: The AMA gets money for selling --

ATTENDEE 3: Yeah.

FEMALE ATTENDEE 1: Yeah. So -- but even though five percent of the people are members, the AMA has the information on a hundred percent, they have the numbers on all of them.

MS. LUNGE: Yes. Yeah. Yeah.

FEMALE ATTENDEE 1: So it's -- okay. So you're getting your information sold by an organization that you don't --

ATTENDEE 2: Belong to.

FEMALE ATTENDEE 1: -- belong to.

For good reason. No, I'm kidding. They do stuff like that.

ATTENDEE 2: Yeah.

MS. LUNGE: The other reason -- The other sort of issue in this area that will come up is that the AMA has just started an opt-out program where the AMA has said to physicians, if you don't want us to sell your number, you can opt out of us selling your number. So that's the other sort of issue is, is that sufficient for Vermont doctors in this area that they could participate in this process.

ATTENDEE 1: Now, is anybody, like the state Medicaid program, also buying this data so they could actually find out also who is --

ATTENDEE 4: They have their data.

MS. LUNGE: For --

ATTENDEE 1: They do. Okay.

MS. LUNGE: Medicaid has --

ATTENDEE 1: Who is only prescribing brand name drugs or something like that.

MS. LUNGE: Yeah. Medicaid has their own data and they can -- and they have the doctor name and number, too, so...

ATTENDEE 4: And the insurers can get the data through their PBMs.

MS. LUNGE: And BISHCA is actually collecting this similar data through the multi-care database

1 project, so our public entities are also collecting
2 this data.
3 One of the issues that OHVA did raise is that
4 they actually -- and they -- I think they'll
5 testify about that -- they would like to have a
6 public records exception for the prescriber data,
7 because what happens now is they aren't paid for
8 the data that they have by the data collection
9 companies. They -- the data collection companies
10 can get that through the public records request.
11 So OHVA may ask for a change to address the
12 situation for them.
13 There probably were other issues that came up
14 that I'm not remembering off the top of my head as
15 well, but those I think are the biggies.
16 ATTENDEE 5: Curiosity question again. Do
17 naturopaths and nurse practitioners, did they have
18 numbers too?
19 MS. LUNGE: If they're prescribers, they did.
20 ATTENDEE 1: Yeah, Bill.
21 ATTENDEE 3: So is there a DEA number plus a
22 prescriber number?
23 MS. LUNGE: There is a bunch of different
24 numbers. There is a DEA number that applies to
25 like narcotics and that kind of thing, but

1 there's -- there are other prescriber numbers that
2 are used, and I think the AMA number is not the DEA
3 number. I think it's a different number.
4 ATTENDEE 3: Harry, how many numbers do you
5 have?
6 ATTENDEE 4: I -- I don't know. But, you
7 know, there is a Medicaid number, there is a
8 Medicare number, there is a New York State Medicaid
9 number, there is -- so there is a lot of different
10 numbers. I don't keep track of somebody else's
11 number.
12 ATTENDEE 3: Okay. Thank you.
13 MS. LUNGE: So, um --
14 FEMALE ATTENDEE 1: All right. Thank you for
15 that little sideline, that helps a lot.
16 MS. LUNGE: Okay. Good. Good.
17 And then I think I can talk more about the
18 opt-in program but it might make sense to sort of
19 wait and see how this all assesses out in the
20 senate, since it could end up any number of ways at
21 this point.
22 Fourteen relates to the data mining, so I'm
23 just going to skip that for a minute.
24 Fifteen and sixteen, you heard Sharon talk
25 about these provisions. This is the provision that

1 would require pharmacies and insurers to require
2 either the co-pay or the usual retail cost of the
3 drug, whichever is less, to address that 6 versus
4 10 dollar issue that Sharon testified about. There
5 is testimony in Senate Health and Welfare that that
6 is currently what's required in contracts with
7 Vermont insurers. BISHCA testified to that, and
8 they brought in a contract, I think it was from
9 Blue Cross. So Senate Health and Welfare didn't
10 feel like this was needed and removed it.
11 ATTENDEE 4: So was there any testimony about
12 whether those contracts are actually working? I
13 mean, is it -- is it -- is there -- was there any
14 evidence from the field that this wasn't what
15 either was or was not a problem?
16 MS. LUNGE: Anthony Otis testified that he
17 thought that the computer system automatically did
18 this, so he was under the impression that it wasn't
19 a problem in this state. It was his testimony and
20 BISHCAs that I recall. I don't think they had in
21 other pharmacists or individuals, so...
22 ATTENDEE 4: Okay.
23 MS. LUNGE: Section 17 is an -- a section on
24 the unconscionable pricing of prescription drugs.
25 This is also a section that has a bunch of

1 amendments pending. It was -- it basically takes
2 the DC concept that Sharon Treat testified about
3 where you're looking at expensive drugs, and the DC
4 law basically said that DC would -- could step in
5 and control the -- or a court process. It wouldn't
6 actually be DC, it would be the court that would
7 control the price of a particular pharmaceutical
8 drug if it was greater than a certain amount
9 over -- and they used other countries' measures as
10 their marker.
11 This is somewhat different because it takes
12 that concept, but it narrows it to a process where
13 it would only apply to a particular public health
14 problem or threat, and there are a number of
15 factors that would be waived. So the process
16 basically would be that the Department of Health
17 would identify something as a serious public health
18 threat, and there is a number of criteria that
19 would go into that analysis.
20 The criteria are one of the issues that are in
21 so play. So Senate Finance set up criteria that
22 would capture things like breast cancer where the
23 drugs are really expensive or, you know, chronic
24 heart disease of some sort where it's extremely
25 prevalent. Senate Health and Welfare narrowed it

1 to more of a emergency situation like a flu
2 epidemic or a natural disaster. Senate Finance has
3 an amendment to go back to the bill as introduced,
4 so how that turns out, I think, is still up in the
5 air.
6 But assuming that however that turns out, if
7 something is identified as a public health threat,
8 then there is a court process established in this
9 part of the bill that would have the court look at
10 whether or not a manufacturer is selling a drug
11 used to treat that public health condition at a
12 price over 30 percent higher than the Federal
13 Supply Schedule in Vermont, Healthy Vermonters
14 price, or the most favored purchase price which is
15 defined as sort of the best private price in the
16 market in Vermont.
17 The AG would have enforcement, so the way a
18 case like this would get to court would be, first,
19 the Department of Health would have to act, and
20 then the AG would have to file a suit under the
21 Consumer Fraud Act. So it's not sort of
22 self-executing. It requires the Department of
23 Health to do something, the AG to file something,
24 and then the court to make a decision before the
25 pricing would be determined.

1 There are a bunch of amendments that are meant
2 to try and address commerce clause issues because a
3 lot of the testimony was around whether or not this
4 really regulated prices outside of Vermont because,
5 of course, we don't have manufacturers in Vermont.
6 And so that's what a bunch of the amendments are
7 meant to do.
8 And then Senator Condos has also added an
9 amendment that would clarify that the price that
10 you're looking at is the price -- the
11 manufacturer's price, not like what the wholesaler
12 is charging. So the bill is not meant to and
13 doesn't allow the AG to go after the wholesaler --
14 we have one wholesaler in Vermont -- or the
15 retailer; it would be focused on -- the litigation
16 would focus on manufacturers.
17 FEMALE ATTENDEE 1: All right. I have a
18 question.
19 MS. LUNGE: Please.
20 FEMALE ATTENDEE 1: I'm just wondering --
21 that's interesting -- if this whole thing has come
22 up, obviously, it's seen as a problem, and I'm
23 wondering was there any testimony or sense of how
24 widespread is pricing that is 30 percent higher?
25 MS. LUNGE: There wasn't -- the testimony was

1 much broader than that. Not very much of the
2 testimony got into the nitty-gritty specifics of
3 that kind of thing. Most of it was focused on the
4 legal issues.
5 FEMALE ATTENDEE 1: Okay.
6 MS. LUNGE: So --
7 FEMALE ATTENDEE 1: Because I'm just
8 wondering -- it looks like it's trying to carve it
9 down, you know?
10 MS. LUNGE: Right.
11 FEMALE ATTENDEE 1: And so I'm wondering,
12 carving it down from what?
13 MS. LUNGE: Right. Well, I think it's trying
14 to carve it down in response to -- a lot of the --
15 the committees, both of them, I think, felt like
16 they wouldn't want to just do this for any old
17 reason, that they would only want this to happen
18 and you know, they didn't want to interfere in the
19 market process except in the case when there was a
20 serious condition or threat, and how they define
21 that serious condition or threat was quite variable
22 between the two committees.
23 But I think there was just a general feeling
24 that this is prescription drugs -- especially
25 pricing is a very market driven area, and they

1 didn't want to necessarily change that, and it
2 would be very difficult to change that because of
3 the way the federal law is structured and patents
4 and that kind of thing.
5 ATTENDEE 5: So let me see if I can interpret
6 that. If I have a chronic disease and we all know
7 that chronic disease is cost that, you know, the --
8 the expenses incurred are in that upper -- upper
9 level of the total cost of health care. So if I
10 have one of these chronic diseases, then I can't go
11 to the attorney general or I can't go any other
12 place if I feel that I'm being injured by the
13 pricing of a particular --
14 MS. LUNGE: You, yourself --
15 ATTENDEE 5: Right.
16 MS. LUNGE: -- as an individual?
17 ATTENDEE 5: Right. Because it hasn't been
18 determined a problem --
19 MS. LUNGE: Public health threat.
20 ATTENDEE 5: -- or a threat.
21 MS. LUNGE: Right.
22 ATTENDEE 5: So it isn't like a Hurricane
23 Katrina-type thing.
24 MS. LUNGE: I think it potentially could
25 include a Hurricane Katrina-type thing, but again,

the Department of Health has to act first.
ATTENDEE 5: Yeah. Okay. So --
MS. LUNGE: So you, the individual, couldn't just decide --
ATTENDEE 5: So this allows --
MS. LUNGE: -- you're going to go sue under this.
ATTENDEE 5: So this continues to allow a drug company or a manufacturer to keep that price up there for people with chronic diseases --
MS. LUNGE: Unless --
ATTENDEE 5: -- that --
MS. LUNGE: Yes.
ATTENDEE 5: -- you know, just --
MS. LUNGE: It wouldn't change --
ATTENDEE 5: -- on the side, that's where a lot of these drugs are sold at high prices, right?
MS. LUNGE: It wouldn't change the current practice unless the Department of Health stepped up and said, "We think diabetes is a really big problem and the drugs are way too expensive."
ATTENDEE 5: Yeah. Which they haven't done yet.
ATTENDEE 6: I guess I see this -- like remember the anthrax --

MS. LUNGE: Mm-hmm.
ATTENDEE 6: -- problem, or there was some epidemic where the drug that was used to treat them all the sudden they raised their price because obviously, supply -- demand was so high.
FEMALE ATTENDEE 1: Right.
MS. LUNGE: Although if -- I think if the Senate Health and Welfare version passes, that's right. If the Senate Finance version passes, it could still -- it could be broader than that. It could be that the Department of Health says, "Look, diabetic supplies just went up. We think this is a really big problem in Vermont, and now we think it's too expensive," and they could step up in the chronic disease --
ATTENDEE 2: So it's broader then --
MS. LUNGE: It's broader than an epidemic or an anthrax-type scare, but it does -- it's not -- it doesn't happen on its own, so you have to have the -- and the way it works in this particular version that the Department of Health, regardless of whether it's anthrax or diabetes, would have to trigger that and determine that that was a serious public health threat.
ATTENDEE 5: And that would take ten years

through all the court process?
MS. LUNGE: Possibly. Maybe -- hopefully not ten. We tend to be a little bit more speedy in Vermont but...
FEMALE ATTENDEE 2: So this isn't -- and I'm trying to get back to what Hilde's question was, I think. This wasn't actually in reaction to anything that happened in Vermont at this point?
MS. LUNGE: No, it was -- it wasn't like someone came in with a particular problem and testified about that and this was the response. This was the committees looking generally at what are other states doing, how -- you'll remember Steve testified yesterday that there are three ways you can attack prices, and this is the way that other states have been attempting to actually attack the prices. So that's what they were looking at more than a response to a particular problem.
Okay. So there are also several consumer fraud provisions in the bill and also a fee. Section 18 establishes a fee for manufacturers, and that money would go to enforce fraudulent advertising provisions that I'm going to talk about in a minute, and also evidence-based education

programs.
FEMALE ATTENDEE 2: And these are manufacturers -- because there are none in Vermont as you just said --
MS. LUNGE: Who are doing business in Vermont.
FEMALE ATTENDEE 2: -- manufacturers who sell their product here.
ATTENDEE 2: How many are there, Medicare programs?
MS. LUNGE: I don't know, actually.
ATTENDEE 2: Do you have three or a hundred? I mean, how much money are you going to generate here?
MS. LUNGE: I don't know. Senate Finance didn't ask for a fiscal note, and so Fiscal didn't get them one.
ATTENDEE 1: Did they ever explore other ways of raising this money, that were perhaps more related to what marketing went on in the state-to-state?
MS. LUNGE: They didn't actually discuss the fee much at all, to tell you the truth. They -- and nobody testified on it either, so --
ATTENDEE 2: How about gas tax? The gas that the retailers have to buy to drive around --

1 ATTENDEE 1: Right. Right. The amount of
2 money they claim on their gas mileage.
3 MS. LUNGE: There you go. A percentage of
4 what they report on their marketing disclosure
5 to the --
6 ATTENDEE 1: Yeah, something like that.
7 FEMALE ATTENDEE 2: Was it based on another
8 state?
9 MS. LUNGE: Yeah, it's based on Maine.
10 FEMALE ATTENDEE 2: Okay. So that would be
11 interesting to see how much Maine --
12 MS. LUNGE: Yep. We can try and find that
13 out.
14 FEMALE ATTENDEE 2: Or if it was challenged in
15 any way in Maine.
16 MS. LUNGE: I think it's operating. I don't
17 believe it was challenged.
18 So the other provisions would add to the
19 Consumer Fraud Act certain violations. One is a --
20 ATTENDEE 2: It all comes down to the gas tax.
21 MS. LUNGE: And Sharon Treat testified about
22 this a little bit this morning. This was based on
23 her testimony to Senate Finance.
24 Senate Finance included a provision that said
25 it would be a violation of the Consumer Fraud Act

1 for advertising to run in Vermont that had been
2 determined to violate the federal law.
3 You may -- I don't know how much we've talked
4 about advertising in this committee, but the
5 Federal -- the FDA regulates advertising. What
6 they do is they have provisions about what
7 advertising is okay, what advertising isn't okay,
8 and they have basically two enforcement options.
9 The FDA can send either a type of letter -- There
10 are two types: Untitled letter and a warning
11 letter -- to the manufacturer saying, "We think
12 this advertisement violates such-and-such federal
13 law, or such-and-such federal rule because it's
14 false or misleading in our view." That's one
15 option.
16 Their other option is to yank the drug off the
17 market. They don't really have an in-between
18 option, so what this provision would do --
19 ATTENDEE 1: Does the first option ask them --
20 MS. LUNGE: To stop.
21 THE DEFENDANT'S ATTORNEY NO. 1: -- or directs
22 them to stop?
23 MS. LUNGE: Yes. Yeah.
24 What this would do is provide AG enforcement
25 for false or misleading advertisements in Vermont

1 that violate the federal law. And it says that if
2 the FDA has issued an untitled or warning letter,
3 that that would be prima facie evidence of a
4 violation of federal law, so that would be proof.
5 It can be rebutted so that the manufacturer can
6 come in and say, well, it actually isn't, but it's
7 offered as proof. So essentially what that does is
8 maintain the federal law standards, but give the AG
9 enforcement power in between of the two federal
10 options.
11 FEMALE ATTENDEE 2: Interesting.
12 ATTENDEE 3: Sharon did say that enforcement
13 is late and lacking, pretty much, by the time FDA
14 gets into some ads, it's --
15 MS. LUNGE: They don't -- And they don't
16 review each and every ad.
17 ATTENDEE 3: Yeah.
18 MS. LUNGE: They sort of review -- I've been
19 calling it "spot checking," which might not be
20 exactly one hundred percent accurate, but my
21 understanding is that they periodically check
22 different ads. They don't check every single ad
23 consistently.
24 ATTENDEE 6: When they come out of their
25 cubical.

1 MS. LUNGE: This section also added the
2 Florida language on electronic prescribing
3 software, and would prohibit advertising in -- to
4 be contained in that prescribing software. That it
5 would -- there was a clarification that information
6 about formulary compliance or what drug is on the
7 list wouldn't -- you know, isn't meant to be
8 included in that, so that the prescribing software
9 could still be useful in terms of giving
10 information to the prescriber about whether or not
11 they were picking a drug that was on the list or
12 not.
13 In addition, the bill contains explicit
14 authority for BISHCA to enforce insurance marketing
15 practices, including the marketing of Medicare
16 plans. They feel they have the enforcement power
17 now and they have been doing some activities around
18 the Medicare plans, but they welcomed the explicit
19 clear authority in the statute. They were
20 inferring that authority from their existing
21 statute, but this made it clear.
22 Then there is some technical amendments that
23 would move, as I said, some things from Title 33 to
24 18. It deletes a study that you've already
25 received, and then everything's renumbered so that

1 it goes in numerical order.
2 So those are the big picture on the senate
3 bill.
4 ATTENDEE 5: Do they have a -- excuse me.
5 ATTENDEE 1: Go right ahead.
6 ATTENDEE 5: Do they have a name for this? Do
7 they have --
8 MS. LUNGE: They do --
9 ATTENDEE 5: -- or do they have --
10 MS. LUNGE: -- but I don't remember it.
11 ATTENDEE 5: Well, do they -- well, maybe not
12 a name. Do they have a purpose with this bill?
13 MS. LUNGE: Sure. I mean, every bill has a
14 purpose. I --
15 ATTENDEE 5: Right.
16 MS. LUNGE: Let me see if I have the --
17 ATTENDEE 5: I'd be interested to see what
18 they say the purpose is. Because it looks to me
19 like --
20 ATTENDEE 1: Sounds like a rule of life.
21 ATTENDEE 5: Yeah.
22 MS. LUNGE: Thank you.
23 ATTENDEE 1: Every life has a purpose.
24 MS. LUNGE: The act name is relating to
25 increasing transparency of prescription drug

1 pricing and information, and the purpose is to
2 increase transparency and prescription drug
3 information and pricing by limiting -- and then it
4 goes through the list of the different initiatives
5 we just talked about.
6 ATTENDEE 5: Okay. So it has nothing to do
7 then with controlling any kind of a price.
8 MS. LUNGE: Well, I think that they felt like
9 what they were trying were new ideas and new
10 initiatives, and that they weren't -- they were a
11 little concerned about using controlling costs when
12 it wasn't a proven method.
13 So these are ideas of ways that costs might be
14 controlled, but there is no evidence because most
15 of them haven't been tried in other states.
16 ATTENDEE 5: Yeah, unless you have a --
17 MS. LUNGE: Or if they've been tried it's been
18 very --
19 ATTENDEE 5: It appears to me, anyway, unless
20 you have an anthrax scare --
21 MS. LUNGE: Yeah.
22 ATTENDEE 5: -- or something like that, it
23 doesn't happen anyway.
24 MS. LUNGE: Yep.
25 ATTENDEE 5: So for you and me, it's business

1 as usual.
2 MS. LUNGE: And to be fair to them --
3 ATTENDEE 5: Fair to who?
4 MS. LUNGE: Senate Finance.
5 ATTENDEE 5: Oh, no. I'm not --
6 MS. LUNGE: No, no, just so you know. I mean,
7 usually, at least the Senate Finance Committee paid
8 no attention to the purpose or the title. That was
9 just something that we do at Leg. Counsel. So, you
10 know, they -- I -- they didn't -- normally, they
11 don't mark that up, so -- this was my read of what
12 I thought a nonpartisan statement of the bill was.
13 ATTENDEE 5: Right. And I think it depicts it
14 exactly.
15 MS. LUNGE: Well, thank you.
16 ATTENDEE 5: I was looking for -- I thought we
17 were talking about dealing with the price of
18 prescription drugs. That's what I thought this
19 bill was going to be about.
20 ATTENDEE 1: Gosh again.
21 FEMALE ATTENDEE 1: Silly you.
22 ATTENDEE 5: That controlling price thing
23 seems to allude me, day after day and year after
24 year.
25 Thank you.

1 This is not competition. Competition would be
2 selling a drug at a lower price so you could get
3 (inaudible) share.
4 MS. LUNGE: So the other thing I'll just
5 mention is that there are some other prescription
6 drug initiatives that I drafted for different
7 people including one -- some stuff that's in a bill
8 by Representative Obuchowski, which is on your
9 wall, and then some other things that Jenny and I
10 had talked about but weren't introduced. So if at
11 some point you want me to go through that, I'm
12 happy to. That's stuff that's drafted now. That
13 are -- a lot of the ideas are similar. They might
14 be different approaches to this same type of issue,
15 so I'll just let -- I just wanted to let you know
16 that those were out there.
17 ATTENDEE 1: Ask me what they might like to do
18 as it relates to that. I'm in sort of open to your
19 ideas. I'm sort of in a -- My general sense at
20 this point is to wait until we get the senate bill
21 so we know more particularly. And when is that
22 going to likely be, again?
23 MS. LUNGE: What I've heard is it will be on
24 the floor Tuesday, and I would assume Wednesday in
25 the senate. My information isn't always firsthand

1 or timely, so that's what I heard.
2 FEMALE ATTENDEE 3: Why did they have so many
3 crossovers?
4 ATTENDEE 1: They did. These are --
5 FEMALE ATTENDEE 3: Oh, it went to finance,
6 okay.
7 ATTENDEE 1: Well, actually, it started in
8 finance, interestingly, and then went to Health and
9 Welfare, and then back to finance. But it came out
10 of the Health and Welfare before crossover, and
11 went back in finance and I guess they're -- been
12 discussing some of these provisions.
13 FEMALE ATTENDEE 2: Well, I'm guessing maybe
14 you were going to do this when you come back in
15 with the actual bill, but I would be interested in
16 seeing -- you said that the issues still out there
17 are similar, so I would be interested -- I had
18 imagined this kind of net where this bill caught a
19 bunch of ideas. But I'm interested in the little
20 fish that are flapping outside the net and see if
21 they can be thrown in.
22 MS. LUNGE: Yep.
23 FEMALE ATTENDEE 2: -- or not a good match.
24 MS. LUNGE: Well, certainly the handout from
25 Sharon has most of the other ideas that have been

1 floating around nationally, but I can -- I can
2 double look -- double check her handout and -- with
3 the other things that I know about and see if there
4 are other things, and then I can bring in a little
5 list, too, so you can have that.
6 ATTENDEE 5: That would be helpful, you know,
7 rather than giving us the bill --
8 MS. LUNGE: Yeah.
9 ATTENDEE 5: -- and not being able to
10 reference --
11 MS. LUNGE: Yeah.
12 ATTENDEE 5: -- back to either her memo or
13 what's in the senate bill.
14 FEMALE ATTENDEE 2: A lot of this stuff came
15 from the meeting that -- some of the stuff -- and I
16 don't know how much of what we talked about ended
17 up in the senate and which stuff didn't, but on
18 November 30th I went to the one in Hartford that
19 you had (inaudible) to, and there was a
20 presentation by a woman who works for a New Jersey
21 PIRG and that was her specialty area.
22 ATTENDEE 1: That's what she talked about,
23 right?
24 FEMALE ATTENDEE 2: Yeah. Yeah. And it was
25 just -- I'd like to at least send her a bill and

1 ask for her comments because she was just
2 phenomenal. Or, you know, when the senate bill
3 comes over. Yeah. And I sat there saying, "Robin,
4 add that, add that."
5 ATTENDEE 1: Okay. Well, looking ahead to
6 next week, you can have some -- you know, our
7 committee is going to have a lot of time on the
8 floor next week, so we'll have -- I believe we'll
9 have both of our bills: Technical corrections bill
10 and the one we just passed out, 531, there may be
11 some desire to get those bills done before the
12 budget gets done. That's -- budget is going to
13 happen Thursday and Friday on the floor. So those
14 will be long discussions on the budget.
15 Thursday, there was some -- a request made
16 that Thursday be all day on the floor because
17 Friday is Good Friday and so to allow as much time
18 as possible on Thursday, and to encourage any
19 budget amendments to happen then so that -- because
20 there is a pretty strong push around this place for
21 people to get out of here by lunchtime on Good
22 Friday. So know that that's happening.
23 You know, if things take a little longer with
24 our bills, we may end up having them be on at least
25 one of the days where we're doing the budget and we

1 might do our bill first, and you know, all that
2 stuff is sort of swimming around, but -- So I will
3 do -- I guess we -- are we going to have our
4 scheduling conversation tomorrow morning? What
5 time can you --
6 MS. LUNGE: I'm double checking.
7 ATTENDEE 1: Can we make it a little bit
8 later, possibly? Can we talk when we're done here?
9 MS. LUNGE: Yeah.
10 FEMALE ATTENDEE 1: Based on your leadership
11 conversation, I'm just curious, what other -- I
12 mean, our health care stuff seems big to us because
13 we are the committee, but besides the budget and
14 health care, what other major bills are you aware
15 of that are coming up next week?
16 ATTENDEE 1: Well, today and tomorrow,
17 obviously, the education bill --
18 ATTENDEE 6: Broadbands is coming.
19 FEMALE ATTENDEE 1: Okay. But next week, do
20 you know?
21 ATTENDEE 1: Well, I think the broadband is --
22 ATTENDEE 3: Spill over.
23 FEMALE ATTENDEE 1: Okay.
24 ATTENDEE 1: On the energy bill -- the big
25 energy bill is what we're competing primarily for

space and ways and means right now.
FEMALE ATTENDEE 1: Okay.
ATTENDEE 1: So that will -- I think they wanted to vote that out today, that's the request that I heard.
FEMALE ATTENDEE 1: So that might be next week as well?
ATTENDEE 1: Yeah. So I'll -- we'll try to figure out a productive use of committee time that relates to this and maybe some of the other bills on the wall, maybe. I don't know. I've got to figure that out between now and tomorrow morning, and hopefully give you an idea tomorrow.
(Inaudible.)
ATTENDEE 1: Yeah, we'll find some space for that.
FEMALE ATTENDEE 1: Which one?
ATTENDEE 1: Naturepass.
Other questions?
ATTENDEE 3: I'm going to start working -- now that the pressure is somewhat off this committee, the exercise program that we talked about. Now that the snow is gone and the sun is out, maybe we can get it. I meant to see Kathy this morning, but she took off, so I'm going to start working on that

pretty soon. I think that's -- hopefully, it will be timely.
FEMALE ATTENDEE 2: Well, she brought -- she did come in and she brought us all calenders.
ATTENDEE 3: I know, but we haven't followed up on that, partially my fault.

CERTIFICATE

COUNTY OF BROWARD)
STATE OF FLORIDA)

I, D. Renee Watson, Notary Public, Stenograph Reporter, do hereby certify that I was authorized to and did listen to CD 07-123/T1, the House Committee on Health Care, Thursday, March 29, 2007 proceedings and stenographically transcribed from said CDs the foregoing proceedings and that the transcript is a true and accurate record to the best of my ability.

Dated this 23rd day of August, 2007.

D. Renee Watson
Stenograph Reporter

TAB K

STATE OF VERMONT
SENATE COMMITTEE ON HEALTH AND WELFARE

2
3
4 RE: SENATE BILL 115
5
6
7 Tuesday March 13, 2007
Standard Committee Meeting
8
9
Committee Members:
10 Senator Doug Racine, Chair
Senator Sara Kittell
11 Senator Kevin Mullin
Senator Ed Flanagan, Vice-Chair
12 Senator Virginia Lyons
Senator Jeannette White

14 CD NO: 07-51/T1, 51/T2
15
Also Present:
16 Robin Lunge, Legal Council
Julie Brill, Assistant Attorney General
17 Paulette Thabault, BISHEA Commissioner
John Hollar, MVP Lobbyist
18 Chuck Storrow, ExpressScript Lobbyist
Bill Smith, Lobbyist
19 Madeline Morgan, VT Medical Society
Steven Kimbell, IMS Lobbyist
20 Susan Gretkowski, PHARMA Lobbyist
21
22 Transcribed By:
23 Vicki L. Lima, Court Reporter
Notary Public, State of Florida
Esquire Deposition Services
Boca Office Job #887530
25 Phone - 800.357.6952

PROCEEDINGS

CD 51/TRACK 1:

FEMALE ATTENDEE: This is the Senate Health and Welfare Committee. Today is Tuesday, March 13, 2007.

CD 51/TRACK 2:

THE CHAIR: This is the Health and Welfare S.115. Robin, could you join us, please? I think what we're going to try to do today is work through this bill, identify both sections that seem to be at least less conversional and what is consensus, and put okays next to those sections, and then look at those which we received a lot of conflicting testimony on last week, and figure out what the committee's wishes are on those sections.

I would say as one member of the committee that gets to talk first right now, my concern --

FEMALE ATTENDEE: (Inaudible).

THE CHAIR: That's certainly one of my prerogatives as chair.

FEMALE ATTENDEE: Yeah. Uh-huh.

THE CHAIR: But I want -- what I hopefully can do with this bill is lower the costs of pharmaceuticals for (inaudible), and those are the

sections I am most interested in. I -- there are some sections which I think we need to discuss. I have to hear more discussion (inaudible) to be convinced that they would actually lower people's health care costs. There's a lot we can do. I'm not convinced that all of the things that we can do will ultimately reduce costs of pharmaceuticals. Now, others on the committee my have other views on this. I have heard some of the (inaudible) say, "well, just put pressure on the pharmaceutical industry. Just lean on them hard, and they would look at the message after awhile. In other words, make their lives miserable, and maybe they'll get the message after awhile and be more amenable to lower drug costs in this country in order to do their share." That's a -- that's a valid point of view. It's not one that I necessarily agree with as we go through it. So I'll just provide my concerns and my ideas on the table, and we'll go from there. Anybody else have --

FEMALE ATTENDEE: How to deal with the Jeep --

THE CHAIR: How to do what?

FEMALE ATTENDEE: How to deal with the Jeep dealer too? (Inaudible).

THE CHAIR: Right, I understand that part.

FEMALE ATTENDEE: It's not how you deal with them. Just lean on them.

THE CHAIR: Lean on them. Well, we sometimes lean on them.

MALE ATTENDEE: I think you're really going -- going down the right road because it doesn't do any good to give (inaudible) false hopes on something that we're going to do. So let's be realistic about it, because, you know, I use the (inaudible) (inaudible) as one thing. You know that was the first bill we passed out of here last session, and it really didn't do much. It helped a few hundred people, but --

MALE ATTENDEE: (Inaudible).

MALE ATTENDEE: Yeah. But it really wasn't the big bill that everybody thought it was going to be. You know, at least let's be honest with people and say, "you know, look, this is what we're going to achieve with this."

MALE ATTENDEE: So I think we need to understand if there's still -- if there are doubts about it, we have until Friday, frankly, to get something out of here. If we want to hear from more people --

MALE ATTENDEE: A portion will be at a

(inaudible) meeting on Friday.

MALE ATTENDEE: Well, we have until Thursday to get (inaudible) from all this participation put in this. You're going to be here Thursday, aren't you?

MALE ATTENDEE: Yes.

MALE ATTENDEE: Okay. And tomorrow?

MALE ATTENDEE: (Inaudible) and I are going to be in Manchester on Friday.

FEMALE ATTENDEE: (Inaudible).

MALE ATTENDEE: Okay. And the two --

FEMALE ATTENDEE: (Inaudible).

MALE ATTENDEE: We have a Thursday deadline on this.

MALE ATTENDEE: Wow (inaudible).

FEMALE ATTENDEE: Yeah, (inaudible).

MALE ATTENDEE: And I just want to point out that there are two other bills in here that we spent some time on that I would like to get out of here, the natural paths and the HIV main reporting bill.

SENATOR WHITE: And I'm just going to take a little (inaudible) provision here and speak on behalf of people who have to sit and wait for us. Our staff could be much more productive if we were

1 here on time.
THE CHAIR: And as the one who was here on time
-- the only one who was here on time today --
4 SENATOR WHITE: Because Robin had to sit here
5 for half an hour waiting for us when she could have
6 been --
7 FEMALE ATTENDEE: Last week we came in here for
8 20 minutes without you, Senator White. I don't
9 know where you were.
10 SENATOR WHITE: I was -- I was just asked to --
11 FEMALE ATTENDEE: Last week you --
12 THE CHAIR: Well, we're all guilty to the point
13 --
14 SENATOR WHITE: I know. I know.
15 THE CHAIR: (Inaudible) is a good point. And
16 this week we want more so than (inaudible). So
17 let's not waste any more of our time. Robin, do
18 you want to start taking us --
19 MS. LUNGE: Sure.
20 THE CHAIR: -- through it section by section?
21 MS. LUNGE: Yes.
22 THE CHAIR: And did everybody get the memo that
23 you handed out to me?
24 MS. LUNGE: Yes, I have it right here.
25 THE CHAIR: Okay. What I asked Robin to do

1 before we left -- it's been -- she had a whole week
2 to work on it, because I'm sure she didn't take any
3 time off --
4 FEMALE ATTENDEE: You didn't give a handout.
5 MS. LUNGE: Oh, I'm sorry.
6 FEMALE ATTENDEE: (Inaudible).
7 THE CHAIR: -- was just to identify those
8 sections where there were differences -- let me
9 just put it that way -- of people who testified
10 against or raised questions about certain sections.
11 So --
12 MS. LUNGE: Okay. First thing I'll do is just
13 go through the bill.
14 THE CHAIR: Okay.
15 MS. LUNGE: And what I did with the issues was
16 to try and basically summarize the (inaudible) and
17 testimony.
18 THE COURT: So we're still working out the
19 conflicts (inaudible)?
20 MS. LUNGE: Yes. I don't have any version yet,
21 because I wanted to get a little guidance first.
22 So -- and these -- my disclaimer is just as a
23 summary. It's not meant to fully explain the
24 conditions of everyone who testified. It's just
25 meant to give you a little bullet point to trigger

1 your memory to (inaudible) the testimony that you
2 heard.
3 So first -- and you may want your bill as well
4 as the issues (inaudible). So in the first section
5 there were several discussions about -- this
6 section is the pharmacy that practices a cost
7 controlled program in OVHA. And most of the
8 testimony you heard about was either around a
9 preferred drug list, or the FQHD provision. So the
10 FQHD provision is on Page 5.
11 THE COURT: Before you get there, on Page 2,
12 I've got a note from the (inaudible) about the
13 stricken language in B. I've got from Vermont
14 Medical Society one list.
15 MS. LUNGE: The stricken language in B was the
16 previous -- the current law actually that directed
17 human resources to use the statewide preferred drug
18 list in the state employees' health benefit plan,
19 meaning the same list as OVHA.
20 THE CHAIR: So when they came in and testified
21 they really thought that we should have the list.
22 MS. LUNGE: They --
23 THE CHAIR: Okay. Okay.
24 MS. LUNGE: I think they testified that they
25 wanted to continue doing their list. I don't know

1 that they wanted to do the OVHA list.
2 THE COURT: I have -- I don't know if it's a
3 direct quote, but from Madeline --
4 MS. MORGAN: Yeah.
5 THE CHAIR: -- that it's sad to see it go --
6 MS. MORGAN: Yes.
7 MS. LUNGE: I guess I --
8 THE CHAIR: -- which implies to me that it's
9 going to go.
10 MS. LUNGE: I have no (inaudible).
11 THE CHAIR: And could I -- I mean if we can try
12 to keep things under control as best we can without
13 being -- no, no, no, what I'm trying to get to is
14 the correct questions of people in the room who
15 testified, I think, without including them in the
16 discussion.
17 MS. LUNGE: Yeah.
18 THE CHAIR: Just to try and not have three
19 conversations going on at once. Madeline, do you
20 want to say something?
21 MS. MORGAN: (Inaudible)
22 THE CHAIR: My main interpretation was, it was
23 sad to see it go, but it's going to go.
24 MS. MORGAN: Yeah, I think there's labor
25 issues. You know, I don't know that -- they've

1 been waiting all these years to address it.
2 FEMALE ATTENDEE: But we can't use the OVHA
3 preferred drug list for the state employees.
4 MS. LUNGE: It's a human issue, right?
5 FEMALE ATTENDEE: Yeah, right.
6 MS. LUNGE: I think the other disclaimer is --
7 I think MESH (phonetic) gave us the testimony on
8 things like calling down to a couple of other
9 cities two weeks ago. So you may also have
10 additional things that we can submit (inaudible).
11 THE CHAIR: Okay.
12 MS. LUNGE: Okay. So Page 5.
13 FEMALE ATTENDEE: May I ask a question? How do
14 you want us to do this as Robin is going through
15 these? Do you want us to try and come to a
16 resolution about these as she's going through them?
17 THE CHAIR: And if there's something that we
18 can't resolve, or we want some more information,
19 then we're going to flag it and figure out a
20 process to get that information and we'll come back
21 to it.
22 FEMALE ATTENDEE: Okay. We'll do as much as
23 possible. Okay.
24 THE CHAIR: But I think we'll go through it
25 section by section, and where there seems to be

1 consensus on a section, we'll put a big check mark
2 next to it and come to resolution.
3 FEMALE ATTENDEE: Okay.
4 THE CHAIR: That's my hope. And we'll try to
5 resolve the issues as we go along.
6 FEMALE ATTENDEE: Wishing.
7 THE CHAIR: It's wishful thinking, but we'll
8 see how it works.
9 FEMALE ATTENDEE: Well, we can maybe whip out a
10 few.
11 THE CHAIR: Okay.
12 MS. LUNGE: So in this section Bi-State had
13 recommended that you strike the including language
14 at the end of Sub Division 7, because of the new
15 federal definition of patients which it no longer
16 meets.
17 FEMALE ATTENDEE: We'll strike what?
18 MS. LUNGE: From on Line 12, starting with the
19 common "including," strike to the end of the
20 sentence. And there was also testimony, general
21 testimony, by the Department of Health that they
22 were a little bit concerned about encouraging FDACs
23 (phonetic) because of movement from the private
24 providers to --
25 THE CHAIR: You were concerned about that too.

1 FEMALE ATTENDEE: I would like to take this
2 out.
3 THE CHAIR: For the -- for the whole section?
4 FEMALE ATTENDEE: The whole section.
5 THE CHAIR: The whole numbers, Sub 7?
6 FEMALE ATTENDEE: The whole Number 7, yes.
7 Because I am concerned that what we're doing is
8 we're -- we are having a plan to encourage
9 Vermonters to leave their -- their private
10 practitioner and --
11 THE CHAIR: But can't they lower their
12 prescription drug prices?
13 FEMALE ATTENDEE: Yeah. --
14 THE CHAIR: It does lower --
15 FEMALE ATTENDEE: Because I -- because at this
16 point we don't even have PHDs (phonetic).
17 THE CHAIR: No, we don't.
18 FEMALE ATTENDEE: And I think that the private
19 -- I think that we have enough of a problem with
20 private -- with primary care practitioners in the
21 state and a shortage of them, that I don't think
22 you should be encouraging people to jump ship on
23 their primary care people and go --
24 FEMALE ATTENDEE: Well, most people won't.
25 Unlike the --

1 FEMALE ATTENDEE: Well, it says that we need to
2 set up a plan though to encourage those to do it,
3 which in my mind says that we, as a state, are
4 saying that we would rather have (inaudible) unless
5 they're primary docs. That's what we're saying
6 here.
7 MALE ATTENDEE: Can we put it in such a way
8 that we want them to be aware of that option? I
9 mean they can make their own choices. If their
10 prescription costs are so high, it's going to save
11 them significant amounts of money, and they're
12 willing to go to a different physician, isn't that
13 their choice?
14 FEMALE ATTENDEE: Well, what I want to add to
15 that point, it will save money if they're insured.
16 But depending on how their insurance works, the
17 beneficiary may or may not see the prescription
18 drug statement.
19 FEMALE ATTENDEE: Right.
20 FEMALE ATTENDEE: Because if they have a $10
21 co-pay, they're going to have a $10 co-pay whether
22 their insurance company pays 100 bucks or 200 bucks
23 for the prescription. So it would lower the cost
24 potentially for the insured people to the insured
25 -- you know, the costs that are billed against the

1 insurance or Medicaid or --
2 FEMALE ATTENDEE: The reason we want this is
3 because we're going to be bringing on (inaudible)
4 help. We're going to encourage more people rehab,
5 Dr. Dinosaur's, we have been going along Medicaid.
6 We're trying to get everybody insured in Vermont.
7 So this will save money, and there -- you know, to
8 me, living in my area, you know, there's a lot of
9 federally designated clinics. There's Richford.
10 There's Auggers (phonetic). There's Rutherford
11 (phonetic). There's Swanton (phonetic). There's
12 four places that people can go to. And there's
13 still some primary care. There's less primary care
14 out there than there is probably from -- you know,
15 it's easier for some folks. The folks that are
16 going to primary care, will go to primary care.
17 They're not going to go to a separate clinic. You
18 know, I don't think you are going to take people.
19 I think it's another alternative, and I don't think
20 it's the same choice for people. They're not going
21 to say, "well, I'm going to leave, who knows,
22 Dr. Cheng, you know, and go to the special clinic."
23 You know, usually you have a relationship with your
24 physician, and where you go.
25 FEMALE ATTENDEE: Well, I think if it says

1 allow the --
2 MALE ATTENDEE: (Inaudible).
3 FEMALE ATTENDEE: If our position was that we
4 were going to make people aware of the choice,
5 that's one thing. But I will not vote for a plan
6 to encourage. I mean I won't do it.
7 MALE ATTENDEE: How about a plan for going for
8 (inaudible) about --
9 FEMALE ATTENDEE: Yeah.
10 THE CHAIR: Yeah.
11 FEMALE ATTENDEE: I mean and it is going to
12 save some people some money. It isn't going to
13 save -- Medicare and Medicaid already get the
14 lowest. So it isn't saving any money on those
15 people, right?
16 FEMALE ATTENDEE: Well, actually I think
17 (inaudible) is pending to lower Medicaid.
18 FEMALE ATTENDEE: I thought -- oh, I thought it
19 was the same.
20 FEMALE ATTENDEE: I mean we have that chart
21 from Steve Kimbell.
22 FEMALE ATTENDEE: Uh-huh.
23 FEMALE ATTENDEE: I can find that, if you don't
24 have that handy. But we handed out a colored chart
25 which showed the different pricings, and 340-D is

1 closer to the VA price than the Medicaid price. I
2 think it's -- I can -- so I think -- I mean again,
3 that's looking at the data that's available. It's
4 hardly compared to our particular Medicaid program
5 because of the -- there's not a lot of (inaudible)
6 for us to look at.
7 FEMALE ATTENDEE: So who are we saving money
8 for by encourage -- converting doing this?
9 FEMALE ATTENDEE: Well, if Medicaid people went
10 to the (inaudible), Medicaid would get the 340-D
11 price, I believe, which is lower (inaudible).
12 FEMALE ATTENDEE: I thought Medicaid already
13 got the lowest.
14 FEMALE ATTENDEE: They're supposed to get the
15 best price in the state.
16 FEMALE ATTENDEE: Right.
17 FEMALE ATTENDEE: That doesn't -- next it
18 doesn't have that defined -- for instance, it's the
19 best price in the State. It's higher than the VA
20 price, for example. And 340-D is a particular
21 federal pricing span.
22 FEMALE ATTENDEE: Right. Right.
23 FEMALE ATTENDEE: So they do get a very good
24 price, and they get a price that's supposed to be
25 lower than any private price as well. So it's not

1 like Medicaid is getting a bad break compared to
2 like private insured (inaudible).
3 FEMALE ATTENDEE: So this might save a few
4 dollars for people on Medicare? It might -- it --
5 FEMALE ATTENDEE: If Medicaid increased, which
6 we're going to actually see, it would save on the
7 pharmacy cost.
8 FEMALE ATTENDEE: On the pharmacy cost?
9 FEMALE ATTENDEE: Right. But the issue with
10 Medicaid is -- well, in terms of sort of the net
11 outcome -- is you save money on the pharmacy costs,
12 but then for the health services actually you get
13 the higher Medicare reimbursement rate. So you're
14 decreasing your pharmacy costs. You're increasing
15 the amount that those dentists and doctors get paid
16 there.
17 FEMALE ATTENDEE: Yeah, I know -- I know the
18 other reasons for --
19 FEMALE ATTENDEE: So I don't know how that nets
20 out is my basic point.
21 FEMALE ATTENDEE: I think this is very
22 important, I mean, because last year we went to
23 focus on federally designated clinics, and, you
24 know, here you're trying to insure 70,000 uninsured
25 Vermonters too of all walks of life.

1 MALE ATTENDEE: Yeah, I would like to have this
2 closed language, or the idea in the language which
3 would make the buyers aware of it.
4 FEMALE ATTENDEE: (Inaudible)?
5 MALE ATTENDEE: Yeah. What about that? Is
6 that --
7 FEMALE ATTENDEE: It's better. I still don't
8 like it, but --
9 FEMALE ATTENDEE: We need to get you a clinic
10 down there.
11 FEMALE ATTENDEE: No, I --
12 MALE ATTENDEE: You don't have a look-alike
13 either?
14 FEMALE ATTENDEE: Huh?
15 MALE ATTENDEE: You don't have a look-alike in
16 the whole town?
17 FEMALE ATTENDEE: No, we have a lot of primary
18 care people. I mean I just -- I have real concerns
19 with the whole --
20 MALE ATTENDEE: FQHD.
21 FEMALE ATTENDEE: -- FQHD. And I think that
22 we're been sold a bill of goods. But anyway,
23 that's my --
24 MALE ATTENDEE: (Inaudible).
25 MALE ATTENDEE: (Inaudible).

1 FEMALE ATTENDEE: Listen, he and I fight about
2 this across the table from each other all the time.
3 THE CHAIR: Okay.
4 FEMALE ATTENDEE: Yeah.
5 THE CHAIR: So let me try to change the
6 language, and we'll keep a little flag next to that
7 one, but if anybody has any further thoughts --
8 FEMALE ATTENDEE: I will go with that, but I
9 won't do this.
10 THE CHAIR: Okay.
11 FEMALE ATTENDEE: And I'll look for that chart
12 --
13 THE CHAIR: Okay.
14 FEMALE ATTENDEE: -- that she had handed to me,
15 and see how much we are going to save.
16 THE CHAIR: Let's --
17 FEMALE ATTENDEE: (Inaudible), could you e-mail
18 Steve Kimbell and ask him for that chart?
19 FEMALE ATTENDEE: I thought I had it here, but
20 --
21 THE CHAIR: Somebody must have took them all.
22 FEMALE ATTENDEE: No, it isn't a colored chart
23 though for us.
24 FEMALE ATTENDEE: Well, I've got a chart on --
25 FEMALE ATTENDEE: No, this just --

1 THE CHAIR: It's a colored chart. I have this
2 one, what total of health care is pharmaceutical?
3 That's not it. There's another one, but I thought
4 I saw it when I was looking through this stuff this
5 past week. Anyway --
6 FEMALE ATTENDEE: I know I had it, but I won't
7 be able to put my hands on it yet.
8 MALE ATTENDEE: Do we have any sense of what
9 that might say? I mean is there anyway to quantify
10 that?
11 FEMALE ATTENDEE: Mr. Chair, why wouldn't we
12 want to save pharmacy money? You know, we have
13 health care saving, you know, across the board.
14 Why wouldn't -- whenever we can save money, why
15 wouldn't we save money?
16 FEMALE ATTENDEE: I just want to see what the
17 -- I want to know what the consequences are. If we
18 saved $100,000 over the years that we actually
19 drove out of the state 14 primary care
20 practitioners, we haven't done -- we've lost.
21 FEMALE ATTENDEE: There are so many doctors
22 that aren't taking people (inaudible).
23 MALE ATTENDEE: Can you get us something
24 (inaudible)?
25 FEMALE ATTENDEE: I can ask Steve Kimbell,

1 because he would have to do that, and that's not --
2 Male attendee: Okay. Let's see if -- let me
3 see if you can get it for us. I would like to know
4 --
5 FEMALE ATTENDEE: (Inaudible) Medicaid --
6 FEMALE ATTENDEE: I know. But in my area --
7 right, but tell me if you believe -- on Riverside
8 Avenue you've got 70 -- 70, 80 clinics. Now, how
9 many people are going to switch from their docs and
10 to go to Riverside Avenue? I can't imagine the
11 minority of people are going to run the primary
12 cares out of town. You know, they're doing their
13 practice --
14 MALE ATTENDEE: No, what makes sense is the
15 folks that are going there are not going --
16 FEMALE ATTENDEE: Anywhere up on the avenue.
17 MALE ATTENDEE: Could I ask the (inaudible)
18 Medical Society if they think that we would lose
19 primary care physicians. I mean do you support
20 that Field C or not?
21 FEMALE ATTENDEE: We support the (inaudible)
22 (inaudible). We generally support the (inaudible).
23 I think they are an important part of the safety
24 net and (inaudible).
25 MS. LUNGE: So anything else on Page 5?

1 FEMALE ATTENDEE: (Inaudible).
2 MALE ATTENDEE: (Inaudible).
3 MS. LUNGE: Page 6 --
4 THE CHAIR: That's what I would do. Okay. Page
5 6.
6 MS. LUNGE: On Page 6 on the potential money
7 from OVHA with about the purchasing pool is C-1.
8 And they recommended that we add on Line 12,
9 (phonetic), which is our Medicare (phonetic)
10 Program for the listed program. And they would
11 also like us, OVHA, to add -- OVHA that you add a
12 reference to CMS approval. That's language
13 basically saying that it would be subject to State
14 of Vermont approval, which I think it would be.
15 So I think that they're really more technical
16 (inaudible) Are you going to agree with that?
17 THE CHAIR: I don't know. It makes sense to
18 me.
19 FEMALE ATTENDEE: Yeah.
20 THE CHAIR: Okay.
21 MS. LUNGE: I think it makes sense to add
22 (phonetic).
23 THE CHAIR: Yeah.
24 FEMALE ATTENDEE: (Inaudible).
25 THE CHAIR: Okay. Okay.

1 FEMALE ATTENDEE: Okay.
2 MS. LUNGE: In addition you had general
3 testimony about (inaudible). This is at the end of
4 my issue list because it doesn't reflect language
5 in the bill. But in the general testimony through
6 Department of Health to consider reviewing the
7 preferred drug list acceptance process in Medicaid,
8 and also consider directing over TUs (phonetic) and
9 non-narcotic alternatives to be on the preferred
10 drug list. That language -- the statutory language
11 that you would change is not currently in the bill,
12 so that's why (inaudible).
13 FEMALE ATTENDEE: What, do we have to take
14 testimony on that, or is that just a
15 recommendation?
16 FEMALE ATTENDEE: I don't -- I think --
17 FEMALE ATTENDEE: There's a whole board that
18 does that.
19 MS. LUNGE: Right. I think it's not -- it's
20 not a technical thing.
21 FEMALE ATTENDEE: It certainly would be a --
22 FEMALE ATTENDEE: Yeah, I'll make them.
23 THE CHAIR: Okay.
24 MS. LUNGE: So I didn't know -- I just put -- I
25 tried to put anything -- I kept writing -- I just

1 stuck on here so --
2 THE CHAIR: Right. We might as well -- because
3 a -- consider we're doing a TL acceptance process.
4 MS. LUNGE: It also occurred to me, the fact is
5 what their -- it's a big recommendation from
6 (inaudible) in terms of doing it.
7 THE CHAIR: Okay.
8 MS. LUNGE: So I think we need to hear from
9 them exactly -- first of all, I think we need to go
10 over what the current process is, what are the
11 problems.
12 THE CHAIR: Same thing with the private health
13 care. That surprises me (inaudible).
14 FEMALE ATTENDEE: (Inaudible) totally.
15 MALE ATTENDEE: We had a new commission. Why
16 aren't they supposed to come? We're working on a
17 bill that effects them, and nice and eloquent. In
18 fact, I had to invite them to come in here.
19 MALE ATTENDEE: (Inaudible).
20 FEMALE ATTENDEE: Well, they were soliciting my
21 PR person.
22 FEMALE ATTENDEE: Yeah.
23 FEMALE ATTENDEE: If anyone comes in here, so
24 she could spend 20 percent (inaudible).
25 THE CHAIR: Yeah, let's not go there. Yeah,

1 we're just going to leave that out for the time
2 being. Let's look over it all, Section 1. Anybody
3 want to suggest to me how this saves? This was --
4 this section was in the bills that are passed in
5 the last couple of years, correct?
6 MS. LUNGE: Parts of it were, although it has
7 been revised. Kind of like all the evidentiary
8 stuff is in here.
9 THE CHAIR: And for those of you who have been
10 here longer than I have, what's the feeling on the
11 savings that would come from this?
12 FEMALE ATTENDEE: In this section? This
13 section right here?
14 THE CHAIR: No, I'm in Section 1. I'm trying
15 to determine what -- how we -- how the --
16 FEMALE ATTENDEE: Section 1?
17 THE CHAIR: Section 1 -- how the --
18 FEMALE ATTENDEE: We're going back to what we
19 just said?
20 THE CHAIR: Right. I think we're in agreement,
21 but I just want to know when we get to the floor
22 what we say how this will -- how this will control
23 funding?
24 FEMALE ATTENDEE: We've erased all the previous
25 language here.

1 THE CHAIR: Right.
2 FEMALE ATTENDEE: And instead of this language
3 which is telling people -- telling the state's
4 employees, which isn't happening and --
5 THE CHAIR: Any thoughts about it?
6 MS. LUNGE: (Inaudible) the purchasing pool or
7 consortium was successful in terms of the idea in
8 getting other state purchasers involved. What it
9 would do for state purchasers, and others who
10 voluntarily participate is allow them to negotiate
11 together so they leverage their bargaining power in
12 terms of pricing, which I think generally has gone
13 one way as getting larger rebates or better prices
14 in your association.
15 FEMALE ATTENDEE: (Inaudible) this language is
16 going to -- they're going to simplify -- I mean
17 simplify involved and make uniformed state
18 legislation?
19 MS. LUNGE: What the language does is it tries
20 to take this idea that previously was passed. If
21 everybody uses the same list, everybody negotiated
22 together and in fact everybody made state
23 purchasers as voluntarily -- voluntary private
24 purchasers, and that that would allow all the
25 different parts of state government which is

1 negotiating in isolation in the work field trying
2 to get a better deal together, so -- but that
3 wasn't working. So this is another way of cracking
4 that same nut.
5 MALE ATTENDEE: My first important thought on A
6 was to put the word maintain in.
7 MS. LUNGE: Yes, that really in my mind was a
8 technical correction to put in the maintain.
9 They've established it. So, you know, it's already
10 established. So the idea would be then you would
11 just continue to maintain. You can just take that
12 out if you wanted to, but --
13 MALE ATTENDEE: Well, I (inaudible).
14 FEMALE ATTENDEE: What we're doing here in
15 Section 1 is getting rid of something that doesn't
16 work.
17 MS. LUNGE: Or hasn't happened.
18 FEMALE ATTENDEE: Or hasn't happened. And just
19 leaving the -- leaving the language in, and putting
20 inaudible) and maintain, is that right?
21 MS. LUNGE: Maintain, yes.
22 FEMALE ATTENDEE: Maintain in --
23 MS. LUNGE: A-1 -- A-1 --
24 FEMALE ATTENDEE: 2. A-1, 2?
25 MS. LUNGE: A-1. Yeah, A-1.

1 FEMALE ATTENDEE: Yeah. 2 we're doing nothing,
2 3 we're doing nothing?
3 MS. LUNGE: Right. 4 --
4 FEMALE ATTENDEE: 4 (inaudible).
5 MS. LUNGE: Right, 4 was the Evidence Based
6 Education Program which we do through the
7 Department of Health, so that's why that's out. So
8 we renumbered the 4, 5 -- the new 4, 5 is saved. 6
9 is saved, the current law. 7 is a new addition,
10 and then 8, and C-1 on Page 6 talk about the
11 purchasing rule.
12 FEMALE ATTENDEE: This is first.
13 THE CHAIR: Okay.
14 FEMALE ATTENDEE: This is --
15 THE CHAIR: Okay.
16 FEMALE ATTENDEE: No, this was only saved in
17 the future if we get into a bigger pool or --
18 MS. LUNGE: It could save entities' lives, for
19 instance, the Department of Corrections, or the
20 Division of Mental Health which might be doing --
21 right now the Department of Corrections has their
22 own contract for health services, so they're
23 negotiating -- I don't know how many new
24 pharmacies. I don't know if they're just going
25 through (inaudible), or they do it --

1 THE CHAIR: They are part of the statewide
2 purchasing pool.
3 MS. LUNGE: -- themselves, but they're not
4 together with OVHA. And it is -- in some ways
5 makes sense for all the state actors to be working
6 together.
7 THE CHAIR: And they are not now? Why not?
8 Why isn't the legislature doing this?
9 MS. LUNGE: I think we need to ask them. I
10 don't know. I mean I think they're probably --
11 they work in different -- you know, they're
12 different people. They work in different offices.
13 I'm sure that they each think that they're doing
14 the best possible job for their particular area.
15 FEMALE ATTENDEE: They have different
16 leaderships in these corrections. And with the
17 negotiated mental health contact and health care
18 contract, (inaudible).
19 THE CHAIR: I mean I --
20 MS. LUNGE: I think it's a common problem in
21 state government. The different divisions and
22 departments don't necessarily work together, I
23 assume, because they don't -- they see their area.
24 THE CHAIR: Right. But if the governor is
25 (inaudible) on to the secretary of administration,

1 or the secretary of the agency with whom the
2 service is with said, "thou shall do this," do we
3 need legislation to accomplish it, or would they
4 say they don't have the legislative -- they don't
5 have the statutory authority to do it?
6 MS. LUNGE: That is -- I think for OVHA they
7 probably would need -- given where the current
8 lies, saying where the state lies PDL (inaudible).
9 I think that OVHA would (inaudible) changes to do
10 with it, because what we're directing OVHA to do
11 right now is establish the PDL and try and get
12 other people on board with (inaudible). So for --
13 THE CHAIR: They don't have that authority now?
14 MS. LUNGE: Correct.
15 THE CHAIR: But is there anything that could
16 prohibit them from doing it if the governor, or
17 whatever, whomever told them to do it?
18 MS. LUNGE: Well, I -- I would think that if we
19 -- if there's legislative language -- statutory
20 language saying those are (inaudible) by PDL, and
21 they went off in a completely different language,
22 then different -- a completely different area, then
23 arguably they're violating the statutory
24 (inaudible). But for OVHA, I think, yes.
25 For the other people, I don't think it

1 necessarily in statute said to the Department of
2 Corrections how they're supposed to be purchasing
3 drugs. So for them, no. But for OVHA, because
4 they have a statutory mandate from the legislature,
5 they do need a change to do something differently,
6 otherwise, they would be violating what the statute
7 says.
8 THE CHAIR: They're violating the existing
9 statutes now.
10 MS. LUNGE: So I think that's almost the second
11 question, if we violate a statute what happens? I
12 mean (inaudible) there's going to a suit.
13 THE CHAIR: Yep.
14 MS. LUNGE: (Inaudible).
15 THE CHAIR: Okay. So I guess my question is
16 not particularly important if we're going to -- if
17 we say to do this, then it's going to get done.
18 But it seems to me that we're stepping in where
19 this could have been done administratively, and
20 that concerns me. Okay. I guess enough said.
21 Point taken.
22 FEMALE ATTENDEE: (Inaudible) all of the people
23 in corrections are under the supervision of
24 corrections, are not under the state health care
25 (inaudible). They are under --

1 MS. LUNGE: Under Federal Medicaid Law you
2 can't provide Medicaid to (inaudible).
3 FEMALE ATTENDEE: Yeah.
4 MS. LUNGE: That's different.
5 FEMALE ATTENDEE: They're on Medicaid.
6 (Inaudible).
7 THE CHAIR: I think it could work with -- it
8 could work with OVHA and everybody (inaudible).
9 MS. LUNGE: Yeah.
10 FEMALE ATTENDEE: Yeah.
11 THE CHAIR: And they are not doing that now.
12 MS. LUNGE: I don't think so. I think they
13 have their own contract separately.
14 MALE ATTENDEE: Before we leave Section 1 --
15 THE CHAIR: Yeah.
16 MALE ATTENDEE: -- you know, I believe that the
17 original language in here that the medical society
18 liked was the correct path. Maybe we should tweak
19 that a little bit to try to encourage the
20 collective (inaudible) process to the (inaudible).
21 But I hate to see it's (inaudible) so --
22 MALE ATTENDEE: I don't know if anybody
23 represents the state authorities (inaudible).
24 FEMALE ATTENDEE: I just directed --
25 MALE ATTENDEE: Why wouldn't they like this?

1 FEMALE ATTENDEE: I just directed the ELC
2 employees (inaudible).
3 FEMALE ATTENDEE: Don't they have their own
4 (inaudible)?
5 THE CHAIR: Yeah, but they gained the lowest
6 prices for --
7 MS. LUNGE: They can't -- they can't -- my
8 understanding is they can't get that price. They
9 could get a better price by, you know, negotiating
10 it together, but the state employees would not get
11 the same price as Medicaid.
12 FEMALE ATTENDEE: They can (inaudible).
13 MS. LUNGE: They would not get the same price
14 as the Medicaid even if -- for the same drugs even
15 if they negotiated together. So they're not
16 getting -- we can't -- because if they got that
17 price, then Medicare would have to get a lower
18 price.
19 FEMALE ATTENDEE: They're Cigna.
20 MS. LUNGE: So they're not going to get the
21 same price.
22 THE CHAIR: Yes, because they can get a lower
23 price.
24 MS. LUNGE: Well, they might be able to get a
25 lower price than they're currently getting, or they

1 might not. But we're telling them to use the same
2 PDL.
3 THE CHAIR: But I would use the same argument
4 that we used on common claims, on common
5 prudentialing and everything else if we have one
6 list. It's much better than having multiple.
7 MS. LUNGE: No, I'm just saying yes, they --
8 but they're not going to get the same price. I'm
9 not saying they shouldn't have the same list, but
10 that's their argument. I wouldn't have done it.
11 THE CHAIR: And if it's good enough for the
12 Medicaid population, it should be good enough for
13 our state employees because we shouldn't be short
14 changing the Medicaid population.
15 MS. LUNGE: (Inaudible).
16 FEMALE ATTENDEE: They're going to present
17 Cigna, and that's a state employee, right?
18 MS. LUNGE: Yes, but Cigna isn't going to weigh
19 in on this at all.
20 FEMALE ATTENDEE: Cigna doesn't know anything
21 about PBI. (Inaudible) --
22 MS. LUNGE: PBL.
23 FEMALE ATTENDEE: -- the working world.
24 THE CHAIR: We're on Section 1 still.
25 FEMALE ATTENDEE: Oh.

1 MS. LUNGE: (Inaudible).
2 FEMALE ATTENDEE: Okay.
3 THE CHAIR: It should be on your list.
4 MS. LUNGE: (Inaudible). This is Restford
5 (phonetic) for -- yeah, (inaudible) CVM so the
6 (inaudible).
7 FEMALE ATTENDEE: (Inaudible).
8 MS. LUNGE: (Inaudible).
9 THE CHAIR: All that B says, "commissioner
10 shall use preferred drug list in the State
11 Employees' Health Plan, only in participation of
12 the program provide (inaudible) in the State
13 Employees' Health Plan, and only if agreed to the
14 bargaining prices." It doesn't say "do it." It
15 just says, "use this list and try to negotiate."
16 MALE ATTENDEE: Yeah.
17 THE CHAIR: So I don't even know if they have
18 the statutory authority to do that. If they wanted
19 to negotiate it, they could negotiate it.
20 FEMALE ATTENDEE: Well --
21 MS. LUNGE: Right.
22 THE CHAIR: So it doesn't make any difference
23 either way if it's in or out as far as I'm
24 concerned, so take it out.
25 All right. Shall we go on to Section 2?

1 FEMALE ATTENDEE: Well, will we save a lot of
2 money (inaudible), Section 1?
3 MS. LUNGE: We're going to have --
4 THE CHAIR: It could. That one could. That
5 one, I think, has the potential to save some money.
6 FEMALE ATTENDEE: Okay. Good.
7 THE CHAIR: Good, right.
8 FEMALE ATTENDEE: We save huge.
9 THE CHAIR: Yeah, that one I'm comfortable
10 with. When I reach my level of discomfort
11 (inaudible).
12 MALE ATTENDEE: All right. Section 2.
13 MS. LUNGE: Section 2, we didn't get any
14 comment on --
15 THE CHAIR: Right.
16 MS. LUNGE: -- so I didn't include it in the
17 list.
18 MALE ATTENDEE: Well, I have a comment on that.
19 We had testimony about the costs of the Oregon
20 Health and Science University during the
21 effectiveness review of this project, and there
22 were two different possible routes to go, one was
23 you use something that's free as a post, or pay the
24 annual fee. And at -- it wouldn't matter what this
25 bill is. I always hate referencing any specific

1 particular model. If there's a better one that the
2 -- the Office of Vermont Health Access can be
3 using to get the research, I'd rather have that.
4 So my preference would be just to strike the "such
5 as" language.
6 MS. LUNGE: Uh-huh. Well, in (inaudible) we
7 always try to get (inaudible), meaning the
8 specifics.
9 MALE ATTENDEE: (Inaudible).
10 FEMALE ATTENDEE: (Inaudible).
11 MALE ATTENDEE: Uh-huh.
12 THE CHAIR: Robin, we have something here from
13 (inaudible).
14 MS. LUNGE: We have --
15 FEMALE ATTENDEE: No.
16 MS. LUNGE: We had testimony from the
17 Department of Health about the costs.
18 FEMALE ATTENDEE: Right.
19 MS. LUNGE: And what this section is meant to
20 do is not mandate that they (inaudible) and cost
21 the service and cost that allows -- they encouraged
22 us to use this type of service, but there's no
23 appropriation, so it would have to not cost
24 anything.
25 THE CHAIR: Well, I would take the "such as"

1 out as well. In fact, I might take the whole
2 section out. I mean it's just -- again, it's one
3 of those things where --
4 FEMALE ATTENDEE: (Inaudible).
5 THE CHAIR: -- I think we're legislating common
6 sense.
7 FEMALE ATTENDEE: Well, isn't that what we have
8 to do? Do you put a time?
9 FEMALE ATTENDEE: But I have a question about
10 this. It's -- it's --
11 THE CHAIR: I'm sorry, if I could finish my
12 thought. If the health department had a real
13 serious focus on doing these things, we wouldn't
14 have to be telling them to do it. It just bothers
15 me. It seems that the health department is not
16 doing all that it could be doing. But why don't we
17 tell them to just take the "such as Oregon" piece
18 out of it?
19 FEMALE ATTENDEE: As long as -- the phrase
20 "independent research" is really old.
21 MALE ATTENDEE: (Inaudible).
22 FEMALE ATTENDEE: (Inaudible) research.
23 MS. LUNGE: And we could (inaudible).
24 MALE ATTENDEE: (Inaudible).
25 THE CHAIR: All right. Section 2 is okay other

1 than the -- after we strike the "such as" language.
2 Okay. Flying right along, Section 3.
3 MS. LUNGE: Section 3 is the pharmaceutical
4 marketer disclosure section, and what this section
5 does is allow the Attorney General's Office to
6 disclose to -- what it currently does is disclose
7 to the Department of Health information that they
8 received from the marketing disclosures after they
9 have assisted the Department of Health in -- by
10 giving them information about that for the Evidence
11 Based Education Program. (Inaudible) had asked --
12 actually the A.G. Office had asked that they be
13 allowed to disclose to OVHA as well, again, with
14 the same confidentiality provision. So what they
15 would like is for us to insert OVHA on Line 18,
16 Department of Health to OVHA. And I believe that's
17 the only comment we got on this one.
18 THE CHAIR: Okay. Does anybody have a problem
19 with that?
20 FEMALE ATTENDEE: No.
21 THE CHAIR: Is everyone okay? Anybody else?
22 FEMALE ATTENDEE: No.
23 THE CHAIR: All right. And what is that going
24 to do to lower costs?
25 MS. LUNGE: I think this section is linked to

1 the Evidence Based Education Program. So --
2 THE CHAIR: Okay.
3 MS. LUNGE: -- I think this may bring the
4 Department of Health a little bit better
5 information about what kind of marketing being is
6 done, which may help them better target, or improve
7 their Evidence Based Education Program, so the
8 costs analysis is being linked to that --
9 THE CHAIR: Okay.
10 MS. LUNGE: -- which is later on in the
11 document.
12 THE CHAIR: Okay. We'll answer that question
13 in a little bit. Section 4.
14 MS. LUNGE: In section --
15 THE CHAIR: We didn't do anything with this.
16 MS. LUNGE: -- 4 there were no comments that I
17 have on that one.
18 THE CHAIR: Okay.
19 MS. LUNGE: This is the section which adds --
20 THE CHAIR: The marketing?
21 MS. LUNGE: Yeah. That's disclosure of the
22 continuing medical education program.
23 THE CHAIR: Well, I have a comment on that. I
24 did not like the stripping of the -- our
25 (inaudible) for continuing medical education

1 programs.
2 FEMALE ATTENDEE: But just a minute, so they're
3 no longer exempt from disclosure?
4 MS. LUNGE: Right, so that information would be
5 disclosed.
6 FEMALE ATTENDEE: It's going to probably amount
7 to --
8 THE CHAIR: I don't want -- I don't want there
9 to be any excuse for not being able to get funding
10 for continued medical education. That's my point.
11 FEMALE ATTENDEE: Yeah, I --
12 MS. LUNGE: If they -- if they only have to
13 disclose the -- the continuing education. They
14 don't have to give individual names or anything.
15 THE CHAIR: Well, I don't know for sure, but I
16 can tell you that -- that at Rutherford (phonetic)
17 Regional, for example, my wife works in the GI
18 department (inaudible), and they frequently get
19 funding from pharmaceutical companies to have their
20 continuing education courses, because the hospital
21 doesn't have the money, so --
22 MS. LUNGE: But do you think they wouldn't if
23 they --
24 THE CHAIR: I don't know.
25 MS. LUNGE: Because all we have to do is say --

Page 42

1 THE CHAIR: (Inaudible).
2 FEMALE ATTENDEE: (Inaudible) little do
3 (phonetic) actually --
4 MS. LUNGE: Right.
5 FEMALE ATTENDEE: -- takes into account what
6 they need. So if you -- if you read that, they say
7 they're unrestricted grants --
8 FEMALE ATTENDEE: Right.
9 FEMALE ATTENDEE: -- but they have to be --
10 THE CHAIR: I guess my (inaudible) even though
11 we're trying to (inaudible) it.
12 FEMALE ATTENDEE: It's a transparency that
13 (inaudible) for doing this good stuff like
14 in-service training or whatever. So I think that
15 it's the way you look at it. I think the
16 disclosure is important, that we (inaudible).
17 FEMALE ATTENDEE: Uh-huh, I agree with you.
18 THE CHAIR: Wait a minute. We're allowing
19 exemption for scholarships and (inaudible) attend a
20 significant education center with (inaudible).
21 Now, we're saying not --
22 FEMALE ATTENDEE: For continuing education --
23 THE CHAIR: -- continuing ed. I mean what --
24 that seems like nickels and dimes compared to the
25 costs.

Page 43

1 MALE ATTENDEE: I know it.
2 FEMALE ATTENDEE: It does.
3 MALE ATTENDEE: Why can't we just leave that
4 one alone?
5 THE CHAIR: It does seem like -- I mean the
6 bigger money is going to be in fellowships, bigger
7 than in continuing ed classes. I mean if we're
8 going to be concerned about this, then we might as
9 well disclose all of it. Am I missing something
10 here?
11 FEMALE ATTENDEE: I don't know that --
12 THE CHAIR: I'm not getting it backwards, am I?
13 FEMALE ATTENDEE: I mean I don't know which is
14 the bigger amount of money. I think one thing we
15 could do is ask Julie. She has had that
16 information because it's -- well, actually, she
17 didn't because it's currently not being disclosed
18 -- but she might have some idea about that
19 (inaudible), but I don't (inaudible) --
20 FEMALE ATTENDEE: You know, I just remember the
21 conversation around, not this year, but in previous
22 years, and I think it was the same kind of
23 conversation, there's not a bottom line to this.
24 FEMALE ATTENDEE: I sort of agree.
25 THE CHAIR: With what?

Page 44

1 FEMALE ATTENDEE: That continuing medical --
2 continuing medical education should continue to be
3 exempt, then that would change the (inaudible),
4 wouldn't it, Robin?
5 MS. LUNGE: I think if you wanted to leave the
6 law as currently, let's take out the (inaudible).
7 FEMALE ATTENDEE: Right. So all that does is
8 it will -- it -- it -- it doesn't -- Senator Kittel
9 was saying which is to provide for transparency on
10 the value, nature and pertinence of the grant.
11 THE CHAIR: What I'm reading from this whole
12 section is it wouldn't be disclosed if I was flown
13 to Hawaii for a national conference.
14 FEMALE ATTENDEE: Maybe if it's your -- your
15 association that picks it, not if the
16 pharmaceutical company offers to do it. It's only
17 if -- if you're a member of the Vermont Pediatric
18 Association, they're the ones that are sending you.
19 They're the ones --
20 FEMALE ATTENDEE: (Inaudible).
21 FEMALE ATTENDEE: They're -- they -- they
22 select you. It isn't the pharmaceutical company
23 that selects you to go, calls you up and says, "do
24 you want to go? The Pediatric Association does."
25 THE CHAIR: Where does it say that?

Page 45

1 FEMALE ATTENDEE: Right on the top of Page 9.
2 FEMALE ATTENDEE: Yeah, (inaudible).
3 THE CHAIR: (Inaudible).
4 FEMALE ATTENDEE: It's elected by the
5 association.
6 FEMALE ATTENDEE: It's selected by the
7 association.
8 THE CHAIR: And what does E mean?
9 MS. LUNGE: E means that if they --
10 THE CHAIR: The pharmaceutical company might
11 need to --
12 MS. LUNGE: No, the pharmaceutical puts on a
13 program at Revland (phonetic) Hospital per upper
14 gastric --
15 FEMALE ATTENDEE: (Inaudible) probably gives
16 Revland Hospital a grant to --
17 MS. LUNGE: Right.
18 FEMALE ATTENDEE: -- (inaudible).
19 MS. LUNGE: Right.
20 FEMALE ATTENDEE: Well, and it probably
21 involves the education for the cholesterol
22 medicine. There will be a lot of continuing
23 education for you from the cholesterol drug
24 company.
25 THE CHAIR: Sure, sure. I understand how that

1 works.
2 FEMALE ATTENDEE: And you know something,
3 that's where most of the funding under those
4 (inaudible) -- I mean target your population to
5 some extent. And again, that is the down side of
6 this.
7 THE CHAIR: Yeah, but if I'm (inaudible) to
8 come in and pay for my continuing ed, I'm fully
9 aware of what they're trying to do, you know.
10 MS. LUNGE: This isn't from your -- doing
11 continuing you, individually. E is when they're
12 putting on the program at Revland Hospital, or at
13 UVM Medical School, or wherever it is. They're
14 putting it on.
15 THE CHAIR: Right.
16 FEMALE ATTENDEE: And, you know, handing out
17 all their own note pads to everybody, and pens, so
18 everybody knows who's putting it on --
19 FEMALE ATTENDEE: No.
20 FEMALE ATTENDEE: -- but I --
21 THE CHAIR: (Inaudible) --
22 FEMALE ATTENDEE: (Inaudible).
23 THE CHAIR: -- provide one step.
24 FEMALE ATTENDEE: The offer as to -- is
25 fowarded, you know, unrestricted. We need

1 unrestricted grants for the continuing medical
2 education program. All we need to say is -- it's
3 just like when you said yesterday if you're going
4 to give the (inaudible) $25 worth of goods, you've
5 got to disclose it.
6 FEMALE ATTENDEE: Here's how you could do it.
7 I mean if you look at -- if you look at
8 unrestricted E, big E, unrestricted grants for -- a
9 grant for continuing -- continuing ed programs. So
10 I get a grant to fly to Hawaii for a continuing
11 medical education program. That could happen, and
12 nobody would know, because that would be exempt.
13 But if I get a grant to fly to Hawaii, and what has
14 to be revealed is the value, and the nature, and
15 the purpose of the grant, then there is, as Senator
16 Kittel said, "a greater transparency about that."
17 So that's why that -- I think that's where the
18 replacement is.
19 MS. LUNGE: Right, I understand that.
20 FEMALE ATTENDEE: Right.
21 MS. LUNGE: But I said we are going to leave E,
22 and D out.
23 FEMALE ATTENDEE: Oh, well, it was until I
24 started flying to Hawaii.
25 MS. LUNGE: Oh, I got -- I got a little bit

1 confused there, because I thought you wanted to
2 leave E in.
3 THE CHAIR: I don't want (inaudible) too many
4 people when they're flying to Hawaii.
5 MS. LUNGE: Well, I don't either.
6 THE CHAIR: Yeah.
7 MS. LUNGE: And I don't think that there's a --
8 MS. KITTELL: I mean you're thinking that they
9 wouldn't do any more because they have to disclose.
10 But if they were just doing it (audible) allow for
11 something, I wouldn't think they would have any
12 problems disclosing, you know. I mean that's been
13 -- I mean that's been -- you know, what's going on
14 with Congress right with all the disclosures and
15 stuff? They're talking about, you know, all of
16 that. I mean shouldn't we be on the same level
17 here?
18 MS. LUNGE: And I like D because -- and I like
19 taking E out, and I like keeping D there, and I
20 think Sara is right, it offers transparency. And
21 we know who's putting it on anyway because they
22 have banners and pens and note pads, and
23 everything, so we're already -- we're already --
24 This is not, I don't think, asking anything of them
25 that they're not already doing (inaudible). And I

1 may be wrong, but my guess is that most
2 pharmaceutical companies do not give grants, and
3 then just sit back quietly in the background as to
4 (inaudible).
5 THE CHAIR: (Inaudible).
6 FEMALE ATTENDEE: They want -- they want the
7 credit for it -- doing it. And then I think it's
8 important here under D that it says that -- they
9 don't have to disclose here who attended. They
10 just have to say that they gave --
11 MALE ATTENDEE: I just know how hard
12 (inaudible) --
13 FEMALE ATTENDEE: -- $25,000.
14 MALE ATTENDEE: -- nurses have to beg to try to
15 get sponsors for these continuing education
16 classes, and like I could just see if I was on the
17 other side of the coin, and I've got a limited
18 budget, I might just say, "well, let's use this as
19 an excuse." I can't do that because, you know,
20 I've got to fill out all of this paperwork, but I'm
21 willing to go with wherever you want to go with
22 this one.
23 THE CHAIR: I think I'm not understanding the
24 reason for the transparency here.
25 FEMALE ATTENDEE: You know, you could also see

1 this benefit to the -- as you said I think, the
2 corporation in providing the continuing medical
3 education.
4 FEMALE ATTENDEE: Maybe we should ask somebody
5 who is working with a pharmaceutical company if we
6 can get with (inaudible).
7 FEMALE ATTENDEE: Who do they have to disclose
8 it to --
9 THE CHAIR: Anybody want --
10 FEMALE ATTENDEE: -- (inaudible)?
11 THE CHAIR: Anybody want to (inaudible) on this
12 one?
13 FEMALE ATTENDEE: No.
14 THE CHAIR: No? (Inaudible), do you have
15 anything?
16 FEMALE ATTENDEE: We don't have a position on
17 this section.
18 THE CHAIR: Okay.
19 FEMALE ATTENDEE: So we're (inaudible), but I
20 think the way the standard works is you have to
21 have (inaudible) complicated. So it's not that --
22 it's not that complicated. I don't really see it
23 happening. It's a -- you know, if they put on pro
24 bono (inaudible) program, (inaudible) program,
25 that's signing up for the program, and then the

1 individual (inaudible) the program. And the
2 restriction requirements for what's unrestricted,
3 and what's restricted, is the unrestricted says
4 it's a grant people can't control the subject
5 matter of the program. It has to be a program
6 (inaudible) people (inaudible) for the committee,
7 and also (inaudible).
8 THE CHAIR: But they do quadruple for Hawaii
9 for continuing education.
10 FEMALE ATTENDEE: Yeah.
11 FEMALE ATTENDEE: Well, that --
12 THE CHAIR: So maybe not up front.
13 FEMALE ATTENDEE: And if you do, that's a gift
14 to the individual (inaudible) --
15 THE CHAIR: Yeah.
16 FEMALE ATTENDEE: -- and that (inaudible) --
17 FEMALE ATTENDEE: Okay.
18 THE CHAIR: Okay.
19 FEMALE ATTENDEE -- that's enough to -- under
20 your deduction for medical students under D,
21 medical students, residents, and (inaudible), they
22 were (inaudible) box supplies (inaudible), so this
23 allows them, if they're selected by their
24 association, to get (inaudible) right from
25 companies.

1 THE CHAIR: Okay. But now their conference --
2 they can get conferences in Hawaii where the docs
3 would pay their way, but once they're there, all
4 expenses are paid. Where does that come from?
5 FEMALE ATTENDEE: Well, the -- any -- it's kind
6 of -- as I understand it, I think that any
7 (inaudible) are not being considered the cost of
8 the CMD. You know, the cost of CMD would be --
9 THE CHAIR: Okay. So that's a gift again?
10 FEMALE ATTENDEE: It would be a gift --
11 THE CHAIR: Yeah, (inaudible).
12 FEMALE ATTENDEE: -- and it would include
13 (inaudible) and food, and, you know (inaudible),
14 and the plane, and the tickets to the ball game.
15 All of that stuff would be the gift.
16 FEMALE ATTENDEE: And that's all reportable
17 right now?
18 THE CHAIR: And that's all reportable right
19 now, yeah.
20 FEMALE ATTENDEE: That's reportable now.
21 THE CHAIR: Now, what about when the
22 legislators go to an NCF (inaudible) conference,
23 and all the banners are up from the drug companies?
24 Where is that -- where is that disclosed? No one?
25 So we have a little bit of a double standard here?

1 MALE ATTENDEE: Yes.
2 THE CHAIR: Okay. I just wanted to know. All
3 right. So --
4 FEMALE ATTENDEE: (Inaudible) too.
5 THE CHAIR: I wouldn't mind. Maybe our
6 (inaudible) committee can look at some -- on
7 eliminating double standards.
8 FEMALE ATTENDEE: (Inaudible) -- my first
9 meeting I went to years ago at Biotech (phonetic),
10 I mean they put on the whole thing. It was all
11 Biotech.
12 THE CHAIR: And I went to one many years who
13 was the CS -- (inaudible). It was in Newport, Long
14 Island, and they had -- I think it was a drug
15 company -- maybe it was the alcohol company -- they
16 had chartered one of the America Cup -- one of the
17 America Cup's yachts, and they were taking people
18 out on the ocean.
19 FEMALE ATTENDEE: (Inaudible).
20 FEMALE ATTENDEE: And you never forgot it.
21 THE CHAIR: I didn't -- I didn't go on that
22 one. I did something else. I think I sat in a
23 seminar all afternoon. Okay. Section -- okay. So
24 we're going to leave Section 4 the way it is
25 exactly unless we -- we're screaming. Okay.

1 Absent screaming. Section 5.
MS. LUNGE: Okay. Section 5, I don't believe
3 that you've heard any comments on Section 5. What
4 I do have for you, you did ask for the copies of
5 the federal regulations that are -- or statute,
6 excuse me, that's referred in terms of the
7 definition of averaging (inaudible) and best price.
8 The full statute is 1,020 pages long, so I
9 excerpted just the parts of the statute that are
10 referenced here, so I'll just hand that out to you
11 first. I gave you reference -- and you'll see I
12 tried to put little stars so that you know when we
13 were sticking entire separate savings. And I
14 wasn't necessarily going to go through, but -- in
15 detail right now -- but this is just for your --
16 for your records so you can see how the federal law
17 defines things like average and manufactured prices
18 and wholesale, and on the second page (inaudible),
19 and on the handout on the bottom (inaudible) best
20 price, et cetera.
21 THE CHAIR: So --
22 MS. LUNGE: So again, what this section in
23 general does is requires the manufacturers to
24 disclose to OVHA these three prices, the average
25 manufactured price, the best price, and prices to

1 the wholesaler and (inaudible) manufacturers for
2 the drugs used in the Medicaid program. So it's
3 limited to the Medicaid program, and the purpose is
4 essentially to get OVHA more information about what
5 they're paying for the drugs.
6 MALE ATTENDEE: Well, I have a note here too,
7 but after my last (inaudible), I'm almost afraid to
8 bring it up, but 50962 B on Page 10, Line 8,
9 (inaudible) tells me that the drug companies are
10 already having to accept the standards of the
11 national drug rebate agreement. But then at the
12 end it says that "OVHA may adopt its own standards
13 by rule." And I just think if there's already a
14 methodology in place, we ought to be using that
15 methodology rather than trying to create a new one
16 that could throw everybody into turmoil. So I
17 would suggest eliminating, or may adopt its own
18 standards by rule.
19 FEMALE ATTENDEE: Somebody else must have said
20 that too, because I put a note beside it. I wasn't
21 (inaudible).
22 FEMALE ATTENDEE: What rule were you looking
23 at?
24 MALE ATTENDEE: Line 8 on Page 10.
25 THE CHAIR: This is OVHA?

1 FEMALE ATTENDEE: So is that line just saying
2 you could use your own? In other words --
3 MALE ATTENDEE: Yeah, and the thing also that
4 provides the standards that they have to use
5 through the National Drug Rebate Agreement referred
6 to by the U.S. (inaudible) with Health and Human
7 Services in Section 1927 with the Social Security
8 Act, the reporting pricing methodology. So that's
9 great. We've got that. So we're going to have
10 that provided to us. But then it says, "or OVHA
11 may adopt its own standards by rule." And it just
12 seems to me that you start going down that process,
13 and it starts to get tricky for the private sector.
14 FEMALE ATTENDEE: So I want to know why that's
15 here, because I rooted for it as B here.
16 MS. LUNGE: This is the entire main law, and
17 that was originally passed (inaudible) Maine RX
18 bill --
19 FEMALE ATTENDEE: Uh-huh.
20 MS. LUNGE: -- and it was the language used by
21 Maine. I don't know why they added that.
22 FEMALE ATTENDEE: Well, is it because they used
23 OVHA prices with --
24 MS. LUNGE: For instance, OVHA has their own
25 (inaudible) agreements where they say "well, this

1 is how they'll calculate," that's possible. I
2 don't know.
3 FEMALE ATTENDEE: Yeah.
4 MALE ATTENDEE: I think they're talking about
5 (inaudible).
6 FEMALE ATTENDEE: They say a contract
7 negotiations process.
8 MALE ATTENDEE: Well, it's true that every drug
9 company has to have the cost accounting system that
10 lies with this federal mandate. So we ought to --
11 we ought to piggy back on that rather than try to
12 create our own accounting for costs that, you know,
13 may add costs to drugs in Vermont because they
14 have to perform a separate procedure to account for
15 those costs.
16 MS. LUNGE: And I can certainly inquire of the
17 OVHA people about whether they use this now, did
18 they use something separate, two separate
19 methodologies in the contract and see what
20 (inaudible) it is.
21 THE CHAIR: So what are we doing with this
22 section overall?
23 MS. LUNGE: We're giving OVHA more information
24 about the prices that are contained in the papers.
25 THE CHAIR: Okay. And it's just a

1 transparency, and hopefully they can make better
2 decisions.
3 MALE ATTENDEE: I don't see any testimony from
4 anybody from the pharmaceutical district saying no
5 to this. Do they provide this information to OVHA,
6 or did I miss something, Susan?
7 MS. GRETKOWSKI: We did -- there was some
8 testimony (inaudible) one of the provisions here in
9 Section 8, and that was about whether or not the
10 CEO could comply --
11 THE CHAIR: Right.
12 MS. GRETKOWSKI: -- to the CEO's regiment's
13 needs --
14 THE CHAIR: We got that.
15 MS. GRETKOWSKI: -- so part of them can live
16 with the language --
17 THE CHAIR: Right.
18 MS. GRETKOWSKI: -- (inaudible).
19 THE CHAIR: So that really means -- so there is
20 no objection to provide this information. Is it
21 providing other states? Is that why it's -- well,
22 it's provided nationally?
23 MS. GRETKOWSKI: It's provided nationally
24 (inaudible).
25 THE CHAIR: So it's just giving from one -- the

1 same information. It's already being provided
2 elsewhere?
3 MALE ATTENDEE: Yeah.
4 FEMALE ATTENDEE: And --
5 THE CHAIR: But without this provision we don't
6 get the information?
7 FEMALE ATTENDEE: So we're going to change it
8 back to be the CEO?
9 FEMALE ATTENDEE: No.
10 THE CHAIR: No.
11 MS. GRETKOWSKI: No, it's --
12 THE CHAIR: Good try, though.
13 FEMALE ATTENDEE: I know.
14 THE CHAIR: (Inaudible). I hate when that
15 happens.
16 MALE ATTENDEE: (Inaudible).
17 MS. GRETKOWSKI: And then there's a technical
18 correction that I need to make in B, because when
19 we added the third price, I neglected to add it
20 there, so I'll get that fixed for you all.
21 THE CHAIR: Okay. So five is okay.
22 MALE ATTENDEE: Are we going to get rid of that
23 language?
24 THE CHAIR: The "may adopt its own standard by
25 rule"?

1 MALE ATTENDEE: Yes. But can we do that?
2 THE CHAIR: I don't mind taking that out.
3 Again, that's --
4 FEMALE ATTENDEE: You know, either way it
5 doesn't make any difference, because on the top it
6 says "may accept." So you can say "may accept" --
7 FEMALE ATTENDEE: Well --
8 FEMALE ATTENDEE: -- and leave that off, and
9 they still can do whatever they want.
10 FEMALE ATTENDEE: Well, does -- when you can
11 adopt standards by rule it could be -- as Kevin
12 says, it could be very expensive --
13 FEMALE ATTENDEE: Yeah.
14 FEMALE ATTENDEE: -- and then there's no point
15 in having it.
16 FEMALE ATTENDEE: Yes, we made that clear.
17 THE CHAIR: I'm just surprised you picked it up
18 with the representative (inaudible).
19 MALE ATTENDEE: (Inaudible).
20 THE CHAIR: Pick your fight? That's a valid
21 position.
22 MALE ATTENDEE: I can't get the (inaudible) and
23 drug interested in this bill so --
24 FEMALE ATTENDEE: Oh, that -- did you call?
25 THE CHAIR: Did you call him?

1 MALE ATTENDEE: No, I didn't call him.
2 FEMALE ATTENDEE: You know, nine days later I
3 said --
4 FEMALE ATTENDEE: Dave, Sam didn't call
5 (inaudible).
6 THE CHAIR: Dave, did you call and leave a
7 message for one of the (inaudible).
8 MALE ATTENDEE: Yeah.
9 THE CHAIR: And what did you tell them, that
10 you were working on a bill named (inaudible), and
11 they didn't call us back?
12 FEMALE ATTENDEE: No.
13 FEMALE ATTENDEE: Because you don't have a real
14 phone.
15 FEMALE ATTENDEE: Probably. I had been talking
16 to them on line too.
17 THE CHAIR: Okay. I don't know what -- let's
18 take that out then. Is that okay with everyone,
19 (inaudible)?
20 FEMALE ATTENDEE: That paragraph (inaudible).
21 FEMALE ATTENDEE: Yes.
22 THE CHAIR: Okay. You got that, Robin --
23 MS. LUNGE: Yep.
24 THE CHAIR: -- deleted?
25 FEMALE ATTENDEE: Done.

1 THE CHAIR: Okay. Thank you, Susan.
2 MS. GRETKOWSKI: (Inaudible).
3 THE CHAIR: That's great. All right. Section
4 6, Healthy Vermonters.
5 MS. LUNGE: Healthy Vermonters Plus. You heard
6 two sets of testimony on this one from OVHA, one
7 from the health care (inaudible). OVHA has --
8 request was the delay for medications after timeout
9 health and some assessment of how many individuals
10 would enroll in (inaudible). This provision might
11 help. They don't think it will account for very
12 many people, and they believe the way it's
13 currently written it's difficult to implement,
14 which was that currently its statute is not in any
15 section of the bills, but in statute it requires
16 for this population to be a percentage of their
17 health care cost versus their income, which is not
18 the same way for Healthy Vermonters. We've
19 implemented Healthy Vermonters with a straight
20 income tax. And what the health care (inaudible)
21 suggested is that she certainly agrees with OVHA
22 that it's too difficult to implement. She thinks
23 that it will still be helpful to some people, and
24 we could use the straight income tax like we did
25 with Healthy Vermonters as a way of simplifying

1 it's limitations.
2 MALE ATTENDEE: And what have we accomplished
3 in this section overall?
4 MS. LUNGE: This section, as a new member, we
5 currently have a pharmacy discount card for people
6 who either exhausted prescription drug insurance,
7 or who have no prescription drug insurance which
8 allows them for certain maintenance drugs that OVHA
9 has negotiated a rebate list to go to the
10 (inaudible) Medicaid price. So it would allow
11 uninsured Vermonters to get a much better price
12 than they would have otherwise paid the pharmacy.
13 And what this would do is increase the income
14 from right now the 300 percent federal prime rate,
15 or 400 percent to those who are 65 or older or the
16 disabled. And this would take that 300, that
17 applies to all Vermonters, and up that to freeze
18 it.
19 MALE ATTENDEE: To all Vermonters?
20 FEMALE ATTENDEE: But the --
21 MS. LUNGE: All Vermonters with that
22 prescription drug (inaudible).
23 FEMALE ATTENDEE: But it doesn't change the
24 Medicaid to save our 400 percent poverty level?
25 MS. LUNGE: No, it (inaudible).

1 FEMALE ATTENDEE: (Inaudible) I mean
2 (inaudible) is helpful for people in Vermont that
3 have -- you know, read -- read the (inaudible).
4 THE CHAIR: (Inaudible).
5 FEMALE ATTENDEE: It's really difficult to
6 compete, but it's a percentage of income that they
7 spend it on their pharmacies?
8 MS. LUNGE: Right, basically the challenging
9 part for OVHA would be for the people between 300
10 and 350, they would have to get their health care
11 cost and their income, and then figure out the
12 percentage for each of the folks, and presumably do
13 that periodically to make sure the people are still
14 eligible in order to give them a card. What the
15 health care (inaudible) is suggesting is that we'll
16 just save straight -- you know, just put it up to
17 350, and forget about -- forget about that.
18 Presumably -- I mean more people will be served
19 with a strict 350 income limit as opposed to also
20 having this percentage.
21 THE CHAIR: It would be easier?
22 MS. LUNGE: I think it would be much easier.
23 And I think that now with the Medicare part --
24 probably it was done the first way because of cost
25 implications. But with Medicare Part B, the group

1 of people who are uninsured has shrunk. So I think
2 the cost implications aren't the same as when this
3 was originally passed, because that was before
4 (inaudible) so --
5 MALE ATTENDEE: (Inaudible). Why the cost
6 implications with this people's account?
7 MS. LUNGE: Because there will be less people
8 -- there are less people who are uninsured for
9 prescription drug coverage now because of the
10 Medicare Part B, because Medicare Part B --
11 MALE ATTENDEE: I understand that part. But
12 what are we getting with a discount card? Who's
13 giving them the discount?
14 MS. LUNGE: But this -- I don't know exactly
15 how the discount card works in terms of the
16 pricing. I know that when they go to the pharmacy,
17 what they pay, the pharmacist would give the
18 Medicaid price versus --
19 MALE ATTENDEE: (Inaudible).
20 MS. LUNGE: -- the -- whatever you call the
21 price people who don't have insurance, and it will
22 be (inaudible) and customary as to that price.
23 MALE ATTENDEE: But who's making up the
24 (inaudible)?
25 MS. LUNGE: That I'm not sure. It might be at

1 the pharmacy level.
2 THE CHAIR: Then why are there cost
3 implications for the State of Vermont?
4 MS. LUNGE: There isn't a cost implication for
5 the State of Vermont, but they might -- there would
6 have been a cost implication for insurers making up
7 the difference.
8 MALE ATTENDEE: Okay. I approve. I get it
9 now.
10 MS. LUNGE: Okay.
11 MALE ATTENDEE: We don't know who's making up
12 the difference?
13 MS. LUNGE: I believe -- well, somebody knew
14 originally, but I didn't cover this bill when it
15 was initially passed, so I don't know personally
16 because I haven't heard that testimony. I believe
17 it may have been the pharmacist which at -- where
18 is at --
19 MALE ATTENDEE: Who (inaudible) has the
20 pharmacists?
21 FEMALE ATTENDEE: No, you can't lead him.
22 MALE ATTENDEE: But he's not here.
23 FEMALE ATTENDEE: He's not here.
24 MS. LUNGE: Well, aren't you -- can you help me
25 --

1 FEMALE ATTENDEE: Aren't Vermonters getting the
2 drugs under the same price contract that Medicaid
3 gets through us?
4 FEMALE ATTENDEE: Yes.
5 FEMALE ATTENDEE: So if Medicare --
6 MS. LUNGE: And I don't know enough about how
7 the contract and rebates work --
8 FEMALE ATTENDEE: Right.
9 MS. LUNGE: -- so I don't know --
10 FEMALE ATTENDEE: Well, the pharmacists usually
11 tell us that all the good things we do hurts them.
12 Usually the good we do for people, that they get
13 less money.
14 FEMALE ATTENDEE: I can ask Maria because she
15 did drafts in this section originally, so she may
16 remember that piece of -- I can try and find out
17 that information as well.
18 MALE ATTENDEE: I would like to know who's
19 bearing the costs on this one. I want to know who
20 we're effecting before we do this. I can see how
21 this one saves money. I want to know -- I want to
22 know who's paying for it.
23 FEMALE ATTENDEE: Hopefully the drug companies.
24 MALE ATTENDEE: Possibly, but maybe not. Is it
25 individual pharmacists? I want to --

1 FEMALE ATTENDEE: Yeah.
2 MALE ATTENDEE: I'd like to know. Does anybody
3 know? No? Wild guesses? No, never mind. Okay.
4 So an attentive okay on that one, but we want to
5 know more.
6 MS. LUNGE: And did you want to go the straight
7 350?
8 MALE ATTENDEE: I would.
9 FEMALE ATTENDEE: Yeah.
10 THE CHAIR: Anything else? Okay.
11 MS. LUNGE: Okay. Sections 7 and 8 are the
12 sections involving the pharmacy benefit manager
13 regulations, which with this section -- this is a
14 section we heard a lot of testimony.
15 THE CHAIR: We heard a lot about this one.
16 Okay. Let's start from the beginning. What are
17 you doing? What is this company doing?
18 MS. LUNGE: Well, right now what's being done
19 (inaudible) a private project to register pharmacy
20 benefit managers. Otherwise, there's no
21 registration, or life insurance with this. It's an
22 (inaudible) from the state, unless they were to
23 (inaudible) from the insurance company or something
24 like that.
25 So what this section does is set up a great

1 infrastructure in terms of registration, and it
2 would require disclosure that certain types of
3 contracts terms are available to the contractee.
4 THE CHAIR: But it doesn't require that those
5 contract terms be in there. It just says --
6 MS. LUNGE: No.
7 THE CHAIR: -- "this is public disclosure"?
8 MS. LUNGE: As the bill was originally drafted,
9 it was modeled on a name which would require the
10 contractor to be in the contract, but what Senate
11 Finance decided to do was to allow greater freedom
12 to contracts. It's not to regulate that -- not
13 require those terms, and to just require
14 disclosures of those terms were available.
15 THE CHAIR: So what does that do? What does
16 that accomplish?
17 MS. LUNGE: It would --if the insurer or the
18 (inaudible), whomever was contracting with the CPM
19 didn't know that there were certain contractual
20 options available, it would ensure that they knew
21 about those options.
22 THE CHAIR: And so the testimony we've recieved
23 says that they all (inaudible) with this? So if
24 I'm moving up -- Kevin, what's your feeling on
25 this?

1 MR. MULLIN: On that same thing, what
2 (inaudible) she knows, according to Section 2 it
3 says that "it would provide protection for a small
4 company with a large PBM." And PBM (inaudible) on
5 the floor, and we kept them asking the question.
6 So really to the world now is (inaudible) if there
7 are any small entities doing business with PBMs?
8 FEMALE ATTENDEE: Yes, there are.
9 FEMALE ATTENDEE; Who?
10 MR. MULLIN: Who?
11 FEMALE ATTENDEE: Well, we -- my problem is
12 that this high list that I have are from a -- we
13 had taken subpoenas. And so the information I have
14 about this is kind of confidential. But you can
15 certainly ask each of the PBMs for their client
16 list, and they can give you their client list if
17 they want you to cooperate with them.
18 MR. MULLIN: Well, the ones that we've asked so
19 are not -- well, it was a small --
20 FEMALE ATTENDEE: I think you need to -- I
21 think you need to actually look at the client list
22 and (inaudible) --
23 MR. MULLIN: Well, can you give us a makeup,
24 like what size we're talking about that you're
25 aware of without disclosing (inaudible)?

1 FEMALE ATTENDEE: I'm aware of some very -- I'm
2 aware of small towns, small cities around the
3 country. I'm aware of (inaudible) in the State
4 Vermont, really small players. (Inaudible) as far
5 as the administrators. They're pretty small. I
6 actually haven't looked at the client list that we
7 kind of -- that we've had for some time. They were
8 a big (inaudible) and --
9 MR. MULLIN: Okay. I guess --
10 FEMALE ATTENDEE: -- (inaudible).
11 MR. MULLIN: -- I guess when I heard the word
12 "small," I was thinking something much smaller than
13 what you're initiating.
14 FEMALE ATTENDEE: And that is very -- I think
15 that's a really good point that you're raising,
16 Kevin, and I'm glad you raised that. I think small
17 is a relative term, you know, compared to an IBM,
18 or GM, these other entities on top of the
19 (inaudible), the City of Baltimore, or something
20 along those lines are considered small.
21 MR. MULLIN: Right, but I'm in the nature of
22 somebody that wouldn't even have a legal
23 department, but -- so I was just going in the wrong
24 direction, because when I hear the word "small," I
25 think something different. So now I understand

1 what you're talking about.
2 FEMALE ATTENDEE: It is possible -- I can't sit
3 here and tell you that everyone who practices
4 (inaudible). I think there are intrusives where
5 that we (inaudible), they don't. But the most
6 important thing is to actually look at the clients,
7 and rather than getting someone to characterize
8 them for you, but if you are calling for my
9 characterization, I will tell you that it seems to
10 be some very large entities to the small entities.
11 And some of the small entities, you use third-party
12 administrators.
13 FEMALE ATTENDEE: I guess my confusion there is
14 when I thought of small like -- I wasn't
15 necessarily thinking of three employees. Like
16 small in the sense of unsophisticated at the level
17 that they would be able to ask the question.
18 FEMALE ATTENDEE: That's right. That's --
19 FEMALE ATTENDEE: And I don't see the State of
20 Vermont being unsophisticated to be able to ask the
21 -- I mean if we are, then --
22 FEMALE ATTENDEE: I think we have learned a lot
23 about --
24 FEMALE ATTENDEE: As well as we've decided
25 we're not done.

1 FEMALE ATTENDEE: -- that over the years. I
2 think we've learned a lot, but I think that -- and
3 I think everyone has learned a lot. I think PBMs
4 have learned a lot since the 2004 medical assembly
5 where we entered into a consent judgment with
6 (inaudible) PBM. I think the industry has been
7 trying to inform itself. I think clientele has
8 been trying to educate itself.
9 FEMALE ATTENDEE: Uh-huh.
10 FEMALE ATTENDEE: But I mean -- you know --
11 FEMALE ATTENDEE: Okay.
12 FEMALE ATTENDEE: -- that's the best I can do
13 for you without disclosing --
14 FEMALE ATTENDEE: Yeah, you see, I was going
15 the same place Kevin was going so --
16 THE CHAIR: (Inaudible).
17 FEMALE ATTENDEE: I just wanted to add, this is
18 an area that this should have a big weigh-in, and
19 going back to the original rules that you set
20 forward in the beginning in terms of trying to do
21 things that would hopefully drive down costs and
22 will increase profits in the area where we decide
23 that there is a potential for -- probably a greater
24 chance of an increase cost. When you come to the
25 (inaudible) of the contract, there's always going

1 to be a price to pay (inaudible), and if there's a
2 disclosure, but not an inhibition, what in actual
3 terms (inaudible). There's a really good
4 possibility for the department to be negotiating
5 their terms, and hopefully (inaudible) both parties
6 are satisfied, and to combine those outside of the
7 contract could be just the opposite of what they're
8 trying to do. And we wouldn't -- and our guess is
9 that (inaudible) becomes small, I don't think we
10 have, you know, an administrative person to be
11 working on considerable people contracting with the
12 PBM. Some kind of (inaudible) will review patients
13 that we have the ability to (inaudible) in the
14 negotiations.
15 THE CHAIR: So you think that this provision
16 would increase costs? Is that what I'm -- that's
17 what I thought I heard you say.
18 FEMALE ATTENDEE: Oh, no, what I was trying to
19 say, we're okay with the way this came out in
20 (inaudible) --
21 THE CHAIR: Okay.
22 FEMALE ATTENDEE -- except for the fact
23 (inaudible) happened over there.
24 THE CHAIR: Okay. But, quite frankly, that's
25 my recollection of your testimony, it was okay.

1 FEMALE ATTENDEE: Yes, we're happy with the way
2 that it is now.
3 FEMALE ATTENDEE: And we're okay with it too,
4 the way it is now.
5 THE CHAIR: Right.
6 FEMALE ATTENDEE: We think the disclosure for
7 who wrote the prescription -- we're not saying it
8 doesn't mandate it either.
9 THE CHAIR: Right, and I think what we heard
10 from people at MBP --
11 FEMALE ATTENDEE: Yep.
12 THE CHAIR: -- was that they felt that we would
13 increased their costs.
14 FEMALE ATTENDEE: MBP?
15 FEMALE ATTENDEE: Increased their costs which
16 meant their PBM.
17 FEMALE ATTENDEE: Is that --
18 THE CHAIR: I don't know if that's right or
19 not. I'm trying to find my notes.
20 MALE ATTENDEE: (Inaudible).
21 THE CHAIR: No, it's not you. What's that?
22 FEMALE ATTENDEE: I can't get away --
23 THE CHAIR: (Inaudible) was here.
24 FEMALE ATTENDEE: I think it was --
25 THE CHAIR: Did I hear that incorrectly?

1 MALE ATTENDEE: Well, I could summarize it in a
2 nutshell. But this -- by chronology, this was
3 provisions when they increased problems with PBMs'
4 (inaudible), and (inaudible) later argument is it's
5 unnecessary because this -- this situation is
6 already disclosed, and these are negotiated
7 transactions between some sophisticated entities.
8 And to the extent that you're imposing a new
9 regulatory regimen, additional staff within
10 (inaudible), when you go back in the industry,
11 those costs are going to go with you, a purchase
12 agreement with services (inaudible).
13 THE CHAIR: Okay. You don't agree with that?
14 FEMALE ATTENDEE: We're not indicating that
15 this provision is going to increase costs, or
16 decrease costs. We're going to register the PBMs
17 anyway. So it's not -- you know, they were going
18 to be hiring staff in the provision, or
19 (inaudible).
20 FEMALE ATTENDEE: To the extent that it might
21 -- can I just say something?
22 THE CHAIR: Yes, go ahead.
23 FEMALE ATTENDEE: All right. To the extent
24 that -- I'm not sure if (inaudible) told me about
25 it -- administrative costs is a loss of rebate.

1 But to the extent that it keeps focused on loss of
2 rebate, that means that the clients would be taking
3 more of the rebates because they're getting more
4 information about it, and through the contracting
5 process they're obtaining more of that money back.
6 And that would seem it is true that that would
7 cause the PBM (inaudible) to alter their
8 (inaudible) revenue, but clients would be getting
9 more money. So in some ways it's a zero
10 (inaudible) gain.
11 THE CHAIR: I'm still questioning why this is
12 needed. I guess I hear the argument of our small
13 unsophisticated purchasers. But I -- I don't -- I
14 guess I'm not understanding --
15 FEMALE ATTENDEE: Well, let me ask you this:
16 Why -- I mean given how complicated these
17 transactions are -- and I've read some of these
18 contracts, and if you haven't read any of them, I
19 would invite you to (inaudible) to give you a
20 typical contract so that you can read it so you can
21 see how complicated it is. Given how complicated
22 they are, it strikes me that having disclosures,
23 and having a rebate flow, and money flow, can only
24 be a good thing for all parties here. I just --
25 you know, it just strikes me that even if

1 sophisticated clients -- you know, what I've been
2 considering a sophisticated client, which may not
3 be what you were envisioning are the same. But
4 even a sophisticated client would benefit by having
5 clear disclosure rebates and disclose the money,
6 and it's a very complicated transaction.
7 THE CHAIR: And you don't -- you think that
8 there are purchasers out there who aren't aware of
9 the --
10 FEMALE ATTENDEE: No, they don't fully
11 understand. I think they need to have someone in
12 there, because some purchasers may not fully
13 understand the implications of what they're
14 agreeing to, and the way the money is flowing.
15 THE CHAIR: And this --
16 FEMALE ATTENDEE: I think the way it's --
17 THE CHAIR: -- and this section would -- would
18 say to those PBMs, "you are going to tell them what
19 they are not aware of right now"?
20 FEMALE ATTENDEE: You will have to make the
21 disclosures and offer up the potential for certain
22 types of contractual provisions, which they can
23 accept or not accept, depending upon whether they
24 are going to pay for that, those contractual
25 provisions.

1 THE CHAIR: So it's -- so it's -- this Section
2 2 is the only disclosure?
3 FEMALE ATTENDEE: That's what --
4 THE CHAIR: That's what the -- and then BISHEA
5 would agree with that, that this Section is totally
6 concerning disclosure?
7 FEMALE ATTENDEE: If anyone has a different
8 reading, we should -- we should figure that out
9 right now, because that is my reading of it.
10 THE CHAIR: Well, does anybody have a different
11 reading? Yes?
12 FEMALE ATTENDEE: Yeah, I don't have any --
13 it's not that there is a different reading, but we
14 have a different opinion --
15 THE CHAIR: Okay.
16 FEMALE ATTENDEE: -- as which you have heard.
17 And I do believe (inaudible) that (inaudible). I
18 may or may not say anything different (inaudible).
19 THE CHAIR: Note the stamp on the time you
20 handed out.
21 FEMALE ATTENDEE: Okay. It has attached to it
22 the testimony of the State of Vermont Department of
23 Human Services (inaudible), and Senate Finance.
24 They've testified in here to it (inaudible)
25 pertaining to different finances (inaudible)

1 attached in here. We do disagree with a reform to
2 increase cost to do something that we're already
3 doing, because -- and I haven't heard the -- that
4 discussion was very helpful between you and Senator
5 Mullin, because I hadn't heard the size envision,
6 and I don't (inaudible). But I don't think that
7 the State of Vermont is a small entity. I think
8 they are (inaudible) -- I think the results in that
9 letter will show you what they say for themselves
10 when they go through the renegotiations.
11 THE CHAIR: Can you give us a (inaudible) --
12 (CD No. 51/T1 & T2 were concluded.)
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1 CERTIFICATE
2
3 THE STATE OF FLORIDA
4 COUNTY OF PALM BEACH
5
6 I, Vicki L. Lima, Professional Court Reporter
7 and Notary Public in and for the State of Florida at
8 Large, do hereby certify that I was authorized to and
9 did listen to CD 07-51/T1/T2, The Senate Committee on
10 Health and Welfare, Tuesday, March 13, 2007 proceedings,
11 and stenographically transcribed from said CDs the
12 foregoing proceedings and that the transcript is a true
13 and accurate record to the best of my ability.
14
15 Dated this 24th day of August, 2007.
16
17
18
19
20
21
22 _____
23 Vicki L. Lima, Court Reporter
24 Job #887530
25

1 STATE OF VERMONT
SENATE COMMITTEE ON HEALTH AND WELFARE
2
3
4 RE: SENATE BILL 115
5
6
7 Tuesday March 13, 2007
Standard Committee Meeting
8
9
Committee Members:
10 Senator Doug Racine, Chair
Senator Sara Kittell
11 Senator Kevin Mullin
Senator Ed Flanagan, Vice-Chair
12 Senator Virginia Lyons
Senator Jeannette White
13
14 CD NO: 07-52/T1, 52/T2
15
16 Also Present:
Robin Lunge, Legal Council
17 Julie Brill, Assistant Attorney General
Paulette Thabault, BISHEA Commissioner
18 John Hollar, MVP Lobbyist
Chuck Storrow, ExpressScript Lobbyist
19 Bill Smith, Lobbyist
Madeline Morgan, VT Medical Society
20 Steven Kimbell, IMS Lobbyist
21
22 Transcribed By:
23 Vicki L. Lima, Court Reporter
Notary Public, State of Florida
24 Esquire Deposition Services
Boca Office Job #887530
25 Phone - 800.357.6952

1 PROCEEDINGS
2 ---
3 CD 52/TRACK 1:
4 FEMALE ATTENDEE: I guess my question for the
5 -- is -- I know that, John, you said that one of
6 the -- the South Dakota examples here were the --
7 not a good example, because it saved $800,000, but
8 there were other -- they negotiated in new
9 contracts --
10 MS. LATANICH: Right.
11 FEMALE ATTENDEE: -- and the State of Vermont
12 did the same thing last year, negotiated into new
13 contracts and saved a lot of money.
14 MS. LATANICH: Which is why a client, a user, a
15 customer, would negotiate a new contract --
16 FEMALE ATTENDEE: To get a better price.
17 MS. LATANICH: -- which is why --
18 FEMALE ATTENDEE: Right.
19 MS. LATANICH: -- we, at Medco, don't have all
20 the contracts, and it's kind of tricky, because
21 other people need to give --
22 FEMALE ATTENDEE: Underbidding.
23 MS. LATANICH: Yes.
24 FEMALE ATTENDEE: So do we have any -- has
25 anybody had this long enough to look at any kind of

1 a trend so that we know that isn't just the
2 negotiating of a new contract, but then in fact
3 they have this almost always, you know, while in
4 the contract?
5 FEMALE ATTENDEE: Well, from the time the
6 (inaudible) has been passed, like (inaudible)
7 would send in an appeal, then it's all been
8 settled, (inaudible) shorter.
9 MS. LUNGE: Maine passed the law quite a long
10 time ago, but it was enjoined pending the lawsuit,
11 and that just got finalized.
12 FEMALE ATTENDEE: Okay.
13 MS. LUNGE: So the only state was -- I think it
14 was West Virginia, but maybe it was one of the
15 Dakotas -- that's the longest --
16 FEMALE ATTENDEE: Okay.
17 MS. LUNGE: -- that has been implemented, and I
18 think that's only less than a year so --
19 FEMALE ATTENDEE: So we can't say that those
20 with it have consistently been able to negotiate
21 better contracts than those without to save time?
22 SENATOR LYONS: The committee has not seen
23 these (inaudible). This argument that the
24 (inaudible) increased costs --
25 MS. LUNGE: Right.

1 SENATOR LYONS: -- where is the money? I have
2 not seen it.
3 MS. LUNGE: In those states, we didn't see that
4 either.
5 FEMALE ATTENDEE: Okay. Then I --
6 THE CHAIR: Let's leave this open for -- for
7 more information here. We're not hearing the
8 (inaudible). (Inaudible) particularly the AG's
9 Office agreeing -- let's go to the other -- let's
10 go to (inaudible) -- the next section where there
11 might not be such agreement. Is that the next one
12 up?
13 MS. LUNGE: I think the -- do you mean the
14 prescription drug cost containment, or did you want
15 to go through any of the detailed recommendations
16 in this section, or leave that for now?
17 THE CHAIR: I don't know. I was actually
18 thinking of the --
19 MS. LUNGE: You were thinking of the
20 enforcement provisions?
21 THE CHAIR: Yes.
22 MS. LUNGE: Yeah, the enforcement provisions --
23 THE CHAIR: (Inaudible) I'm getting ahead of
24 us, right?
25 MS. LUNGE: Just a tiny bit.

1 THE CHAIR: Why don't we -- why don't we keep
2 on your track instead of letting me wander?
3 MS. LUNGE: Okay.
4 THE CHAIR: (Inaudible).
5 MS. LUNGE: So I want to just point out a
6 couple of suggestions. First, on Page 15 there's a
7 comment that the (inaudible) provision, meaning
8 unless the contract provides otherwise, was
9 supported. There was also a comment on the
10 standard in A-1 that this -- that the prudent PBM
11 standard -- there was some concern that it would
12 cause legal confusion, so I just wanted to
13 highlight those specific comments about those
14 specific sections.
15 THE CHAIR: Well, you're our legal adviser
16 here. What do you think?
17 MS. LUNGE: I --
18 THE CHAIR: And I don't -- if you don't feel
19 like answering any of these questions --
20 FEMALE ATTENDEE: Yeah.
21 THE CHAIR: -- you aren't the advocate for
22 this. You're just trying to (inaudible) --
23 MS. LUNGE: Absolutely.
24 THE CHAIR: -- (inaudible) illuminate here, so
25 -- but if -- so if you are uncomfortable, let me

1 know, but I (inaudible).
MS. LUNGE: Okay. That's fine.
MALE ATTENDEE: (Inaudible).
4 MS. LUNGE: I think that -- I think what the
5 expression of the legal confusion was, is that the
6 -- ExpressScript was thinking of it, that they see
7 these as contractual terms, and the duty in here is
8 higher than what a strict contractual review would
9 normally require. I think that if there were
10 enforcement of this kind of thing -- the court is
11 going to be look -- at any contract, the court is
12 going to be looking at the actual terms of the
13 contract. So I -- you know, I don't know whether
14 or not a court would find this confusing, but when
15 I used to work at the courts, we would look at the
16 language in the contract. And I would do that
17 whether it was a regular old contractual obligation
18 or not. So I think in this case, because you are
19 saying unless the contract provides otherwise, that
20 this duty would probably be spelled out in the
21 contractual terms. So the court would read these
22 words, and that should trigger to the court "oh,
23 this is a different duty." But, you know, that's
24 just based on my knowledge of how the court -- at
25 least the Vermont trial courts would approach a

1 contractual dispute, in terms of actually looking
2 at the language in the contract. So I don't think
3 I've said all that, one way or the other, but --
4 THE CHAIR: I'm still confused, I'm sorry.
5 MS. LUNGE: So, I mean, I think it is a
6 different standard than a normal contract dispute.
7 I don't know that that would necessarily cause
8 confusion, because I think the court would be
9 looking at the law, and the contract terms when
10 they were dealing with the contractual dispute.
11 THE CHAIR: So what could we do to eliminate
12 any questions? Yes, Julie?
13 MS. BRILL: I think the Vermont Commissioners
14 (inaudible), and I have to comment here. In
15 Vermont we actually have a fairly high legal
16 standard for care between, you know, contracting
17 for -- it's one of the highest standards in the
18 industry. I would know if the ExpressScript's
19 comment would specifically focus on the law when it
20 was making its comment, but this isn't standard of
21 prudence and care that is required. But to be
22 honest with you, I'm not sure how different it
23 would be from the current legal standard that the
State of Vermont required (inaudible). So was it
treacherous conduct that -- in relation to Vermont

1 law, or in relation to the national contracting
2 (inaudible) National (inaudible)?
3 THE CHAIR: I don't know. It was not --
4 somebody was definitely testifying to that.
5 MS. BRILL: So the only -- so I just want to
6 inform you this maybe a slightly higher standard
7 than what we have currently, but we always had a
8 very high standard (inaudible).
9 THE CHAIR: So if we didn't want to make it
10 higher, if we want to just leave things the way
11 they are, which you say is a high standard, how
12 would we rewrite this?
13 MS. BRILL: I'm trying to remember the terms in
14 there for the current case law.
15 FEMALE ATTENDEE: We can look up -- a current
16 court case.
17 THE CHAIR We can look that up. I don't think
18 you want to --
19 MS. BRILL: We can prepare.
20 THE CHAIR Yeah, I guess I'm not interested in
21 following a new legal ground (inaudible), but just
22 -- I don't want to make it a lower standard than we
23 already have.
24 MS. BRILL: Clearly.
25 THE CHAIR But if you can draft language that

1 might alleviate that one concern, and it relieves
2 us with our already high standard, I think that
3 would be a fair resolution of this.
4 MS. BRILL: I can certainly use the different
5 (inaudible) with the contractual law that you're
6 referring to, or are you referring to a contractual
7 health care law with insurance?
8 MS. LUNGE: When I'm referring to contract law,
9 I'm referring to case law.
10 MS. BRILL: Case law.
11 MS. LUNGE: Not statutory law.
12 MS. BRILL: Right. And so if having been here
13 makes it stronger because you're referring to that
14 rule? It would be in the statute, and about health
15 care contractual contracts, right?
16 MS. LUNGE: You mean why would we want a higher
17 standard in this area? Is that the question? I'm
18 not sure of your question.
19 MS. BRILL: I guess this maybe a higher
20 standard because it's in -- it would be incurring
21 the specific health care contracts.
22 MS. LUNGE: Well, and again, this was based on
23 the Maine Law. So Maine would be -- whatever their
24 legal standard, which I don't know. It may be
25 different than ours. It sounds like it probably

1 is. So it could be that what Maine was looking
2 when they originally passed this language, was
3 because this is a complicated, complex area, they
4 wanted the person who had the information to have a
5 higher duty than they would otherwise, because of
6 the complexity of it. That's my guess on what
7 Maine was thinking, or would have been thinking by
8 including a higher standard than their current law.
9 THE CHAIR Could you two get together and see
10 if you could come up with something like --
11 MS. LUNGE: Sure.
12 THE CHAIR -- create -- I'm afraid we're
13 creating some unnecessary confusion with this, and
14 an unnecessary issue. It doesn't seem to be an
15 important issue to --
16 MS. BRILL: We can get together and work on
17 that.
18 MS. LUNGE: Yep.
19 THE CHAIR Okay. Thank you.
20 MS. LUNGE: Okay. Page 18 there was -- the
21 next section that I had commented on was the
22 enforcement section. I will also mention that I
23 was going to rewrite a little bit of C because it
24 -- I think just the sentence structure is a little
25 bit deceiving. So I was going to try and make that

1 a little less deceiving, but that would not change
2 contents. That would just change clarity,
3 hopefully.
4 THE CHAIR: Okay. Clarity is good.
5 MS. LUNGE: Clarity is good.
6 THE CHAIR So we're heading into the --
7 MS. LUNGE: Enforcement.
8 MS. LUNGE: -- enforcement --
9 THE CHAIR: -- (inaudible).
10 MS. LUNGE: Yeah.
11 THE CHAIR: But I mean --
12 MS. LUNGE: Go ahead.
13 THE CHAIR: But that's -- don't you think that
14 maybe before we get into that one, let's take a
15 break for some fresh air?
16 FEMALE ATTENDEE: Oh, great.
17 THE CHAIR: For like maybe -- is that okay?
18 FEMALE ATTENDEE: Five minutes?
19 THE CHAIR: Maybe five -- yeah, five minutes.
20 And if we need ten, it will be okay. Don't make it
21 more than ten, please?
22 FEMALE ATTENDEE: Okay.
23 THE CHAIR: Which it's 3:30 by this clock.
24 (A recess was taken:)
25 CD NO. 52/TRACK 2:

1 THE CHAIR: All right. We are continuing on
2 Section 7, and this is the feature match for the
3 afternoon.
4 FEMALE ATTENDEE: This is an easy one. I tried
5 to (inaudible).
6 THE CHAIR: Okay. Robin, could you tell us
7 about the issue in front of us, and --
8 MS. LUNGE: Yes.
9 THE CHAIR: -- and we will let the -- we will
10 let the two effective parties have their say, and
11 then we'll figure out what we want to do.
12 MS. LUNGE: So one of the -- there are two
13 issues in the enforcement section, the first one --
14 THE CHAIR: Which is the bottom of Page 18.
15 MS. LUNGE: Yes, the bottom of Page 18, Section
16 9473.
17 THE CHAIR: Okay.
18 MS. LUNGE: There was some testimony from
19 BISHEA that they would prefer an alternative joint
20 enforcement mechanism to what was in this version
21 of the bill, and some testimony from the Attorney
22 General's Office that they were okay with this
23 version, although they were happy to work BISHEA to
24 talk about the issues. And I think that's as
25 detailed as we got into it really. So do you want

1 to -- do you want them to speak to that issue now,
2 or do you want me to --
3 THE CHAIR: I think so.
4 MS. LUNGE: Okay.
5 MS. BRILL: My understanding was that there
6 were also some parties -- some PBMs who said that
7 they were concerned about A.G. enforcement.
8 MS. LUNGE: No, that's true. That second --
9 THE CHAIR: That's correct.
10 MS. LUNGE: -- that's the second issue.
11 MS. BRILL: So let's just lay everything on the
12 table.
13 MS. LUNGE: Yep.
14 THE CHAIR: Right.
15 MS. BRILL: And Paulette and I -- the
16 commissioner (inaudible) and I just had a brief
17 conversation. I think we're fine with this. We're
18 both fine with this language as it is. And I think
19 the fact that the PBMs don't want A.G. enforcement
20 is a good indication that you ought to have A.G.
21 enforcement.
22 THE CHAIR: Why?
23 MS. BRILL: Because I think they're --
24 THE CHAIR: And I don't want the A.G. to come
25 in here and enforce any of our state rules, that

1 doesn't mean it's a good argument (inaudible).
2 MS. BRILL: Well, maybe we should. I think
3 this is an industry --
4 THE CHAIR: You're not helping.
5 FEMALE ATTENDEE: Now, you're on a slippery
6 slope.
7 MS. BRILL: In this industry we have, I think,
8 several years, if not more, of experience. We know
9 this industry really well, both from a consumer
10 perspective and a (inaudible) perspective. I don't
11 think there's anyone as well educated in this
12 industry as the attorney general in the state
13 government (inaudible).
14 In terms of the -- the OVHA -- the (inaudible)
15 issues that apply in this section or area, and
16 that's why I was saying -- I perhaps was too rude,
17 and I apologize for that --but I was saying I think
18 it shows that we have been respected in the area.
19 We have one consent judgment under our belt. As I
20 mentioned to you we were also deemed (inaudible) to
21 other major (inaudible) now, and I think they find
22 this to be expected, which is what they don't want.
23 THE CHAIR: So where is your enforcement
24 authority now, and what goes back to it?
25 MS. BRILL: Our enforcement -- I think what

1 this does -- okay. Our enforcement authority right
2 now is the Consumer Protection Act, or the consumer
3 fraud Act is what we call it. What this provision
4 adds, is because you are adding substantive
5 provisions, it will make clear who can enforce the
6 new provisions that you're adding. And it makes
7 clear that it could be joint enforcement as spelled
8 out in this section, the appropriate section,
9 between our office and BISHEA, and we think that's
10 appropriate.
11 THE CHAIR: I'm sorry, what's -- what are you
12 going to (inaudible) for this?
13 MS. BRILL: I'm sorry, if I wasn't clear.
14 THE CHAIR: No, I was taking notes on the first
15 thing you said, that's why.
16 MS. BRILL: It's going to make clear -- I think
17 it will make clear that the new substantive
18 provisions you're adding shall be jointly enforced
19 by our office and by BISHEA. In other words, if
20 you were (inaudible) on enforcement, it would be
21 unclear what entity would enforce the new
22 substantive provisions we're adding in a new
23 contract. It's making clear that our office along
24 with BISHEA enforces the new law.
25 THE CHAIR: And the new law is the disclosure

1 requirement?
2 MS. BRILL: That's right.
3 MR. CHAIR: But why --
4 FEMALE ATTENDEE: (Inaudible).
5 MS. BRILL: The disclosure and contract would
6 be -- oh, yeah, I got a notee, someone had
7 testified that we don't -- our office doesn't get
8 involved in business disclosure issues, and that's
9 just wrong. I mean our (inaudible). As I
10 mentioned -- I think I mentioned (inaudible), we do
11 protect businesses when they're acting (inaudible)
12 as well as consumers. And we have lots of case law
13 where we're out to protect -- we're out there --
14 cases and investigation and settlements and
15 litigation where we're protecting primarily
16 businesses.
17 THE CHAIR: So does the enforcement provision
18 right now, or the enforcement authority on
19 contracts between the State of Vermont and the PBM,
20 or other entities like MPC and their PBMs?
21 MS. BRILL: Yes.
22 THE CHAIR: And they're contracts?
23 MS. BRILL: Depending upon the issue. We can't
24 go -- our authority is not simply to enforce the
25 contract. We would have to show that one of the

1 parties are engaging in activities that rise to the
2 level of a protection violation. So it's not --
3 it's not -- and again, I don't want to get too
4 technical. It's not that we can just enter into
5 litigation between two contracting parties and say,
6 "here's the person who's right, and here's the
7 person who's wrong." We don't engage in that kind
8 of enforcement.
9 THE CHAIR: Right. What I'm getting at, this
10 wouldn't be -- this wouldn't be getting you into a
11 new area --
12 MS. BRILL: No.
13 THE CHAIR: -- in terms of contractual
14 relationships --
15 FEMALE ATTENDEE: Absolutely.
16 THE CHAIR: -- between the two parties involved
17 here.
18 MS. BRILL: We already have authority. In
19 other words, if you do not enact this law, if you
20 do not enact this section, we have authority to
21 regulate PBM. But with the credit -- if you
22 dropped out this section of enforcement, I think
23 what would be a good question, or implying would be
24 "well, who would enforce these substantive
25 provisions?" You have to have something on

1 enforcement.
2 SENATOR KITTELL: I think I want to ask a
3 question.
4 MS. BRILL: And I think that that is less
5 appropriate (inaudible).
6 THE CHAIR: Go ahead.
7 FEMALE ATTENDEE: (Inaudible).
8 THE CHAIR: Go ahead. No, unless -- Sara is in
9 line first.
10 SENATOR KITTELL: So if I read this it
11 indicates that any violation in this subchapter
12 shall be considered a violation of the Vermont
13 Consumer Fraud Act itself.
14 MS. BRILL: Right.
15 SENATOR KITTELL: So that's pretty strenuous --
16 I mean that's pretty rigorous --
17 MS. BRILL: It's the same as our regular --
18 SENATOR KITTELL: Why not -- why not certainly
19 -- why not certainly say may, maybe, so that
20 there's some discretion in that in your office as
21 well as in negotiations with BISHEA --
22 MALE ATTENDEE: Well, our problem --
23 SENATOR KITTELL: -- when it reaches the level
24 of consumer fraud violation?
25 MS. LUNGE: I don't think by saying "shall"

1 versus "may" makes a difference. Either it
2 violates, or it doesn't. And they would make that
3 decision, regardless of whether you say "shall" or
4 "may." What this says is that it is a violation of
5 the Consumer Fraud act, if there's a violation at
6 all.
7 MS. BRILL: That's right. In other words, this
8 "shall" -- we already have a tremendous amount of
9 (inaudible) through discretion. If there's a
10 voluminous violation of the law -- I mean I think
11 I'm getting at what the substantive provisions are
12 --
13 SENATOR KITTELL: Yes. Yes, you are.
14 MS. BRILL: -- voluminous violations of the
15 law, we don't prosecute every, you know, voluminous
16 violation that's out there. We don't have the
17 staff. We don't have the time to do that. So what
18 we're looking at is, typically speaking, aesthetic
19 problems that affect a number of entities, whether
20 they're individuals, consumers or businesses.
21 That's the type of work that we do.
22 THE CHAIR: Your turn.
23 FEMALE ATTENDEE: So I think that what I would
24 say is that we -- it's true that that (inaudible)
25 and we've had, in fact, many conversations with

1 BISHEA (inaudible) about this enforcement, and we
2 -- I would just say that BISHEA really does believe
3 that we are the primary ring leaders of health
4 insurance, and PBMs are regulated through staff
5 (inaudible). We have marketing relations. We have
6 (inaudible). We have all kinds of (inaudible) --
7 we mentioned the bills. We have participated
8 actively in regulations of the enforcement of the
9 law. That being said, we are -- I don't want to
10 say we're not necessarily in agreement, but we are
11 willing to accept the (inaudible) in enforcement of
12 the PBM.
13 THE CHAIR: Now, let me ask you, without this
14 language, how would you enforce if you can't
15 prosecute? What would your enforcement authority
16 be? What would your enforcement options be?
17 FEMALE ATTENDEE: You don't need to prosecute
18 to enforce. We have a number of administrative
19 proceedings. We have the authority to hold a
20 license, pull a sign. There are a whole host of
21 options available for that kind of enforcement that
22 we could do. So we don't need to be able to
23 prosecute.
24 THE CHAIR: Okay. But you're willing to accept
25 this language which shares enforcement?

1 FEMALE ATTENDEE: Somewhat reluctantly, yes.
2 THE CHAIR: So somewhat reluctantly --
3 (inaudible). I mean either you do or you don't? I
4 mean it's something -- I mean (inaudible).
5 FEMALE ATTENDEE: No, I (inaudible). As I
6 said, I think that BISHEA should be the primary
7 regulator over (inaudible). I don't think that
8 it's helpful to have another agency (inaudible)
9 (inaudible).
10 THE CHAIR: Is there a way you have a --
11 FEMALE ATTENDEE: Well, we never reached an
12 agreement (inaudible).
13 THE CHAIR: I'm not hearing what you're saying,
14 but go ahead. Maybe you can clarify.
15 FEMALE ATTENDEE: Yes. What is it that
16 provides this (inaudible)? Is it that your office
17 will be required to provide information directly to
18 the A.G.'s office or -- I'm seeing a head shaking
19 no -- but that information would be available from
20 the PBMs and the insurance companies?
21 FEMALE ATTENDEE: I think our position is that
22 the insurance companies should have one regulator,
23 not two. And that (inaudible) regulate
24 (inaudible).
25 FEMALE ATTENDEE: Okay. Are there more than

1 two definitions of consumer fraud? And how does
2 that differ from what the -- just to understand
3 your concerns, what is it that you are looking at
4 that is different from the regulatory rule that
5 BISHEA plays in all of this?
6 MS. BRILL: That latter question is a really
7 good question, and this is kind of, you know, where
8 I've been trying to discuss -- what I've been
9 trying to discuss with Commissioner Taebo and Herb
10 Olsen, and to be fully fair to you, I mean, we all
11 have lately had a lot of time to really focus in on
12 this. There are many insurance companies that are
13 the clients of PBM, but there are many, many
14 companies that don't go through insurance companies
15 to contract with PBMs. They are individual
16 companies, the State of Vermont, for instance.
17 There can be other entities that have a direct
18 contract with the PBM, and they're not operating
19 through insurance companies.
20 And the reason why I think it's important that
21 we have this dual authority, again, BISHEA's
22 perspective is to the extent that the PBM offering
23 as an agent of the insurer, like MVP, or Cigna,
24 then BISHEA wants that overarching authority over
25 the insured and all of its agents.

1 Our authority is really where you've got a PBM
2 dealing directly with the client, and there is no
3 insurer as an engineer. Does that make sense to
4 you?
5 SENATOR KITTELL: Yes, that makes a lot of
6 sense. But at the same time we could authorize
7 enforcement provisions to BISHEA for those PBMs?
8 MS. BRILL: You could, but -- you certainly
9 could. I think -- you know, when -- after we talk
10 about that (inaudible) who PBMs are dealing with --
11 which sometimes they're operating through an
12 insurer, and sometimes they're not, they're
13 operating directly with the insurance company -- I
14 would think that BISHEA -- of course, they'll speak
15 for themselves -- will agree that it's really the
16 former category that they're most concerned about,
17 when the PBMs ar operating as an agent of an
18 insurer. But when it is a stand alone relationship
19 with a company, which many, many of these
20 relationships are, I -- in our conversations I had
21 with (inaudible), BISHEA wasn't concerned about
22 that. It was really when the insurer was involved,
23 that that's where their concern was. But again --
24 FEMALE ATTENDEE: I --
25 THE CHAIR: Could you --

1 MS. BRILL: -- and that's the reason for the
2 dual enforcement.
3 THE CHAIR: -- could you write this so that
4 you're not through the insurance companies, or
5 anybody else?
6 MS. BRILL: (Inaudible). I mean I think that's
7 what the language is.
8 FEMALE ATTENDEE: Well, (inaudible).
9 THE CHAIR: Robin, do you agree with that --
10 MS. LUNGE: Well, I think that --
11 THE CHAIR: -- or do you want to agree, so we
12 have a memorandum of understanding to try to
13 clarify this (inaudible)?
14 MS. LUNGE: -- the part that I would also, I
15 think, add to the discussion so far, is that the
16 remedies that you have under BISHEA enforcement
17 versus consumer fraud enforcement might be
18 different as well.
19 FEMALE ATTENDEE: Yeah.
20 MS. LUNGE: So for a BISHEA enforcement, as the
21 commissioner had testified, it would be possibly --
22 well, in this case they're not licensed, so I don't
23 know that they're -- the PBM, there's no license to
24 revoke, but it would be fine for that type of
25 administrative --

1 THE CHAIR: The insured.
2 MS. LUNGE: -- the insured --
3 FEMALE ATTENDEE: (Inaudible)
4 MS. LUNGE: -- because it does have licensure.
5 So the insurer's license could be revoked if
6 they're, of course, insured. Under the Consumer
7 Fraud Act, it's not that big type of remedy. It
8 would be money damages, possibly an injunction --
9 FEMALE ATTENDEE: Restitution.
10 MS. LUNGE: -- restitution.
11 THE CHAIR: And you need that for the insurance
12 companies, or for the other consumers of the PBM
13 party?
14 MS. BRILL: You know, the truth is there's so
15 much work out there in terms of enforcement. I
16 mean if what we want to have is a clear carve-out
17 when there's an insurance office, BISHEA, and then
18 there's not, I think that's probably going to leave
19 BISHEA with a much lower percentage in it matters.
20 If that's what you're looking for, then
21 (inaudible).
22 THE CHAIR: No. I guess what I'm looking for
23 is to stay out of the insurance matters, which you
24 will have dual enforcement on all the others so
25 that they don't carve-out that piece -- or do you

1 do it for everybody?
2 MS. BRILL: I'm not sure why they would need
3 BISHEA enforcement, or any BISHEA Rule when there
4 is no insurer involved.
5 MS. LUNGE: If they're not regulated
6 (inaudible) --
7 MR. BRILL: Right.
8 THE CHAIR: (Inaudible).
9 MS. LUNGE: -- so they have no current statute
10 --
11 MR. BRILL: Right.
12 MS. LUNGE: -- for a (inaudible).
13 THE CHAIR: Go ahead, you've been eager here.
14 MS. STORROW: Well, yes, thank you. My name is
15 Chuck Storrow, and this is (inaudible), and we
16 represent ExpressScript. And the point I want to
17 make is that while (audible) for the consumer, it
18 only does so with respect to (inaudible) services
19 that it purchases for its own use as opposed to its
20 resale. And, you know, if you -- if that convinces
21 (inaudible) philosophy that if you're a business,
22 and you're buying something that you're going to
23 turn around and sell, then you don't need the
24 protection of the Consumer Fraud Act Statute when
25 you buy that, because you're -- you're offering in

1 a different level, or plateau than when you're
2 consuming those services yourself.
3 And so when you're departing from that sort of
4 distinction, you know, big boys and girls can look
5 out for themselves when they're buying and
6 purchasing goods and services for the purpose of
7 reselling them versus when you use them for your
8 own internal consumption.
9 And certainly in a case where an insurance
10 company that has a prescription drug benefit, but
11 is using -- for people -- who is using a PBM to
12 help them deliver that, then really the (inaudible)
13 of services is making them, packaging them through
14 their insurance fraud and then reselling them.
15 MS. BRILL: I disagree. I don't think that's
16 the appropriate characterization. In fact, it is
17 evident how complex this transaction is. I do not
18 think that this is going to be the exception that
19 Chuck is referring to, which is that if there's a
20 product that the business is buying for resale,
21 that business would not inflict the percentage of
22 the Consumer Fraud Act.
23 I do not think that this is being purchased for
24 resale. It is a service being provided to
25 employees. It is not providing it to customers.

1 It's providing it to employees, so I disagree with
2 his characterization. He is correct on the law.
3 But I disagree that in this context the PBM
4 prescription drug services are being purchased for
5 resale, because that would be resale to the
6 consuming public.
7 SENATOR KITTELL: So -- okay, while I'm
8 thinking here, the consumer fraud enforcement
9 provision that would be here would be to enforce
10 what we have on the previous pages --
11 MS. BRILL: Correct, exactly.
12 SENATOR KITTELL: -- when I look at that, I'm
13 looking at the financial terms and arrangements for
14 contractual obligations between a PBM and the
15 client, whoever the client happens to be, whether
16 it's an insurance company, or others, and --
17 MS. LUNGE: It would actually be more limited
18 than that, because remember this is basically
19 disclosure. So it would be disclosure that --
20 SENATOR KITTELL: It's part of the price
21 disclosure --
22 MS. LUNGE: -- that contract term was
23 available.
24 SENATOR KITTELL: Right, that's it.
25 MS. BRILL: Which is the kind of --

1 SENATOR KITTELL: Let me finish.
2 MS. BRILL: Oh, I'm so sorry. I'm sorry.
3 SENATOR KITTELL: So it's a very limited part
4 of the relationship between the two organizations,
5 whatever they are, and -- but it isn't -- I lost
6 Robin -- this is about the actual drugs that are
7 being delivered to the individual consumer.
8 MS. LUNGE: Because what this would now provide
9 is notice that certain contract terms are
10 available, I think the enforcement is whether or
11 not that notice was provided.
12 SENATOR KITTELL: Okay.
13 MS. LUNGE: So that's all that this provision
14 now does, so --
15 THE CHAIR: But why is this so important and
16 difficult? It seems like it's a rather -- the
17 section is rather limited, notice of provision.
18 They provided the notice, or they didn't. Why
19 would there be consumer protection, consumer fraud
20 protection on that? What level of protection would
21 that provide that BISHEA cannot already provide?
22 Really we're only talking about whether something
23 has been disclosed or not.
24 MS. BRILL: Right, whether they violated the
25 specific vision. Again, BISHEA doesn't yield its

1 vast majority of the PBM relationships that I'm
2 aware of where no insurer it involved.
3 THE CHAIR: Okay. We're back to that?
4 MS. BRILL: Well, you're creating this
5 statutory obligation. You need to have some
6 reinforcement, I believe. And if it should be said
7 that you're going to have enforcement, you have a
8 choice, and it's -- you know, we have been
9 advocating and working with BISHEA to argue that it
10 ought to be (inaudible) involved, and it should be
11 our office.
12 THE CHAIR: But that's suggesting to me that
13 those contracts have no -- there's no enforcing it
14 if they don't involve an insurance company. I'm
15 getting confused.
16 MS. BRILL: Oh, individually --
17 THE CHAIR: I'm spinning around and around in
18 circles here.
19 MS. BRILL: Well, when you say "enforcement," I
20 mean, obviously individual companies are going to
21 contract with PBM, and go to court and say PBM
22 violated the contract, okay? But that's not the
23 same thing as saying that they can go to court and
24 can say, "we didn't get notice as required under
25 the provision." Those are two different --

1 THE CHAIR: That's a violation of -- not a
2 (inaudible) violation -- a contract violation of
3 the law.
4 MS. BRILL: That's right.
5 MS. LUNGE: Right.
6 MS. BRILL: And that's what our rule is.
7 SENATOR KITTELL: But how would your
8 municipality, the A.G.'s office, approach this
9 without this provision? I mean wouldn't you still
10 have an obligation under the Consumer Fraud Statute
11 to at least audit some of the contracts that exist
12 to determine whether or not the obligation was
13 being met?
14 MS. BRILL: We are not allowed to just audit
15 private relationships without some understanding
16 that there is a potential violation. In order to
17 investigate, we have to have a reasonable belief
18 that there's a violation of law. So we just can't
19 go out and, you know, ask private parties for all
20 their contracts.
21 SENATOR KITTELL: Okay. Then let's take it the
22 next step. If this provision were here, then how
23 would you go without ensuring that all those
24 provisions and obligations were met? Would you ask
25 to have on file all the contracts from the PBMs in

1 the state?
2 MS. BRILL: No, we would probably have waited
3 for some kind of complaint.
4 SENATOR LYONS: So what's the difference? I
5 mean so what's the difference, because it sounds to
6 me like without this provision you would wait for a
7 complaint, and with this provision you would wait
8 for a complaint?
9 MS. BRILL: Without the provision, and assuming
10 you've created a new statutory law, it would give
11 question as to whether we could enforce the new
12 statutory obligation to disclose without the
13 enforcement provision.
14 MS. LUNGE: So they would go to court, file a
15 Consumer Fraud Act complaint, and then the court
16 would decide is this something that could be
17 enforced by the A.G. under the Consumer Fraud Act
18 or not, and the court could go either way.
19 SENATOR KITTELL: Or the A.G. could take that
20 information to BISHEA?
21 MS. BRILL: Assuming that insurers were
22 involved, I'm sure we would.
23 SENATOR KITTELL: Well, and if -- but if the
24 enforcement provision in here for PBMs were within
25 BISHEA, then you could carry your information to

1 BISHEA, and they would enforce it.
2 MS. BRILL: We said if there were no insurer
3 involved, it's not an actual BISHEA issue. But
4 you're correct, we could.
5 FEMALE ATTENDEE: (Inaudible)
6 MS. BRILL: I mean we could.
7 SENATOR KITTELL: But I mean it could be
8 something new. We're talking about doing something
9 new and different here.
10 FEMALE ATTENDEE: Well, we do have -- I mean we
11 are registering all PBMs. I wouldn't say that we
12 are without any connection at all to do that. I
13 don't want to, you know, have you think that
14 (inaudible). We do absolutely regulate the health
15 insurers, and we actually register the PBMs. So we
16 have a connection (inaudible), and we regulate that
17 and (inaudible).
18 THE CHAIR: So you talked, and you say you
19 reluctantly accept this. Is there anything you
20 want to do differently with this given the
21 agreement that you will share enforcement? Is
22 there --
23 FEMALE ATTENDEE: Well --
24 THE CHAIR: And before I keep talking, we have
25 another whole day. So if you want to keep talking

1 and think this through, that's fine. Any other --
2 any thoughts from the committee members? I love
3 the way you two you are looking at each other, it's
4 like what's going on here?
5 FEMALE ATTENDEE: I really have got to confirm
6 that the committee -- you didn't get the -- let me
7 see, where is my quotation that -- on something
8 that is going to do with that -- it opens that door
9 (inaudible) that BISHEA for everyone (inaudible)
10 and adds further complications.
11 THE CHAIR: I'm going to say, quite frankly, if
12 you two are in agreement, I'm feeling like we can
13 keep it in. If you are in disagreement, then I
14 think this is something more to think about, or if
15 anybody else has something that's more compelling
16 that they want to tell us? (Inaudible)?
17 FEMALE ATTENDEE: I hate to say that it will be
18 a more compelling authority (inaudible). I mean
19 because I'm not a lawyer, I feel a little
20 (inaudible). And I'm not a lawyer, I will admit.
21 But our standpoint, and I really would like to say
22 that Medco didn't -- hasn't said they don't support
23 this, because we are afraid of the A.G. (inaudible)
24 because they have been supportive (inaudible). And
25 we just think the dual jurisdiction -- which is a

1 tongue twister -- is unnecessary, because this
2 language, I think, has been on the PBM for an
3 unfortunate amount on time -- it was last year that
4 we started registering -- we promulgated the rule
5 to start registering the PBMs, so that's been done,
6 and we have a new level of registration and
7 jurisdiction and BISHEA now.
8 We have been under the impression that the
9 attorney general doesn't have an awful lot of tools
10 already to do everything that they contemplate on
11 doing. So we are the company under the consent
12 agreement, and she has got two more under consent
13 agreements. I don't know what more tools they
14 need. So that's our confusion on it. But to be
15 real safe and simple, we think that it's effective
16 without the statute.
17 THE CHAIR: Well, what about the concern that
18 --
19 FEMALE ATTENDEE: That the --
20 THE CHAIR: -- they need the authority for
21 those that are not -- those clients of the PBM that
22 are not insured?
23 FEMALE ATTENDEE: Under the consumer protection
24 statute, I think the A.G.'s office can go after
25 anyone that -- it may not work for non-consumers --

1 but I mean just about any area. I've had a lot of
2 --
3 THE CHAIR: But this is --
4 FEMALE ATTENDEE: (Inaudible).
5 THE CHAIR: Right, but this is new. I mean do
6 you disagree with that?
7 MS. BRILL: I do disagree with it, and I think
8 I agree with where I think you're going, Senator,
9 with things in this respect.
10 THE CHAIR: (Inaudible).
11 MS. BRILL: To be (inaudible) of this body, and
12 enact a new statutory provision, if we try to
13 enforce this, there will be a question in court as
14 to what your intent is as to who should enforce
15 this. If you're saying -- sitting here saying, "we
16 have all the authority we need," then it doesn't
17 hurt to clarify that, yes, we have the authority
18 also to enforce -- if you were to take it out of
19 the statute -- excuse me -- out of the the bill at
20 this point a question would be raised. The PBM
21 would raise the finance bill. They would bring in
22 your version. They would say, "look, the Senate
23 struck it. It must have been meant something," and
24 then we would have an argument -- oh, absolutely,
25 oh, this goes on.

1 MS. LUNGE: It is a rule -- it's a rule of
2 statutory interpretation that when you remove
3 something that --
4 THE CHAIR: From the draft?
5 MS. BRILL: Yes.
6 MS. LUNGE: -- from -- well, it's from law, but
7 I think they could look at the draft of legislative
8 history, and the court could decide that you meant
9 to take it out, because you meant it not to be --
10 MS. BRILL: That's right.
11 MS. LUNGE: -- consumer fraud. The court may
12 not decide that, but that's --
13 THE CHAIR: (Inaudible).
14 MS. BRILL: The way -- the way --
15 THE CHAIR: Even if we take something out, it
16 still has mean.
17 MS. BRILL: It could. It could have meaning.
18 I don't want to -- I don't want to blow it out of
19 proportion.
20 THE CHAIR: Right, I understand. I understand.
21 MS. BRILL: The argument would be there, and
22 then it would be up to the court, which could go
23 either way. So if your intent is that we should
24 have all the authority we currently have, including
25 the ability to enforce these new provisions, I

1 think that that ought to be clarified so that
2 everybody knows what the rules are going forward.
3 You don't have to have those (inaudible). That
4 would be my --
5 THE CHAIR: Okay. Any last words?
6 FEMALE ATTENDEE: I would like to have the
7 opportunity to (audible), and consider the
8 possibility of language that might carve-out the
9 PBMs that are offered through self-insurers. I
10 don't know that that (inaudible) --
11 FEMALE ATTENDEE: (Inaudible).
12 THE CHAIR: Okay.
13 FEMALE ATTENDEE: -- (inaudible), and -- but I
14 don't really want to make that --
15 THE CHAIR: Okay.
16 FEMALE ATTENDEE: -- recommendation without
17 (inaudible).
18 THE CHAIR: Is that acceptable to the
19 committee, and we'll move on?
20 THE COMMITTEE: Yes.
21 THE CHAIR: Okay. (Inaudible) -- I don't know
22 how anybody else is feeling, but leaving this the
23 way it is would probably be the alternative of
24 (inaudible).
25 FEMALE ATTENDEE: (Inaudible).

1 THE CHAIR: But that seems like that might be a
2 good solution instead of (inaudible). Okay.
3 MS. LUNGE: Okay.
4 FEMALE ATTENDEE: (Inaudible).
5 MS. LUNGE: So --
6 THE CHAIR: (Inaudible). Where are we?
7 MS. LUNGE: We are on the bottom of Page 19,
8 Section 8, 18 VSA 9421, and there were several
9 suggestions, including some specific language
10 suggestions on this Section in B, which starts on
11 Line 17, there was a suggestion that the language
12 should change to say that -- that no PBM would be
13 obligated to offer an administrative services only
14 pricing option. This section of the bill basically
15 requires the PBMs to notify health insurers that an
16 admin services only contract is available. I think
17 the question is whether Senate Finance meant -- by
18 saying that that's available, that they meant that
19 each PBM would offer that as well as notify -- and
20 I'm not sure that --
21 SENATOR KITTELL: Well, we had this -- is this
22 what you're talking about from --
23 MS. LUNGE: Yes.
24 SENATOR KITTELL: Right.
25 FEMALE ATTENDEE: Yep.

1 SENATOR KITTELL: So this is that "no PBM shall
2 be obligated to offer an administrative services
3 only pricing"?
4 MS. LUNGE: They just have to inform --
5 SENATOR KITTELL: Right.
6 MS. LUNGE: -- the clients that it may be
7 available someplace.
8 SENATOR KITTELL: Right. Okay.
9 MS. LUNGE: But I agree with it. I don't think
10 it -- I want to tell the companies what they have
11 to offer, and what they don't have to offer.
12 THE CHAIR: Right. So we make that change?
13 SENATOR KITTELL: Yes.
14 THE CHAIR: Who brought that language into it?
15 MS. LUNGE: Medco.
16 SENATOR KITTELL: Yes, I believe it was
17 (inaudible).
18 THE CHAIR: Okay. (Inaudible) proposal?
19 MS. LUNGE: Yeah, and that was the one -- I
20 actually think that's the way I read it anyways,
21 you know.
22 THE CHAIR: Okay. That just clarifies --
23 MS. LUNGE: For me it --
24 MALE ATTENDEE: So what are we taking out, the
25 (inaudible)?

1 MS. LUNGE: No, just take that out, and just
2 put that --
3 THE CHAIR: So no --
4 MS. LUNGE: -- they don't have to offer an
5 administrative services contract only. They just
6 have to say to the client "it may be available in
7 the price."
8 THE CHAIR: Right. That's fine.
9 MS. LUNGE: Yeah.
10 THE CHAIR: Next?
11 MS. LUNGE: Also in C-1 Medco -- I believe it
12 was still Medco -- suggested clarifying that the
13 periodic verification of privacy -- excuse me --
14 pricing arrangements would only apply to the
15 administrative services only contract. So they
16 would add language in C-1 to make that change. And
17 I would say right now A and B only apply under --
18 if it's in the administrative services contract C,
19 on page -- on the top of Page 21 is a broader
20 provision that would allow for periodic
21 verification, pressing arrangements, for other
22 types of pricing arrangements. So that is a
23 broader provision that would apply to other costs
24 -- to other types of contracts.
25 SENATOR KITTELL: So you don't think it needs

1 to have this added because it's already implied in
2 the bill?
3 MS. LUNGE: I don't -- I think their intent was
4 to probably remove C altogether and say "that this
5 type of verification would only be available in
6 administrative only contracts." So I think I could
7 -- I could -- I don't know that I would do it the
8 same way that they suggested, but if you wanted to
9 do that, I could clarify it. But I think you
10 clarify it by removing C, and then it probably
11 makes sense to add the "if applicable" language to
12 C-1 as a strike out of A and B so that you don't
13 have a lot of redundant language.
14 FEMALE ATTENDEE: Remove big C?
15 MS. LUNGE: Yes, big C on the top of Page 21.
16 FEMALE ATTENDEE: So you don't need A, B or big
17 C then? Is that what you're saying?
18 MS. LUNGE: It depends on whether -- who you
19 want to be able to have access to periodic
20 verification and pricing arrangements. What is
21 being suggested is that that should only be
22 available in administrative services only
23 contracts. I don't have an opinion either way.
24 That's -- you know, that's, I think, the decision
25 to make, is should this type of information to --

1 an audit be available only on administrative
2 services contracts or in all contracts?
3 Now, maybe I misunderstood the intent, but I
4 think that's -- from what their language is, I
5 think that's --
6 THE CHAIR: Could I interrupt a second?
7 MS. LUNGE: Sure.
8 THE CHAIR: This section is about registration?
9 MS. LUNGE: A is about registration --
10 THE CHAIR: Yeah.
11 MS. LUNGE: -- and B is --
12 THE CHAIR: And that doesn't exist now?
13 MS. LUNGE: BISHEA just started doing it under
14 a pilot project in the last year. So when this
15 language was originally passed, it was not
16 happening.
17 THE CHAIR: So do you still need the language?
18 MS. LUNGE: Do you have specific authorization
19 in another statute to register?
20 FEMALE ATTENDEE: (Inaudible).
21 MS. LUNGE: So I can check the multi-para
22 (phonetic) claims database, but I think the
23 registration was not a stand alone --
24 FEMALE ATTENDEE: (Inaudible) to the question
25 (inaudible) insurance (inaudible).

1 FEMALE ATTENDEE: (Inaudible)?
2 FEMALE ATTENDEE: (Inaudible). Everyone.
3 MS. LUNGE: I personally think it's a little
4 clearer to have it in it's own section than hidden
5 in the multi-para database section --
6 THE CHAIR: Right.
7 MS. LUNGE: -- but that's -- I don't think
8 adding it changes the current practice.
9 THE CHAIR: Okay.
10 MS. LUNGE: I think it just makes it a little
11 easier to find in the book.
12 THE CHAIR: Okay. So let's keep going then.
13 So B --
14 MS. LUNGE: So B says that PBMs operating in
15 Vermont would notify insurers that a quotation for
16 admin services only contract is available somewhere
17 with the change we just discussed.
18 THE CHAIR: Right.
19 MS. LUNGE: C-1 says that PBMs are required to
20 allow access by the health insurer to financial and
21 contractual information necessary to complete an
22 audit. And A and B specifically say that these
23 sections -- actually these sections -- I'm sorry, I
24 haven't looked at this in a while -- but if
25 applicable under the administrative services only

1 contract, full pass through of negotiated prices.
2 So I think these sections would probably only apply
3 to admin services only contracts, A and B.
4 FEMALE ATTENDEE: But C does apply to
5 everybody, right?
6 MS. LUNGE: C applies to everybody. What we're
7 trying to do in the whole section is to require
8 enough information that somebody could audit their
9 contract to see if what they contracted for is what
10 they're getting.
11 FEMALE ATTENDEE: Why would we not want to do
12 that if it's not an admin -- this suggests that you
13 would only provide that information if it was a --
14 MS. LUNGE: Yes, right. And I think probably
15 the PBMs would say that -- and the point of the
16 administrative services contract is to pass the
17 discount, and so that type of contract is where the
18 client would most need the --
19 FEMALE ATTENDEE: Uh-huh.
20 MS. LUNGE: -- the ability to audit. I can't
21 say that I have enough detail about the very types
22 of the contracts to know whether or not in a
23 different kind of contract somebody wouldn't want
24 to audit. I don't know. But I think that's kind
25 of an issue.

1 FEMALE ATTENDEE: Okay.
2 THE CHAIR: And this would be the auditing of
3 BISHEA?
4 MS. LUNGE: No, it would be the health insurer.
5 It would be the party -- the contractee. So me,
6 the health insurer, if I have a contract with the
7 PBM, I would be auditing you to see if our contract
8 -- if I'm getting what I think I should be getting
9 under my contract with you.
10 FEMALE ATTENDEE: (Inaudible).
11 THE CHAIR: And that gives you the information
12 you need?
13 MS. LUNGE: Right.
14 THE CHAIR: Why would I want to do that if
15 that's only where the administrative services come
16 from?
17 MS. LUNGE: I think we need to ask them,
18 because I don't know enough about the contracts to
19 speak to that intelligently.
20 MALE ATTENDEE: Well, I think it's fair in the
21 context of the administrative services only
22 contract that the health insurer be able to
23 determine whether or not -- you know, the prices
24 they're being charged for a particular drug in fact
25 -- you know, the price that the PBM -- you know,

1 that they have that information to determine, you
2 know, what's going on with (inaudible). In a
3 situation where, let's say, it's not an
4 administrative services only contract, and the deal
5 between the PBM and the health insurer is that
6 refills will cost $5. So how would the health
7 insurer figure out, you know, what the cost
8 structure for the PBM is in delivering that? It's
9 going to upset the balance of power in the
10 negotiations between the PBM and the health insurer
11 over many (inaudible) health insurer (inaudible).
12 SENATOR KITTELL: I think I got that.
13 MALE ATTENDEE: It's (inaudible). That's the
14 best I can do.
15 FEMALE ATTENDEE: There's a contract --
16 MALE ATTENDEE: (Inaudible).
17 THE CHAIR: Go ahead.
18 SENATOR KITTELL: There's a contract for --
19 that it's going to cost $5, then you're either
20 getting it for $5, or you're not getting it for $5,
21 but I as the PBM I shouldn't have to give him how I
22 got to that $5. He's already agreed to it.
23 MALE ATTENDEE: That's going to be a
24 complication with the PBM.
25 SENATOR KITTELL: Right.

1 MALE ATTENDEE: (Inaudible) $5 --
2 SENATOR KITTELL: Go off and get a new
3 contract.
4 MALE ATTENDEE: -- (inaudible).
5 SENATOR KITTELL: Okay.
6 THE CHAIR: Or try to get the (inaudible) from
7 the PBM. It would only cost them a dollar, then
8 I'm sure I'm in a better negotiating position to
9 say, "you're only paying a dollar for this --
10 MS. LUNGE: Right.
11 THE CHAIR: -- and you're charging me 5.".
12 MS. LUNGE: Right, but you've already -- if
13 you've already agreed to -- if your contract says
14 it's $5 -- I mean when you by a Jeep it says the --
15 THE CHAIR: A Jeep? I've never bought one.
16 MS. LUNGE: Okay. Well, when you buy a --
17 THE CHAIR: (Inaudible).
18 MS. LUNGE: I mean --
19 THE CHAIR: That's not a good analogy, because
20 you can go on line and figure out how much a dealer
21 pays for that car.
22 MS. LUNGE: Right.
23 FEMALE ATTENDEE: A lot of --
24 MS. LUNGE: Right, but it's the dealer -- it's
25 the -- here we're protecting the dealer, not the

1 ultimate consumer. But what this is saying is "I'm
2 using the dealer as an health insurer here." And
3 if the health insurer -- if the dealer contracts
4 with Detroit to buy it for $1,800, and then they
5 find out that it only costs Detroit $800 to produce
6 it, that's what you've contracted to buy it for. I
7 mean I don't get why -- why we should be protecting
8 the health insurance companies.
9 THE CHAIR: I'm not getting it either.
10 FEMALE ATTENDEE: (Inaudible).
11 THE CHAIR: I mean if you go into a grocery
12 store, you don't know how much the grocery store
13 purchased that box of corn flakes for.
14 FEMALE ATTENDEE: And you certainly don't know
15 how much --
16 THE CHAIR: And, hey --
17 MS. BRILL: But what happens -- just to take a
18 step back on this issue. This has been a huge
19 issue in this industry. Let me explain why BISHEA
20 is important. I actually agree with your question,
21 Senator Kittell, as to why it should be limited to
22 administrative services only contract? I don't see
23 the rational that was just described, so let's just
24 take a step back for a brief moment.
25 What happens is we have got these big companies

1 that are contracting with PBM. They're told they
2 will get certain rebates on a certain basis. But
3 the PBM historically has been very good at parking
4 money elsewhere under different tones, and it's
5 been very difficult for the clients, even the very
6 sophisticated clients, to ensure themselves that
7 they were getting all the rebates back that they
8 were supposed to be getting. Now, in an
9 administrative services only contract, that's where
10 all -- every rebate is passed through. In other
11 words, the PBM is taking a fee for service. But
12 even if you got a split kind of relationship where
13 some of the rebates go to the clients, and some
14 stay with PBM, it's very important to be able to
15 audit this. And historically some of the PBMs
16 have not allowed auditors in. Historically they
17 have said, "well, we'll only allow certain types of
18 auditors, and not others. We need to see their
19 credentials" It's been a very troublesome area, a
20 very troubled skills area. So this provision is
21 actually meaningful and is important.
22 And the reason why it's different from a
23 grocery store relationship is because the client
24 actually has a contract with the PBM which says,
25 "I'm going to get 10 percent, or 90 percent of

1 those rebates," but how do you know you're getting
2 them? See, that's why the audit is very important.
3 Now, I would argue that the administrative --
4 the administrative services fee only, whatever
5 we're calling this contract, presents the strongest
6 case for the need to audit. But even in my view,
7 the split relationships where the client is only
8 getting a portion of the rebate, in some ways I
9 want to even argue it's even more important to view
10 an audit there, because they need to see where the
11 money is being parked.
12 THE CHAIR: So the contract is written in such
13 a way that the -- that the purchaser, or the
14 service (inaudible) for the purchase of the drug --
15 MS. BRILL: Yes.
16 THE CHAIR: -- my contract says, "I'm entitled
17 to 90 percent of the rebates", or is it "I'm paying
18 $5 for the (inaudible)?
19 MS. BRILL: It doesn't -- it can be both. It
20 doesn't -- it can do either, and there are
21 contracts that do -- that (inaudible) --
22 THE CHAIR: Because $5 --
23 MS. BRILL: -- divide it and (inaudible).
24 THE CHAIR: Because $5 for the whole bill, $5
25 --

1 MS. BRILL: Correct.
2 THE CHAIR: -- that's what I paid for.
3 MS. BRILL: Correct. Correct.
4 THE CHAIR: If it's 90 percent of the rebate, I
5 don't have enough information to --
6 MS. BRILL: Correct, you need to use --
7 THE CHAIR: And it should be used.
8 MS. BRILL: It can be either. It can be both,
9 absolutely.
10 THE CHAIR: Okay.
11 MALE ATTENDEE: Again, one point I wanted to
12 make, is that if a contract provides that it's
13 going to be attached to a rebate, or sharing a
14 rebate, I have got to believe that the health
15 insurer has got to agree to that, but also with
16 there being an audit provision in the contract?
17 MS. BRILL: There are audit provisions in the
18 contract.
19 MALE ATTENDEE: And so, you know, to just lay
20 the statute on top of that, you know, is going to
21 be redundant to what people can do and can't do,
22 and in fact do to protect themselves. The FDC --
23 I've got a letter here that the FDC will do a
24 (inaudible) concerning a bill (inaudible) because I
25 just was down there a few years ago speaking on

1 this issue, and it goes to, again, to this notion
2 of (inaudible) the cost structure. And they were
3 saying, you know, there was a lot of, you know,
4 potential harm -- yes, that health insurance
5 purchasers do have to take (inaudible) into
6 consideration, because then it's going to basically
7 make the PBM (inaudible) the way they do it -- and
8 again, it all goes to the magic of the marketplace
9 (inaudible). (Inaudible) people who have -- people
10 bargaining and challenging each other on -- in
11 conflicted transactions. (Inaudible) distributed
12 copies of this letter about 70 to 80 percent faxed
13 over (inaudible).
14 THE CHAIR: (Inaudible). If you say it's
15 redundant, then what's the problem with it?
16 MALE ATTENDEE: Well, that goes back to that
17 age old question (inaudible) problem, or is it
18 redundant as to why you need it in the first place?
19 So, you know, I don't know what the answer is.
20 THE CHAIR: Yeah, okay.
21 MALE ATTENDEE: Mr. Smith, (Inaudible)
22 Goldsmith for (inaudible). If you go back and look
23 at Section B, 9421 B, and then (inaudible).
24 FEMALE ATTENDEE: What section is it?
25 MALE ATTENDEE: B.

1 FEMALE ATTENDEE: Page 20?
2 MS. LUNGE: 19.
3 MALE ATTENDEE: 19.
4 MALE ATTENDEE: It says, "(inaudible) process,
5 the health insurer, or the self-insurer employer
6 that puts out an RFB," it says I want this from you
7 PBMs (inaudible). Okay. And in that situation the
8 health insurer, or the employer makes a
9 determination for them, if they want audit rights,
10 if they want -- after -- if they want full
11 transparency, or if they just want a commercial
12 price, thank you very much, that's the best price,
13 two-year deal. So they control what they're asking
14 for.
15 Now, they might ask for audit rights, and then
16 you're going to do that. Okay. And in those
17 situations the PBM is on that contract. They know
18 what they're getting into. They price their
19 services accordingly. If you expand the audit
20 rights of C, 9421 C, you include those, you've
21 given that self-employer, that self-insured
22 employer, health insurer, another bite at the apple
23 for the audit.
24 If you limit it to the administrative services
25 only, folks, you're allowing them to perhaps what

1 had been, I think, (inaudible) as sophisticated
2 contractors. I mean the people that maybe just
3 want to (inaudible), you can give them -- this
4 gives them an audit right, okay, under C-1, A and
5 B. Okay. That might be something that they hadn't
6 thought of, and that's okay. But if you started
7 going back and saying to someone, "wait a minute.
8 Health insurer or self-insured employer, you put
9 out an R.P., the PBM did an audit, gave you a price
10 for it, maybe it had audit rights, maybe it
11 didn't," and now we're going to allow the health
12 insurers (inaudible) come in and say, "oh, I get
13 audit rights under C-1, oh, great, thanks." That's
14 not fair to the PBM who thought they knew what they
15 were contracting for.
16 SENATOR LYONS: So, in other words, you
17 negotiated your contracts, and then all of a sudden
18 there are new rules about that that will allow for
19 an evaluation, and an audit based on things that
20 you never --
21 MALE ATTENDEE: You didn't (inaudible).
22 SENATOR LYONS: -- negotiated.
23 MALE ATTENDEE: (Inaudible).
24 SENATOR LYONS: Okay.
25 THE CHAIR: I'm actually tending to agree with

1 that.
2 SENATOR LYONS: Yeah.
3 THE CHAIR: I mean, at some point you've got a
4 marketplace and a competition, and willing sellers
5 and willing buyers.
6 SENATOR LYONS: But you've got to have
7 consistency in the audit provision. I mean if
8 you're going to audit, then audit what they agreed
9 to be -- to do.
10 THE CHAIR: And this goes beyond --
11 SENATOR LYONS: Yeah, but --
12 THE CHAIR: -- (inaudible), I think.
13 SENATOR LYONS: -- but I can get --
14 MS. LUNGE: (Inaudible).
15 THE CHAIR: On the administrative only
16 contract, yes.
17 SENATOR LYONS: Yes.
18 THE CHAIR: So that's where I (inaudible).
19 MALE ATTENDEE: You know it's like we have a
20 cost accounting for every car that's still in the
21 dealership.
22 SENATOR KITTELL: Yeah, there we go.
23 THE CHAIR: I wish I had it with my
24 manufacturer, but as a consumer, it happened with
25 me, you can go online -- you know, how much I paid

1 for that car. I have people coming in and say,
2 "here's the profit I'm going to let you have, and
3 you can take it or leave it."
4 MALE ATTENDEE: Don't you think it's based on
5 that amount of sales they do, though?
6 THE CHAIR: Yeah, that you don't know until the
7 end of the month, the end of the month period.
8 MALE ATTENDEE: Right.
9 THE CHAIR: Yeah, that's true.
10 MS. LUNGE: That's why I always buy used cars
11 from people.
12 THE CHAIR: Buy cars at the end of the month.
13 FEMALE ATTENDEE: Oh, yeah, they want to unload
14 them.
15 MALE ATTENDEE: Oh.
16 THE CHAIR: Buy cars at the end of the month.
17 MS. LUNGE: And don't buy them if they're made
18 on Friday?
19 MALE ATTENDEE: (Inaudible).
20 THE CHAIR: You can't -- you can't -- yeah, you
21 buy them at the end of the month.
22 MS. LUNGE: Okay.
23 FEMALE ATTENDEE: (Inaudible).
24 MS. LUNGE: From the horse's mouth.
25 MALE ATTENDEE: (Inaudible).

1 MALE ATTENDEE: I guess the point I wanted to
2 make is that if the contract (inaudible) where the
3 purchaser of the health insurance decided that they
4 want audit rights, but then the statute (inaudible)
5 to them, that's going to increase the cost to other
6 drugs out there, because the PBM only prices -- if
7 they have to allow an audit, they're going to price
8 it accordingly. So essentially if you acquire that
9 as a contract term, then, you know, an audit --
10 allowing somebody to audit you is going to increase
11 your cost (inaudible).
12 THE CHAIR: I'm hearing some concerns from the
13 public committee here to strike out that -- or to
14 limit this to the administrative services contract
15 (inaudible), fair enough? Okay. Robin?
16 MS. LUNGE: Page 21 in D, which it starts on
17 Line 7, OVHA requested that you consider not
18 allowing a bill back to PBMs working with OVHA,
19 because they were concerned that that bill back
20 with them would be passed on to OVHA, and then you
21 increase Medicaid costs.
22 THE CHAIR: Okay. So where are you?
23 SENATOR LYONS: Is that D?
24 MS. LUNGE: D.
25 SENATOR LYONS: D?

1 MS. LUNGE: Yeah, this is a -- BISHEA has in
2 other areas the ability to bill back their expenses
3 for regulatory activities that -- and this is
4 modeled on their current bill back authorities in
5 another area. And OVHA's concern was that the PBM
6 they work with would pass on that bill back to
7 them, which would then increase Medicaid costs.
8 SENATOR LYONS: Okay. So what percentage of
9 review by BISHEA is associated with Medicaid? What
10 -- how much cost will this involve?
11 MS. LUNGE: I don't know. Do you know?
12 FEMALE ATTENDEE: (Inaudible).
13 MS. LUNGE: No, no, they want your bill back to
14 not apply to their PBM, so that their PBM doesn't
15 tact it on to them, and then increase Medicaid
16 costs. So I think Senator Lyons' question was what
17 right do you know what that PBM percentage is
18 (inaudible).
19 SENATOR LYONS: Yeah.
20 FEMALE ATTENDEE: Well, I mean I guess if we
21 don't pass it on -- if we don't pass it on to
22 Medicaid, we'll pass it on to someone else.
23 SENATOR LYONS: That's what I'm saying.
24 FEMALE ATTENDEE: I don't have the answer.
25 SENATOR LYONS: Okay.

1 FEMALE ATTENDEE: I don't know -- I can't
2 (inaudible)
3 SENATOR LYONS: Okay. (Inaudible). It comes
4 out of something.
5 THE CHAIR: It doesn't have these general
6 funds, though, do they?
7 FEMALE ATTENDEE: No, (inaudible).
8 THE CHAIR: No.
9 SENATOR LYONS: It comes from somebody else's
10 bill back. That's where it comes from, right?
11 FEMALE ATTENDEE: Maybe we can pass it on to
12 the hospitals.
13 FEMALE ATTENDEE: I mean a normal process would
14 be to charge back to companies that were regulating
15 --
16 SENATOR LYONS: Right.
17 FEMALE ATTENDEE: -- the (inaudible)
18 regulations --
19 SENATOR LYONS: Right.
20 FEMALE ATTENDEE: -- of the (inaudible).
21 MS. LUNGE: Right.
22 SENATOR LYONS: I didn't know that.
23 THE CHAIR: So are we with this?
24 SENATOR LYONS: We're done.
25 THE CHAIR: Huh?

1 SENATOR LYONS: That's good.
2 THE CHAIR: So it's fine the way it is? What
3 --
4 FEMALE ATTENDEE: I don't know.
5 MS. LUNGE: I think it's fine. I mean --
6 THE CHAIR: Well, where are you going to get
7 (inaudible)?
8 MS. LUNGE: Well, the way it's written right
9 now it would be billed back to the PBM, and then
10 the PBM -- it would be up to the PBM and OVHA in
11 there negotiation --
12 SENATOR LYONS: Right.
13 MS. LUNGE: -- to negotiate that.
14 THE CHAIR: So this one is going to lead to
15 higher costs?
16 MS. LUNGE: For Medicaid.
17 THE CHAIR: Yeah.
18 MS. LUNGE: But they still have the lowest
19 costs anyway, so --
20 THE CHAIR: I'm sure it's inaudible).
21 MS. LUNGE: It's complicated. I don't know.
22 You know, I think -- I would guess that -- I mean
23 obviously if the PBMs' expense -- general expenses
24 went up, they would need to increase their revenue
25 to cover their expenses. So I think to know where

1 the dollars would come from, you would have to know
2 for the PBM that OVHA is dealing with, what
3 percentage of that PBM's business is OVHA, and how
4 much will then get passed on to OVHA versus their
5 customers. I mean I would presume -- I mean I
6 don't how this works, so I don't know if the PBM
7 would just parcel it out to everybody, or -- you
8 know.
9 THE CHAIR: Well, what's the alternative for us
10 to (inaudible)?
11 MS. LUNGE: The alternative -- if they didn't
12 parcel it out to OVHA, then it would be shifted
13 presumably on to their other customers to pay for,
14 or it would come out of their administrative
15 expenses, or something like that.
16 THE CHAIR: Well, this isn't good, but
17 everything else is (inaudible). That's sort of the
18 way I'm reading it. Let's not even assume
19 something. Paulette, do you have something you
20 wanted to say on that? You look in pain?
21 MS. THABAULT: No, I just (inaudible).
22 Whatever -- whatever the activities are, there is
23 going to be costs associated with that.
24 THE CHAIR: Right.
25 MS. THABAULT: And it's kind of like, you know,

1 the person with the (inaudible) or whatever,
2 somebody is going to pay for it.
3 THE CHAIR: Right.
4 MS. THABAULT: And if you want to keep it out
5 of Medicaid's budget, and you want to have that
6 budget billed to that, then I think (inaudible)
7 OVHA, but I think that's what their goal is. But
8 what's going to happen to the cost, it's not going
9 to be (inaudible), --
10 THE CHAIR: Right.
11 MS. THABAULT: -- but PBM is not going to do it
12 for free, and it's not going to disappear. I mean
13 they're still going to charge for that, and it's
14 going to appear somewhere else.
15 SENATOR LYONS: So one of the -- one of the
16 interesting things --
17 THE CHAIR: It's cautious.
18 SENATOR LYONS: Yeah, it is cautious. But one
19 of the interesting things that we talked about, you
20 know, using a PBM, is that there are significant
21 cost savings we've made. So even for a program
22 like Medicaid, we've heard in the past that we've
23 saved millions of dollars in Medicaid. So within
24 those savings there might be some money that could
25 be committed to administering the program. So the

1 question I have was -- that was hope -- the
2 question I had was how much does it cost to
3 administer the Medicaid program with respect to
4 pharmacy benefits in their office? Because that's
5 what we're talking about, that amount of money.
6 MS. THABAULT: How much would you -- how much
7 do you get billed back --
8 SENATOR LYONS: How much money would it cost?
9 MS. THABAULT: -- I guess would be another way
10 of saying that, and --
11 SENATOR LYONS: And how much does it cost for
12 that program as compared with a MVP or privacy
13 benefit manager, or other relationship?
14 MS. THABAULT: And I'm going to get -- I
15 haven't had any history yet with this.
16 MS. LUNGE: Well, I don't think also you would
17 have a way of knowing -- I mean it would -- I don't
18 think -- because BISHEA is not administering
19 anything for Medicaid. What they're administering
20 is --
21 SENATOR LYONS: I know.
22 MS. LUNGE: -- the PBM.
23 SENATOR LYONS: I know. I know.
24 MS. LUNGE: So I think --
25 SENATOR LYONS: I know that.

1 MS. LUNGE: -- the way to calculate that would
2 be -- there would have to be a cost -- an
3 estimating cost of administering the admin -- the
4 registration provision, and then they would have to
5 divide that among all the PBMs they're registering,
6 and then for the one that does this with OVHA, we
7 have to know what percentage of that bill back to
8 the PBM would then get passed on to OVHA, which
9 would be something that --
10 SENATOR LYONS: That's what I want to know --
11 MS. LUNGE: Right.
12 SENATOR LYONS: -- that kind of detailed
13 information so that we can have an accounting of
14 what those costs are, because ultimately -- if you
15 don't know what those costs are, then you can
16 convey the bill back at a level that reduces
17 savings overall.
18 MS. THABAULT: I'm going to say that it also
19 incremental for a company that's doing business
20 with a number of (inaudible) under insured that
21 it's probably instrumental to add on another -- the
22 profits to provide the information is going to be
23 whatever it is, and (inaudible), it's not going to
24 --
25 SENATOR LYONS: Well, no, not really, because

1 if we're saying that there are significant savings
2 in Medicaid through the pharmacy benefit program,
3 then those -- those savings can be millions of
4 dollars. Why -- when we have those savings
5 available to cover administrative expenses, expense
6 of BISHEA, why would we cross shift to other
7 sectors? This is an opportunity for Medicaid to
8 accept its responsibility in terms of --
9 MS. LUNGE: And also the other thing I should
10 have --
11 SENATOR LYONS: I just think that it's
12 counter-intuitive to pay (inaudible) when we have
13 savings.
14 MS. LUNGE: The other thing I should add is
15 that there's physically two alternatives, one is to
16 allow BISHEA to bill back, and then prohibit the
17 PBM from passing it through to Medicaid, which is
18 the cost shift.
19 SENATOR LYONS: Yes.
20 MS. LUNGE: Two, it's tell BISHEA you can't
21 bill back some percent to this PBM that does
22 business with Medicaid, which means that the
23 administrative cost went to BISHEA. So they would
24 have to find it either elsewhere in their budget,
25 or ask for additional administration -- you know,

1 general fund appropriation to cover their
2 administrative services I think what OVHA was
3 thinking is --
4 THE CHAIR: That doesn't happen, though.
5 MS. THABAULT: So if -- I mean I really don't
6 know if (inaudible) cost, that we can actually make
7 it go backwards (inaudible).
8 SENATOR LYONS: Are we charging them for
9 registration and for (inaudible)?
10 THE CHAIR: But we don't -- is there anyway we
11 CAN figure this out IN the next 24 hours?
12 MS. THABAULT: Well, I -- you're talking about
13 -- certainly there are administrative costs
14 associated with registration.
15 SENATOR LYONS: Right.
16 MS. THABAULT: But registering just the
17 Medicaid B, is that like a significant portion of
18 the whole, or is that -- so you're going to have to
19 divide it into two anyway, so it doesn't matter how
20 many -- you know, I'm just using that as an
21 example, and you're going to to have a (inaudible)
22 for registration to occur --
23 SENATOR LYONS: Right.
24 MS. THABAULT: -- so how much of it gets
25 applied just to Medicaid? I mean I don't even

1 know. At this point I'll get -- I'll try to find
2 out what I can about this and how -- (inaudible)
3 Right now. We're just trying to see what we can
4 do. I don't have all the answers.
5 SENATOR LYONS: Okay. But I mean the -- but
6 the question suggests a way of capturing data for
7 the future at least for decision making.
8 MS. THABAULT: I mean what we have done in
9 other circumstances is, you know, the parties were
10 being billed back for activities, are
11 proportionately charged their share. So it is a
12 hospital kind of thing. The hospital (inaudible),
13 and it's kind a proportioned out that way. So we
14 can either portion it into Medicaid or not.
15 SENATOR LYONS: So is the language here then --
16 should the last sentence read -- should that
17 reflect what you just said, "in a manner and form
18 prescribed by the commissioner," or "in a manner
19 and form" -- it is proportioned (inaudible).
20 MS. LUNGE: Right, the way it's written right
21 now it would be proportional for the (inaudible)
22 covered so --
23 MS. THABAULT: I mean there has to be a fair
24 way we can do it.
25 SENATOR LYONS: Yes.

1 THE CHAIR: Let's see, what say the committee?
2 SENATOR LYONS: I would say (inaudible) for
3 now, and then the only other question is the
4 Medicaid question, if we want Medicaid to be paying
5 it to BISHEA. Is that right?
6 MS. THABAULT: Their share.
7 MS. LUNGE: Uh-huh.
8 THE CHAIR: I think we should.
9 MS. LUNGE: Uh-huh. If it's the cost
10 (inaudible.
11 THE CHAIR: And then -- if it's the cost --
12 yeah, I mean they pay other administrative
13 expenses, probably, I want to say --
14 MS. LUNGE: Yeah.
15 THE CHAIR: -- not this -- I mean that's part
16 of the costs of running a program.
17 MS. LUNGE: Yes.
18 THE CHAIR: So the way it is right now is okay
19 unless we hear something otherwise?
20 MS. LUNGE: Okay.
21 THE CHAIR: Right?
22 MS. LUNGE: (Inaudible).
23 THE CHAIR: Well --
24 MS. LUNGE: So you still want the information
25 back from (inaudible)?

THE CHAIR: I understand. Anything else on this section?

MS. LUNGE: In E there is a comment that the rule making authority seemed broad, and it was unclear what rules would be necessary. I think this is the general language we often use in rule making, so it's -- we generally do include broad rule making, and then leave it to the agency to (inaudible) out what needs to be made by rules, and whatnot, so --

THE CHAIR: That's pretty (inaudible).

MS. LUNGE: It's standard. I mean I wouldn't put special language in here as opposed to the --

THE CHAIR: (Inaudible). Okay. It's 4:30. How do you think we're doing in terms of -- are we halfway through?

MS. LUNGE: I think we are --

THE CHAIR: Enough said.

MS. LUNGE: -- we're definitely halfway through on pages. I think we have two biggies.

THE CHAIR: What are the two biggies?

MS. LUNGE: Prescription drug data confidentiality and unconscionable pricing.

THE CHAIR: Okay.

MS. LUNGE: And then I think we have a bunch of

small -- tweaking would be an understatement, but smaller issues, I guess, in the evidence based education program, electronic marketing, and then the co-payments.

SENATOR LYONS: (Inaudible).

THE CHAIR: What says the committee, go until 5?

SENATOR LYONS: Sure.

FEMALE ATTENDEE: Sure.

THE CHAIR: Bite off another chunk of the apple here?

FEMALE ATTENDEE: Yeah.

THE CHAIR: Let's see?

(CD No. 07-52/T1 & T2 were concluded.)

CERTIFICATE

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Vicki L. Lima, Professional Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did listen to CD 07-52/T1/T2, The Senate Committee on Health and Welfare, Tuesday, March 13, 2007 proceedings, and stenographically transcribed from said CDs the foregoing proceedings and that the transcript is a true and accurate record to the best of my ability.

Dated this 24th day of August, 2007.

Vicki L. Lima, Court Reporter
Job #887530

STATE OF VERMONT
SENATE COMMITTEE ON HEALTH AND WELFARE

RE: SENATE BILL 115

Tuesday March 13, 2007
Standard Committee Meeting

Committee Members:
Senator Doug Racine, Chair
Senator Sara Kittell
Senator Kevin Mullin
Senator Ed Flanagan, Vice-Chair
Senator Virginia Lyons
Senator Jeannette White

CD NO: 07-53/T1

Also Present:
Robin Lunge, Legal Council
Julie Brill, Assistant Attorney General
Paulette Thabault, BISHEA Commissioner
John Hollar, MVP Lobbyist
Chuck Storrow, ExpressScript Lobbyist
Bill Smith, Lobbyist
Madeline Morgan, VT Medical Society
Steven Kimbell, IMS Lobbyist

Transcribed By:
Vicki L. Lima, Court Reporter
Notary Public, State of Florida
Esquire Deposition Services
Boca Office Job #887530
Phone - 800.357.6952

1 - - -
2 PROCEEDINGS
3 - - -
4 MS. LUNGE: Substantive section is Section 12
5 at the bottom of Page 22.
6 THE CHAIR: Okay.
7 MS. LUNGE: And this is the Evidence Based
8 Education Program. On Page 23 in the main
9 provision 4622 A, which is on Line 7, the
10 Department of Health suggested that we add in
11 Office of Vermont Health Access, because they
12 operate the Drug Utilization Review Board for
13 Medicaid, and they thought it would be helpful to
14 have their involvement and participation.
15 THE CHAIR: That sounds like -- I think that's
16 an easy thing to do.
17 MS. LUNGE: Yep.
18 THE CHAIR: Okay.
19 MS. LUNGE: On Page 20 -- bottom of 23, going
20 on to Page 24, two things, first of all, again,
21 there is a mention of the Oregon Health and Science
22 University, so if you want to be --
23 THE CHAIR: Take that out.
24 MS. LUNGE: -- consistent, we can take that
25 out. The other -- the other comment from the

1 Department of Health is that participating in that
2 would cost money, $259,020 for three years. This
3 provision is not mandatory. It says that the
4 department may contract for that support. I think
5 if you thought that was a good idea, you couldn't,
6 you know, ask for the appropriation to be included
7 in the bill. I think -- I don't think I
8 appropriated money for --
9 FEMALE SENATOR: Could you tell me exactly
10 where you are right now, Robin, I'm sorry?
11 THE CHAIR: C.
12 MS. LUNGE: C, the department may contract, on
13 Page 23, Line 19.
14 FEMALE SENATOR: Oh, okay.
15 MS. LUNGE: The contract may -- the department
16 may contract with technical and clinical support.
17 FEMALE SENATOR: Okay.
18 MS. LUNGE: So I think the issue is whether you
19 want -- Department of Health didn't explicitly say
20 it, but I think they were hinting that they could
21 --
22 THE CHAIR: They can do without the money.
23 MS. LUNGE: -- they would like the money for
24 it.
25 THE CHAIR: So, Committee, how eager are you to

1 have this going down as an appropriation?
2 FEMALE SENATOR: Not at all.
3 FEMALE SENATOR: So this would be for the
4 Evidence Based Education Program, and they would be
5 -- the health department would be having more of an
6 in-depth look at different (inaudible)? This would
7 go on a little --
8 MS. LUNGE: What they would be doing is
9 creating an education program for health care
10 providers, to provide health care providers with
11 independent research and information about
12 effectiveness of different --
13 FEMALE SENATOR: Are we doing that now?
14 THE CHAIR: (Inaudible).
15 MS. LUNGE: Yeah, they can do it through the
16 free program, which means they get it a little bit
17 later. The other thing is that we have included a
18 fee later in the bill that would fund this
19 provision, so that may provide some money, and also
20 that they could look to working with the A.G. to
21 try and get some funding from any lawsuit awards
22 that might happen. So there are other sources.
23 FEMALE SENATOR: (Inaudible).
24 FEMALE SENATOR: No, we don't (inaudible).
25 FEMALE SENATOR: Well, you said later on

1 there's an appropriation?
2 MS. LUNGE: No, no, there's a fee.
3 MALE SENATOR: A fee.
4 THE CHAIR: (Inaudible).
5 FEMALE SENATOR: Pardon me.
6 THE CHAIR: (Inaudible). But -- so that might
7 give them some resources for this. It doesn't
8 require (inaudible).
9 MS. LUNGE: On this, right.
10 THE CHAIR: But I mean does this absorb it?
11 Does this take care of budget problems elsewhere in
12 the budget?
13 MS. LUNGE: I think they would have to use that
14 for this program, but they, for instance, could use
15 it to -- they could just give all the money to AHAC
16 (phonetic) to run -- you know, to continue their
17 program as opposed to doing a contract to get this
18 information. But I do think they have to use it
19 for the Evidence Based Education Program.
20 THE CHAIR: Okay. Then I feel we leave up to
21 them as to how to spend that. (Inaudible).
22 MS. LUNGE: Steve Kimbell likes it, for
23 whatever that's worth.
24 THE CHAIR: Steven, can we leave it up to the
25 health department to determine how to spend the

money?
MS. KIMBELL: Uh-huh.
THE CHAIR: Okay. Okay.
MS. LUNGE: Okay?
THE CHAIR: Yes.
MS. LUNGE: The Department of Health also seemed to be -- they had a question about whether or not it was necessary to get the money from the lawsuits and the -- and I saw -- I remember when I heard their testimony, I thought they were just confused about the language, but now I don't recall. I think they would need some source of funding to operate the program, because they need to either buy materials, or create materials.
FEMALE SENATOR: Now which letter are we on?
MS. LUNGE: We are -- this is not a letter -- oh, I'm sorry, yes it is. It's in D, Page 24 D.
FEMALE SENATOR: Okay. So D?
MS. LUNGE: Yeah.
FEMALE SENATOR: Okay. (Inaudible).
FEMALE SENATOR: So they already had $300,000 that goes to the AHAC project?
FEMALE SENATOR: Yeah.
MS. LUNGE: Yeah.
FEMALE SENATOR: Something like that.

MS. LUNGE: And AHAC has been doing one drug. They've been -- they've done, I think two different (inaudible). Someone around the room, does anybody know? I think they've done two different --
FEMALE ATTENDEE: (Inaudible).
MS. LUNGE: I don't think it hurts to direct them to look at funding sources for the program. It doesn't say they have to do any particular funding source, but that they --
FEMALE SENATOR: So there's nothing wrong with D?
MS. LUNGE: And I can review it again to see. I don't remember their testimony that clearly, but -- and then those were the specific suggestions. The other testimony you heard was just kind of why you would want to do those kinds of programs.
THE CHAIR: It seems like a constructive program.
FEMALE SENATOR: Uh-huh.
MS. LUNGE: So if -- maybe it would make more sense to skip prescription drug data confidentiality right now, and go to Section 15, because we might be able to get some of the easier sections taken care of.
THE CHAIR: Oh, I don't know. Let's weigh into

it.
MS. LUNGE: Okay.
FEMALE SENATOR: Do we have enough oxygen in here?
FEMALE SENATOR: (Inaudible).
MS. LUNGE: It's all right.
FEMALE SENATOR: It's just like men, they won't (inaudible) --
FEMALE SENATOR: (Inaudible).
MS. LUNGE: See, I like to check things off the list.
FEMALE SENATOR: Men don't ask for directions, they don't think of rules.
THE CHAIR: We don't ask for directions. (Inaudible).
THE CHAIR: Okay.
FEMALE ATTENDEE: And then (inaudible).
THE CHAIR: This is the so-called data mine (phonetic) section?
MS. LUNGE: Yes.
THE CHAIR: Okay. And (inaudible) has this?
MS. LUNGE: Yes.
THE CHAIR: And --
MS. LUNGE: Well, they passed it as being litigated.

THE CHAIR: Being litigated. And what can you tell us about what the components of this section say about costs (inaudible)?
MS. LUNGE: I think this actually is more having to do with -- I don't know that this is really a cost section so much as a confidentiality section, because what it -- and maybe I'm just not thinking through the cost implications, far enough through the chain of events. But what it basically would do is by prohibiting the data mining, that would change the way marketing for pharmaceutical products is done from how it's done now.
So I suppose if you think that this section would reduce marketing in general, that could have a cost impact because it would reduce the total amount of marketing done. I don't know -- I don't have any way of quantifying that, or knowing if that's --
THE CHAIR: I don't see how we can reduce marketing. I think what we've learned was that given if this passed, they're going to be -- they're already having seminars with the information -- (inaudible), you passed, or somebody passed out --
FEMALE ATTENDEE: Somebody passed out.

1 THE CHAIR: -- that's suggests -- for good
2 (inaudible) reasons --
3 FEMALE ATTENDEE: I did.
4 THE CHAIR: -- that suggests that there will be
5 other ways -- they're already advising other ways
6 of marketing.
7 What's confusing to me about this section is
8 why doctors need this. And, Madeline, I guess I'd
9 love to hear from you, or have you tell us who we
10 want to hear from in 15 minutes, 5 minutes, why
11 this is important to doctors' salary standard?
12 MS. MORGAN: Well, I think this is really
13 important for cost reasons. I mean this industry
14 is a 287 billion dollar industry, and it increases
15 about 8 or 9 percent a year.
16 THE CHAIR: The whole pharmaceutical industry.
17 MS. MORGAN: The whole pharmaceutical.
18 industry.
19 THE CHAIR: That's (inaudible).
20 MS. MORGAN: Now, the data mining piece, the
21 sales support the effectiveness of this product
22 that IMS has, which is the product that they -- you
23 know, one of their important products that they use
24 to collect this data and to sell it to PHARMA to
25 market drugs, that's an 847 million dollar revenue

1 source for IMS. I mean there's a lot of money.
2 And they're collecting this money from, you know,
3 the pharmaceutical companies here using it to make
4 their sales persons more effective, which means
5 getting them to sell more brand drugs, different
6 pharmaceutical -- newer brand drugs as opposed to
7 the evidence based prescribing program that we just
8 talked about in the previous section which is the
9 way that (inaudible) could go.
10 THE CHAIR: But the doctors are prescribing
11 those drugs?
12 MS. MORGAN: The doctors are prescribing those
13 drugs. They're busy people. If someone comes in
14 and makes a pitch to them, they listen to that. I
15 mean I'm not going to say that they -- you know,
16 I'd like the system to be different, but that's the
17 way the system is. You know, they're prescribing
18 the drugs, and we'd like to have them have access
19 to this evidence based information so that they,
20 you know, have that spread (inaudible). They have
21 (inaudible) for their practices, but they don't
22 have much funding. But if that program could grow,
23 then physicians and other prescribers would have
24 more -- you know, unbiased information available as
25 opposed to information that's linked to sales of

1 products.
2 FEMALE ATTENDEE: The prescribing that they
3 have of doctors, I mean, they have all of that?
4 That's what data mining is?
5 MS. MORGAN: That's what they do. They collect
6 profiles. They sell them to PHARMA, and PHARMA
7 passes them back to sales reps. I do think it's a
8 completely -- I don't think it's about the argument
9 -- I'll try to put this a little bit more calmly --
10 to say that they need this information for FDA for
11 safety reasons. I mean this is a huge industry.
12 They're in the business of researching new drugs
13 and developing wonderful new drugs that are, you
14 know, keeping my parents alive, and they're really
15 doing some good things. They're in the business of
16 researching drugs. They're in the business of
17 getting drugs approved by the FDA. The FDA is
18 making sure that the drugs are safe, and the
19 pharmaceutical manufacturing companies have a
20 strong interest in ensuring that the drugs are
21 safe. They don't want recalls of their drugs. So
22 I don't buy the argument that they have to save 847
23 million dollars on a data mining product to improve
24 their sales force in order to meet the requirements
25 of the FDA. I don't think that's such -- I mean if

1 they have the need to do that, that's their course
2 of business, is researching drugs, bringing drugs
3 to market, making sure that they're safe to bring
4 them into market. And they'll find another way to
5 do this.
6 This is not a transparent offering. I mean
7 doctors don't get to see what IMS is buying from
8 the pharmacy, and then selling to the
9 pharmaceutical manufacturer companies. But one
10 thing we know from the implication of the preferred
11 drug list in Medicaid, is that claims data isn't
12 always clean data. But when they first did the
13 preferred drug list in Medicaid, doctors got lists
14 of drugs that they had changed -- they were getting
15 the lists in order to change from one drug to
16 another on the preferred drug list, and they said
17 these drugs -- these lists don't even have
18 demarcations on them. They don't have the other
19 drugs that I'm prescribing, because the -- you know
20 the numbers that get put in get transcribed, and
21 they get turned around, so there's no way that the
22 doctor can even check that this is accurate
23 information. It goes from the pharmacy to IMS to
24 the manufacturer company, and then back to them
25 through the -- through the marketers, and that's --

1 we think it's very important. We think it's a --
2 it creates a --
3 THE CHAIR: Yeah, but why don't doctors use the
4 opt-out, and why can't doctors just say "no, I
5 don't want to see you."
6 MS. MORGAN: The opt-out, you know, I think
7 it's just -- they can say "I don't want see you,"
8 and some doctors do. But the opt-out doesn't -- it
9 opts out of one small piece. It doesn't opt-out of
10 the whole system. It's really -- it's -- you know,
11 Julie can talk to you more about this too -- it
12 doesn't solve the problem.
13 THE CHAIR: But I guess what I'm hearing is
14 that none of the doctors are suggesting this. The
15 doctors are certainly supporting this. They need a
16 lot to keep the marketers from knowing too much
17 about them, or to keep the marketers out of their
18 offices. I don't understand why we need a lot to
19 do this.
20 MS. MORGAN: Well, we didn't even know that
21 this was happening until (inaudible) in New
22 Hampshire, and this is one of the most secret
23 things, you know, and so when the doctors in
24 Vermont found out that this was happening they
25 said, "this is not a good policy. This isn't good

1 for our patients. This isn't good so that" --
2 THE CHAIR: So they didn't know that this was
3 being done to them?
4 MS. MORGAN: No.
5 MALE ATTENDEE: So there's no requirement that
6 you can put data (inaudible) --
7 MS. MORGAN: That's our main --
8 MALE ATTENDEE: -- (inaudible) --
9 MS. MORGAN: I mean some do.
10 MALE ATTENDEE: -- Opt-out?
11 MS. MORGAN: What?
12 MALE ATTENDEE: Earlier on you said there was a
13 thing where you can opt-out.
14 MS. MORGAN: Right.
15 MALE ATTENDEE: But there is no obligation for
16 the drug companies to send similar -- or the AMAs,
17 or whoever is collecting the database, they didn't
18 send anything to doctors saying that you have the
19 right to opt-out?
20 MS. MORGAN: They had some testimony in finance
21 about sending the thing out. On 100,000 to 200,000
22 of notices of the opt-out, the physicians -- there
23 were 800,000 physicians -- I don't know whether
24 those were just sent to AMA members. I know in
25 Vermont only about 5 percent of the physicians are

1 members of the AMA, you know, over two-thirds of
2 them belong to the medical society. There's a very
3 small percentage in Vermont. If that was the
4 (inaudible). I don't know who the AMA is sending
5 them to. We sent out notices to doctors --
6 MALE ATTENDEE: Well, if the AMA is selling the
7 information to only 5 percent of the members, who
8 are they getting the rest of the information from?
9 MS. MORGAN: They get it from everybody,
10 because the AMA is declaring how doctors are taking
11 their continuing medical education. So they have a
12 continuing medical education number for all
13 physicians. And they take this file for all the
14 physicians inaudible) filed, which has every
15 physicians' continuing medical education number,
16 which follows them through their life, then IMS
17 buys from the AMA, and uses it for the
18 pharmaceutical (inaudible) to create the profile.
19 FEMALE SENATOR: So they can use their license
20 number --
21 MS. MORGAN: They could use other numbers --
22 FEMALE SENATOR: -- their AMA number?
23 MS. MORGAN: -- to create the profile. That
24 happens to be one that the IMS has found to be
25 convenient, and I think Steve said that they would

1 change to another if that number, you know, was no
2 longer available.
3 FEMALE SENATOR: The pharmacy can give out
4 information?
5 MS. MORGAN: Pharmacies can give out
6 information?
7 FEMALE SENATOR: Right? They give out
8 information?
9 FEMALE ATTENDEE: As long as it's non-patient
10 identifiable.
11 FEMALE SENATOR: Right, as long as they say,
12 you know, Number 1635 is prescribed everyday.
13 MS. MORGAN: The testimony in finance from Ann
14 Rowe (phonetic), who's the director -- the deputy
15 director, I guess, of the pharmacy program for OVHA
16 -- was that the manufacturing companies are kind of
17 skipping IMS step and going direct to OVHA and
18 saying, "bring the information that -- give us the
19 prescribing information that you have on people
20 from physicians."
21 MALE ATTENDEE: Which is a (inaudible).
22 MS. MORGAN: Which is a (inaudible). But one
23 of the requests that OVHA made in finance -- and I
24 think this came in a -- I don't know if it was in a
25 bill or a discussion -- is it that they're gaining

1 a (inaudible) exemption so that OVHA can say, "no,
2 we don't want to give you this information about
3 who's prescribing what drugs," because it's
4 handwritten that that undermines their preferred
5 drug list, because pharmaceutical manufacturing
6 companies use that information to go with the
7 representatives to market the drug information to
8 the physicians that tell them why they should buy
9 the brand drug instead of the generic drug when the
10 drug that OVHA has a rebate on through the
11 preferred drug list, which OVHA would prefer that
12 people were buying the cheaper drugs, and then
13 (inaudible) can use this information to encourage
14 the physicians what to do, you know, because the
15 other thing -- until we get a stronger evidence
16 based prescribing program, you know, it's hard for
17 the doctors. I mean I know they're smart people.
18 They're very busy people, and, you know, they need
19 to get the accurate information. This isn't
20 helping.
21 THE CHAIR: Go ahead.
22 SENATOR WHITE: I'm just going through what we
23 heard here before in my mind. My question is -- on
24 one hand we have this remedy that if we -- if it
25 can't be used for commercial purposes, it's not

1 going to exist, and that's all Elliot Fisher said
2 and Authur Wolf said, they want it available for
3 those other purposes. In fact, Elliot Fisher
4 doesn't even say that it won't exist if it can't be
5 used commercially, but Authur Wolf does. So I
6 guess my question is was research and analysis done
7 before this was being sold to the commercial -- to
8 the markets, or has it always been sold to the
9 commercial marketers, and how real is the threat
10 that it won't exist? Because none of the -- this
11 doesn't say that it can't be collected. It just
12 says that it can't be given for commercial -- it
13 can't be sold to the -- the (inaudible).
14 THE CHAIR: Right. I think what we're hearing
15 is that there's no commercial value. It's not
16 going to be out there because --
17 SENATOR WHITE: Right.
18 THE CHAIR: -- (inaudible).
19 SENATOR WHITE: And I want to know how real
20 that -- that's what I do, because what -- has this
21 never been used before? I mean is it not -- did
22 IMS not exist until they started selling it?
23 MALE ATTENDEE: So Steve -- because Steve
24 (inaudible) client.
25 MS. KIMBELL: I can try and answer that

1 specific question. They existed -- and this is a
2 relatively small percentage of their business. It
3 holds less than 20 percent. They didn't want to
4 give an exact number because they have competitors
5 who are doing the same thing.
6 THE CHAIR: A small percentage of what?
7 MR. KIMBELL: The prescribed -- to identify
8 sales, sales to PHARMA.
9 THE CHAIR: Okay.
10 MS. KIMBELL: So PHARMA could -- (inaudible) to
11 PHARMA. (Inaudible).
12 MR. KIMBELL: And your other question is a good
13 one, Senator White. This is relatively a new kind
14 of business. It will be with us -- it probably
15 didn't exist ten years ago.
16 SENATOR WHITE: Uh-huh.
17 MR. KIMBELL: This is on the frontier of
18 collection and packaging of information for resale.
19 And I don't think there's any evidence that this --
20 in the record that we've heard here -- that banning
21 its commercial use will reduce cost to customers on
22 prescription drugs. I'm not sure I understand the
23 relevance of the national drug sale figures that
24 Madeline uses, except I'm taking a cholesterol drug
25 permanently now that I didn't take a year go, not

1 because my cholesterol level has changed, but
2 because the standards have changed. My doc said,
3 "the standard has changed. Now, you have got to
4 take this."
5 So let them go on their (inaudible). I know
6 Julie is waving her hand, and she wants to say that
7 there was evidence in the (inaudible) case that
8 this well reduces costs. I don't think that was
9 the evidence (inaudible). I think he said
10 pharmaceutical marketing -- by the way, this is
11 what she said in finance -- pharmaceutical
12 marketing is effective. He didn't say that it's
13 effective because we have access to prescribed
14 (inaudible) by data. He has -- I testified earlier
15 -- and I'll (inaudible) -- common sense suggests
16 this is going to make marketing cheaper, because we
17 don't have to fire a shotgun and go marketing to
18 every single doc because they know what they're
19 doing.
20 SENATOR WHITE: But my question is: Did the
21 research and analysis exist or was that being done
22 before? And then this packaging of the data now
23 for commercial purposes is a new thing, so that's a
24 relatively new and small portion of the business.
25 So the other part is the research and analysis to

1 the health care industry.
2 MR. KIMBELL: It wasn't being done before.
3 SENATOR WHITE: And if it was being done
4 before, then --
5 MR. KIMBELL: I think the answer to that
6 question is no, it wasn't being done before.
7 SENATOR WHITE: So what did IMS do before then?
8 MR. KIMBELL: They're -- they're a whole range
9 of health care databases that they (inaudible) and
10 package and resell, probably for some purposes that
11 you would like them for or Madeline, and probably
12 for some purposes they wouldn't. But they're in
13 the business of harvesting data from all kinds of
14 sources, repackaging it and selling it to whoever
15 might want it. It might be hospitals. It might
16 be physicians themselves.
17 SENATOR WHITE: So they don't do anything else
18 except that because it says --
19 MR. KIMBELL: Yeah.
20 SENATOR WHITE: -- "that's a significant part
21 of our companies' business, but we also provide
22 information research analysis."
23 MR. KIMBELL: Right, they provide the
24 information to researchers such as Elliot Fisher
25 and others. But they wouldn't do a collecting and

1 packaging of information solely for that purpose.
2 But that's (inaudible), Senator White, and why I
3 think the answer to your question is no, it
4 wouldn't exist, is this state's own unified health
5 care database and unified health care budget has
6 been on the books for many years, and with all due
7 respect to the new Commissioner of BISHEA, I think
8 most people that pay attention would say, "it's not
9 a usable tool yet. Yet. We're not there yet for
10 either that, or the prescriber database that the
11 commissioner is also charged with developing."
12 The government has just not put the money into
13 developing these databases. To the extent that
14 they need to be, they haven't been where they
15 should be. I just think the physicians, with all
16 due respect to the Vermont Medical Society, I don't
17 buy that they're busy people, and they have to
18 listen to these pharmaceutical marketers. They've
19 got assistants out front, and, you know, the doctor
20 could say, "I see patients. I don't see people
21 selling drugs."
22 SENATOR WHITE: (Inaudible)?
THE CHAIR: I think (inaudible).
FEMALE SENATOR: Yeah, go ahead and
25 (inaudible).

1 SENATOR WHITE: I think if it has not -- if
2 there has been evidence that shows that it has
3 reduced the price -- I mean the -- if it's -- what
4 you're saying is that if it didn't exist, the
5 potential is that the prices go up, I mean, because
6 it would increase marketing, because they would
7 have to vote to go to a shotgun --
8 MR. KIMBELL: I don't want to make the -- the
9 belief that the pharmaceutical prices will go up.
10 I can tell you that the pharmaceutical companies'
11 marketing costs will go up --
12 SENATOR WHITE: Okay.
13 MR. KIMBELL: -- because that means there are
14 more people on the street --
15 SENATOR WHITE: But what --
16 MR. KIMBELL: -- whether --
17 SENATOR WHITE: -- like what I want to know
18 then, did it work in reverse? When they started
19 buying this, did their marketing costs in fact go
20 down?
21 MR. KIMBELL: I can't make the one on one
22 connection. I know that pharmaceutical companies
23 have far fewer marketers on the streets today than
24 they did five years ago.
25 SENATOR WHITE: Yeah, but that doesn't mean

1 their cost is less, just to say there are fewer
2 marketers.
3 MR. KIMBELL: Well, at least they're paying
4 fewer salaries and bonuses.
5 SENATOR WHITE: Well --
6 MR. KIMBELL: But I don't know --
7 SENATOR WHITE: Anyway --
8 MR. KIMBELL: -- about the one on one
9 relationship --
10 SENATOR WHITE: Okay.
11 MR. KIMBELL: -- but I think those things are
12 awfully hard to trace when you talk about over 100
13 pharmaceutical companies, three or four major
14 wholesalers, dozens of retail pharmacies, where do
15 the costs get added?
16 SENATOR WHITE: Right, I agree. It's hard.
17 I'm just trying to do the other end of the -- the
18 potential for increasing the price.
19 MR. KIMBELL: But why do -- why take the risk
20 of doing some harm with a deal like this when
21 physicians have in their own hands the right to
22 either use the opt-out versus one click online.
23 You can go look at yourself. It's very easy, or
24 just tell their assistants out front, "please, I
25 don't want to see any pharmaceutical marketers.

1 I'll read their literature. They can leave it, but
2 I'm not interested."
3 SENATOR WHITE: But does their information not
4 go to a desk -- to IMS? Then either -- if they
5 opt-out, they don't get the marketer, but their
6 information still goes?
7 MR. KIMBELL: Well, because there's lots of
8 other things that the physician (inaudible).
9 SENATOR WHITE: Right. So all they're -- all
10 that's happening is that they're not getting --
11 MR. KIMBELL: They don't get the target
12 marketing call.
13 SENATOR WHITE: -- they won't get a target
14 marketing call. Okay.
15 THE CHAIR: Okay. Jenny, we'll get there.
16 FEMALE SENATOR: Yeah, so this is a really good
17 discussion to have, and I don't think there are
18 answers about costs yet (inaudible) I don't think
19 we can tell whether it increases or decreases. But
20 a lot of the things I've heard about collecting
21 data, are going to be data that's available to
22 Vital ultimately as we better develop our database.
23 And when we had testimony from Vital, we heard that
24 Vital would be able to package and sell data as a
25 possibility in the future, and that would be a

1 benefit to the state overall. Then -- and then I'm
2 just throwing out some ideas -- and that that would
3 provide for prescribing transparency within the
4 state.
5 It would also -- it also seems to me that
6 rather than addressing the drug, we should be
7 looking at the diseases in this state. So we
8 should be looking at the chronic care initiative
9 and what diseases are actually prevalent with our
10 practitioners, and the best way to treat those
11 diseases, and that is part of our chronic care
12 program.
13 The fact that someone can opt-out, and still
14 have data collected is problematic to me. I just
15 -- we work so hard to keep patient/physician
16 information confidential, and then all of a sudden
17 it's accessible and available, and I just -- that
18 bothers me a lot.
19 THE CHAIR: Don't apologize. But it --
20 FEMALE SENATOR: Well --
21 THE CHAIR: The patients' names aren't there.
22 FEMALE SENATOR: I understand the patients'
23 names aren't there, but you still have a physician
24 who's treating an X group, or so, you know, it
25 ultimately can -- maybe it would go backwards, I

1 don't know.
2 So anyway, I just -- I understand the concerns
3 that if this data isn't available, then marketing
4 information will not be available. I understand
5 that this is a part of a commercial enterprise and
6 competitive enterprise, but I think that if we're
7 on a line right now between what is marketable,
8 what is competition, what is economic, and where we
9 are with our health care system. I do think that
10 if we restrict the amount of data that goes out, we
11 can -- I heard what Madeline said about generics
12 versus the more expensive drugs. We should be
13 probably marketing generics, or at least what's on
14 our preferred drug list. I just -- I have
15 concerns.
16 THE CHAIR: Julie, do you want to step in and
17 say something?
18 MS. BRILL: Well, I think I can add to the
19 conversation, hopefully. I had said when I first
20 came in here an argument that probably got lost,
21 but I think it's really important. If AMA opt-out
22 is being offered by IMS and by the industries as a
23 way of saying, "the doctors are in control here.
24 They can control whether their information goes to
25 the pharmaceutical company."

1 Steve's client testified on my phone in Senate
2 Finance that they don't need the AMA number to link
3 the doctors' data. They can use statewide
4 (inaudible) numbers. They can probably use DBA
5 numbers. There are all sorts of numbers that
6 follow doctors through lives. And so this AMA
7 opt-out, I called it a red herring. I still think
8 it's a red herring. It's not going to save the
9 doctors' information from going to IMS and being
10 able to be mined and churned, and then sent to the
11 pharmaceutical manufacturers for marketing
12 purposes.
13 So I really think -- I mean obviously everyone
14 is allowed to discuss whatever they to want
15 discuss, but I just want to be real clear that the
16 AMA offer is not going to keep this information
17 from being used by IMS, and being used by
18 pharmaceutical manufacturers on a doctor
19 identifiable basis.
20 Why do doctors let these guys in? I mean this
21 is responding really to you, Senator Racine, when
22 you said "first of all, they're in control. They
23 can opt-out." So they really can't opt-out. They
24 can opt-out of one set of linking numbers, but not
25 the rest of them out. But why do they let these

1 guys in? I really think -- and I actually worked a
2 lot with doctors in the cases that I did -- I think
3 doctors are starving for information. They are
4 really, really business.
5 And I don't know if any of you have ever seen
6 an evidence based report. We have a three million
7 dollar contract with one of our settlements to get
8 University of North Carolina people to turn one
9 evidence based report, you know, on AED,
10 (inaudible) drugs into understandable language for
11 doctors.
12 The evidence based report in this respect, it
13 is so complicated. I mean a researcher can read
14 it. But researchers and doctors are not the same.
15 I mean researchers are the academic folks who sit
16 up there and they think about all this evidence
17 based stuff. Turning that into language for
18 doctors is very, very tricky and difficult. So
19 doctors aren't reading evidence based reports.
20 They can't. They don't have time to do it.
21 So what -- so they -- a rep comes to their
22 office -- and you may know what these guys are --
23 they don't know that these reps have all this
24 information about them -- and I mean that's what
25 Madeline is saying is new -- they didn't know that

1 --
2 THE CHAIR: What about now?
3 MS. BRILL: Now, they do, absolutely. But why
4 do they let them in? I think the reason is because
5 they are starving for information about new
6 technologies, new treatments, because they want to
7 help their patients. I think they look at this
8 stuff that comes from the pharmaceutical
9 manufacturers -- and look at what (inaudible)
10 certainly do -- but they have no other source of
11 information. That's why we're working so hard to
12 do counter-detailing, to do the evidence based
13 stuff, but it's very expensive. You have to do it
14 on a class-by-class basis. Like I said, we're
15 spending three million dollars just on AEDs. It's
16 very hard to get this information out.
17 THE CHAIR: Well, what (inaudible) suggests is
18 because -- because of evidence based information,
19 deny them other information --
20 MS. BRILL: No.
21 THE CHAIR: -- or help them avoid the other
22 information.
23 MS. BRILL: I think the marketing is going to
24 happen. I think the marketing is going to happen.
25 I think these manufacturers are extremely clever.

1 They're going to pay (inaudible) like they continue
2 to do. They're going to -- but what they won't be
3 able to do is target specific doctors and say, "you
4 need to prescribe more of my brand new drug. I
5 know it's very expensive, but you need to prescribe
6 more of it, because I can see you're not
7 prescribing enough." They'll be able to give
8 objective information --
9 THE CHAIR: You know, I -- and I just --
10 MS. BRILL: -- that's not (inaudible).
11 THE CHAIR: I guess I don't get it, because I'm
12 sitting there as a doctor, if somebody comes in --
13 now, I know that they're doing it. I know what he
14 has -- and for somebody to come in and say, "You've
15 got to sell more of my drugs," I'm going to say,
16 "no, I don't." I mean I don't think -- I don't see
17 why that's --
18 MS. BRILL: But you didn't --
19 THE CHAIR: -- (inaudible) --
20 MS. BRILL: Your patient --
21 THE CHAIR: -- (inaudible).
22 MS. BRILL: Why shouldn't the manufacturer --
23 why shouldn't -- I think what we ought to be doing
24 is as on a policy basis, is encouraging as best we
25 can -- and I think that this provision does it --

1 encouraging the manufacturers to give objective
2 information, as objective as they can be, without
3 reference to "are you a prescriber, a low
4 prescriber?" That's irrelevant. They should be
5 giving information about the drug. And that's what
6 I think our policy ought to be, and I think this
7 bill -- with all due respect to Robin -- this bill
8 is clearly -- this section of the bill is clearly
9 designed to reduce the costs. That's what it's all
10 about, absolutely.
11 THE CHAIR: I -- I'm still trying to figure out
12 -- I do not see that, and I don't understand -- as
13 Robin described as confidentiality. That's the
14 title of it.
15 MS. BRILL: It's -- it's --
16 THE CHAIR: I mean I understand what -- that
17 technically it's on confidentiality. But the only
18 compelling argument I've heard is that doctors
19 don't want to have this kind of marketing aimed at
20 them, and that's -- I'm sorry, I just see that as
21 -- (inaudible) in that sense, that they're asking
22 us to protect them from themselves.
23 MS. BRILL: It should be objective marketing.
24 It should be -- you know, manufacturers go in -- in
25 fact, the FDA requires that it be fair information,

1 balanced information.
2 THE CHAIR: Balanced (inaudible)?
3 MS. BRILL: The problem, of course, is that the
4 manufacturers have money to make in this
5 transaction, right?
6 THE CHAIR: I understand.
7 MS. BRILL: So --
8 THE CHAIR: That's what marketing is. That's
9 what --
10 MS. BRILL: -- it's not -- but the point is
11 that it ought to be when you're talking about a
12 pharmaceutical product, that when they have access
13 to a doctor, they ought to be giving fair
14 information.
15 THE CHAIR: And I love the counter-detailing
16 and the evidence based work, and I think we ought
17 to be doing that. I don't know that we have to
18 deny the marketing of certain products in this
19 particular way to help them get their -- but
20 anyway, (inaudible) --
21 MALE ATTENDEE: Julie --
22 MS. BRILL: I have an idea.
23 THE CHAIR: (Inaudible).
24 MALE ATTENDEE: -- there are other states in
25 the conferences that have used data mining to --

1 (inaudible) the docs that are over prescribing the
2 Oxycotin, and things like that.
3 MS. BRILL: Yep. Yep, absolutely.
4 MALE ATTENDEE: And so isn't the public good
5 for this information?
6 MS. BRILL: Yes, but that wouldn't be for
7 commercial purposes. In other words, it would be
8 -- you're targeting those doctors --
9 MALE ATTENDEE: But Steve was right in saying
10 that they won't do it, if it's used for commercial
11 purposes.
12 MS. BRILL: Okay. Let me -- I -- with all due
13 respect to Steve, I am very skeptical of that
14 argument. If Vermont -- Vermont is an extremely
15 small player in this overall market. I think his
16 argument is if every state were to enact a law just
17 like Vermont did, and if every state were to do
18 this, then the market would dry up, I think there
19 maybe something talk about. But Vermont in
20 (inaudible) is not going to affect this overall
21 market, and the availability of this information.
22 MALE ATTENDEE: But can't they do some states,
23 and not others?
24 MS. BRILL: Sure, absolutely, they could. But
25 what you're saying is they -- what you're saying is

1 there would be a conspiracy among all the data
2 miners, that they would -- they would carve out
3 Vermont, and not give out the information because
4 they were mad at us. I mean --
5 MALE ATTENDEE: Do we know if that -- in
6 answering that, that there's association
7 (inaudible).
8 MS. BRILL: I think that's a great question. I
9 don't believe the answer -- I believe the answer is
10 no.
11 MALE ATTENDEE: Does anybody know?
12 MR. BRILL: Probably. I'm not sure that the --
13 is the law in effect while the litigation is going
14 on?
15 MS. LUNGE: I'd have to check
16 MS. BRILL: I think --
17 FEMALE ATTENDEE: -- those out (inaudible).
18 MS. BRILL: -- that one problem maybe that it's
19 actually in place now.
20 MS. LUNGE: It is.
21 MS. BRILL: But I think that's a great
22 question. I'd love to know the answer to that.
23 MS. LUNGE: I have contact information for the
24 sponsors.
25 THE CHAIR: Your first (inaudible), go.

1 FEMALE ATTENDEE: We have got to fight for our
2 rights too?
3 FEMALE ATTENDEE: We do.
4 FEMALE ATTENDEE: (Inaudible).
5 FEMALE ATTENDEE: It will be interesting.
6 FEMALE SENATOR: I was trying to look at what
7 do we want to accomplish here.
8 THE CHAIR: Yeah.
9 FEMALE SENATOR: And, you know, we certainly
10 want the big market here with business and all.
11 But what we want is -- this is not selling Jeep
12 cars, you know, and this is a free market, and we
13 want to sell Jeeps or Subarus, and that people want
14 to do this. This is health care. And we are
15 paying huge amounts for health care. This is
16 people. This is not -- this is different. So I
17 think that we should be controlling diseases. We
18 should be looking at low-cost drugs first. We
19 should be taking care of any way we can help our
20 health care industry, the docs, to do this with the
21 low-cost drugs and objective information, and we
22 need enough to get a little filtered, and help with
23 -- you know, AHAC is doing this counter-detailing,
24 whatever it's called -- you know, maybe that has to
25 be involved a little bit. Don't stop the process,

1 but, you know, you have to go through some hoops
2 first that will meet our objective. I would be
3 more comfortable with it that way.
4 I mean I think that the (inaudible) issue when
5 you're a physician -- the (inaudible) with working
6 in a physician's office of ten years -- is that,
7 you know, they know enough about what you're doing,
8 you know, they really can say the right things, you
9 know, if you really want to get the procedure under
10 control, are those that have this certain thing, I
11 really can -- you know, saying all right things,
12 and they go, "maybe I shouldn't be using that, and
13 this a Federal one," and you know, all those
14 things. So if they know all that information, you
15 don't have -- you could easily be prescribing more
16 expensive things, and you don't always have the
17 resources to go back and figure it out. They're
18 the most knowledgeable people, the drug -- those
19 marketers. That's all they do.
20 THE CHAIR: (Inaudible)
21 FEMALE ATTENDEE: Well, I don't know. I was
22 just indicating (inaudible).
23 THE CHAIR: (Inaudible).
24 FEMALE SENATOR: Now, correct me if I'm wrong,
25 when we talked about the -- about patient data that

1 -- in the Vital conversation that the government --
2 in the governance of that entity, we talked about
3 ownership of the data, this (inaudible) of the
4 patient. That's what we've talked about. Who owns
5 the data? Now, this is data that is -- who belongs
6 to this? Whose data is this? Is it the patient's
7 data? Who actually owns -- who actually owns the
8 prescription information? This question -- and I
9 -- there's going to be an important question as we
10 look at Vital and continued development of a
11 computer database. So that's just a question.
12 But then you could look at it another way, you
13 know, who's going to make money on this? Well,
14 right now a corporation is making money and selling
15 data, and that belongs to someone. Does it belong
16 to the patient, or does it belong to the physician?
17 So who's making money on the data that's owned by
18 somebody? So can the physician, or the pharmacist,
19 or the patient sell the data? Well, right now a
20 corporation is making money on the data. Just
21 another question. Can -- instead of opting out,
22 can physicians in the State of Vermont opt in to
23 this system and say, "sure, go ahead, access my
24 data for my patients," so it's another way of
25 offering guarantees, or is there an opt-out that is

1 particular to the State of Vermont? You know, so I
2 think the question of data ownership, just as it's
3 going to be critical for other areas of -- for
4 laboratory testing, when we start doing more and
5 more lab testing, and sell testing more directly to
6 a chronicle care environment, it raises a lot of
7 questions as we go in the future. So there's going
8 to be DNA testing, so who owns the results of that,
9 et cetera?
10 SENATOR WHITE: So I have a comment here, but
11 maybe we should -- maybe they should pay the doc.
12 FEMALE SENATOR: Well, that's what I'm saying.
13 SENATOR WHITE: If they're targeting them for
14 marketing, they should pay them for the
15 (inaudible), reimburse them for the data.
16 FEMALE SENATOR: The patient.
17 SENATOR WHITE: Right, pay the patient. Pay.
18 But I think that there are -- if you look on Page
19 26 -- I mean I was thinking about Kevin's comment
20 here about people who are overprescribing. I think
21 that Page 26 and 27 have -- they list 7 exemptions
22 to this, and all of those -- all of those things
23 that we would think might be beneficial using for
24 collecting, and using the data, are exempted here.
25 So 6 -- 5 and 6 both give the ability to sue where

1 there's a law enforcement issue or provision issue,
2 and --
3 MALE ATTENDEE: As long as it's still
4 collected.
5 SENATOR WHITE: Yeah, and I don't -- I actually
6 have to say I don't think -- given the fact that
7 they can collect it by many other methods, I don't
8 think they're going to stop collecting this. If
9 there's a profit to be made on it, they'll find a
10 way to get it.
11 MS. LUNGE: And I would just say I don't think
12 that, for instance, the Department of Health effort
13 where they're doing the monitoring for Oxycotin or
14 whatever, I don't think they're buying that data
15 from IMS. They're collecting it directly
16 themselves.
17 SENATOR WHITE: Yeah.
18 MS. LUNGE: So for that effort they wouldn't be
19 purchasing it, so they don't care what IMS is
20 doing, or any other (inaudible) is doing.
21 FEMALE ATTENDEE: They can't afford it, right?
22 MS. LUNGE: Right.
23 FEMALE ATTENDEE: But there's a possibility
24 here on a way to --
25 THE CHAIR: Go ahead.

FEMALE ATTENDEE: I would like to weigh in on a number of points here. I know it's a little after 5. Do you want to want to keep going, or come back to this tomorrow, because there are a lot of (inaudible)?
FEMALE SENATOR: On this topic only?
FEMALE ATTENDEE: Oh, yes -- well, this topic, and other topics to.
FEMALE SENATOR: Yeah.
THE CHAIR: Before you do that, I want to ask the committee, should we push on, or --
FEMALE SENATOR: Come back tomorrow?
THE CHAIR: -- come back to this tomorrow?
MALE ATTENDEE: (Inaudible) for my other committee, (inaudible) right now, but --
THE CHAIR: (Inaudible). How are people feeling on this provision? I'm actually having a hard telling whether people being devil's advocates, or (inaudible) some of the arguments though (inaudible) I don't want to leave this provision in. I want to take it out. Okay. We're undecided.
FEMALE SENATOR: (Inaudible). Did you want it in or out?
MS. LUNGE: I wanted it in.

FEMALE SENATOR: (Inaudible).
THE CHAIR: We'll leave it in.
FEMALE SENATOR: No, I mean I think it's an important provision for us to keep discussing.
THE CHAIR: Right, so you haven't made up your mind yet?
FEMALE SENATOR: No, I would not --
MS. LUNGE: I still could be placed --
THE CHAIR: Okay.
MS. LUNGE: -- but that's where I am.
FEMALE SENATOR: -- like to leave it.
THE CHAIR: Okay.
FEMALE SENATOR: I would not like to take it out completely.
THE CHAIR: You would not?
FEMALE SENATOR: I would not like to take it out completely. I think it's a big issue.
MALE SENATOR: I guess I'm not convinced that -- either way at this point.
THE CHAIR: Okay. That's a definite maybe. Jenny?
FEMALE SENATOR: Yeah, I want to hear some of the legal issues. I mean we did hear a little bit about this, and I know it's being contested in New Hampshire, and I guess it's -- I think it is a very

important provision, and I think it's important to have something like this in place, but I also am very aware that there is a court case going on, and I would like to know what the status of that is and what it means.
THE CHAIR: I guess we're going to come back to it tomorrow. And I think I expressed some of my concerns.
FEMALE SENATOR: Right.
THE CHAIR: I'm not convinced that doesn't (inaudible). Anyway, we'll be back at this at the end of the Senate section tomorrow, which will be --
FEMALE ATTENDEE: Okay.
THE CHAIR: -- 2:00. It could be 2:30. I don't think there's much on the calendar, so --
MALE ATTENDEE: No, it should be a fairly short docket.
THE CHAIR: -- I think it could be -- we should be back in here at 2. So those of you who have any interest -- and Susan, we can start with you, and end with Robin if she has any more information based on what we (inaudible).
MALE ATTENDEE: And, Robin, I (inaudible).
THE CHAIR: As to the provisions, I think we

should strike all of the amendments.
MS. LUNGE: Yep.
THE CHAIR: I (inaudible) amendments.
MS. LUNGE: Okay.
THE CHAIR: I think when I (inaudible) --
MALE ATTENDEE: Yeah.
THE CHAIR: -- and I prefer -- yeah, and right now I'm thinking I prefer to have finance present the bill, and then we'll go through with any changes that we have, and hope -- my hope would be that finance gets up and says yes to most of them.
MALE ATTENDEE: Do you have any questions (inaudible)?
THE CHAIR: Sure, (inaudible).
MALE ATTENDEE: And since Bill asked (inaudible) for the jurisdiction to cross over, it's hard to (inaudible) with finance. This argues -- (inaudible).
THE CHAIR: I think (inaudible) jurisdiction. I think the exemption applies to the money. The money (inaudible).
MS. LUNGE: That's right. I think if it had gone the other way actually --
FEMALE ATTENDEE: Yeah.
THE CHAIR: Well, ask David.

FEMALE ATTENDEE: Yeah.
THE CHAIR: I think it's -- I think (inaudible).
FEMALE ATTENDEE: Yeah, (inaudible)
THE CHAIR: That's my understanding. If you want to check with David and --
MS. LUNGE: I'm sure I -- which the unconscionable pricing section --
THE CHAIR: Right. Maybe if I --
MS. LUNGE: -- you gave me a copy of the decision in the D.C. case. That's the unconscionable pricing section.
THE CHAIR: (Inaudible).
MS. LUNGE: Yep, I do.
THE CHAIR: (Inaudible).
MS. LUNGE: Thank you.
THE CHAIR: I think (inaudible).
(CD No: 07-53/T was concluded.)

CERTIFICATE

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Vicki L. Lima, Professional Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did listen to CD 07-53/T1, The Senate Committee on Health and Welfare, Tuesday, March 13, 2007 proceedings, and stenographically transcribed from said CDs the foregoing proceedings and that the transcript is a true and accurate record to the best of my ability.

Dated this 24th day of August, 2007.

Vicki L. Lima, Court Reporter
Job #887530

STATE OF VERMONT

2 (Senate Committee on Health and Welfare)

3 Re: Senate Bill 115

4

5 Date: March 14, 2007

6 Type of Committee Meeting: Prescription Drug Legislation

7

8 Committee Members: Sen. Doug Racine, Chair; Sen Ed

9 Flanagan, Vice-Chair; Sen. Sara Kittell; Sen. Kevin

10 Mullin; Sen. Virginia Lyons; Sen. Jeanette White

11

12 CD Number: 07-54/T1/T2

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Reported by:

24 Susan Taylor, Court Reporter

Notary Public, State of Florida

25 Esquire Deposition Services

1 PROCEEDINGS
2 - - -
3 CD 07-54 T1
4 ATTENDEE 1: This is the meeting of the
5 Senate Health and Welfare Committee. Today is Wednesday,
6 March 14th, 2007.
7 PROCEEDINGS
8 - - -
9 CD 07-54 T2
10 ATTENDEE 1: With your strong support and
11 backing (inaudible) we made it unscathed.
12 ATTENDEE 2: (Inaudible).
13 ATTENDEE 1: Well, you never know.
14 ATTENDEE 3: Great.
15 ATTENDEE 1: We are had starting now on
16 S.114 continuing the discussions that went very,
17 very well yesterday. And I thank everybody, the
18 committee and Robin and everybody in the room,
19 for what I thought was a very constructive
20 process. And on the theme I started with
21 yesterday, because it seemed to work, was as we
22 work through this people who are in attendance
23 have things to say your input is welcome. Try to
24 keep it brief and we keep it under control so
25 there's only one conversation going on at a time.

1 I think those of you who were in here yesterday
2 realize that we are willing to have a little back
3 and forth with the committee so we can work these
4 things out. If things can be worked out that's
5 great, if not we will have to figure (inaudible)
6 round the table with the six of us.
7 So I would like to go back to Robin and,
8 perhaps, before we can -- before we proceed, and
9 we were in the middle of the so-called data
10 mining portion. I don't know if that's a
11 derogatory term for those who are doing the
12 mining or not. But before we do that, we go back
13 to -- I understand we have some agreement on some
14 provisions that were being discussed by others.
15 ATTENDEE 5: Yes.
16 ATTENDEE 1: So take it away, please.
17 ATTENDEE 5: Sharon, do you have the copies
18 or are they being made of Paulette's language?
19 ATTENDEE 6: Can I ask a very important
20 question before we get started?
21 ATTENDEE 1: Sure.
22 ATTENDEE 7: Commissioner Paulette, how do
23 you spell your last name?
24 MS. THABAULT: Can I spell you my first
25 name? It's Thabault.

1 ATTENDEE 7: Thabault?
2 (Brief interruption).
3 ATTENDEE 7: Thank you for that very
4 important --
5 ATTENDEE 1: This is all intricate stuff.
6 It's a small town we live in in Vermont. So why
7 don't we proceed.
8 ATTENDEE 8: So the language that we just
9 passed around, it looks like this. I'm not
10 referring to the memo, I'm referring to the
11 actual language.
12 ATTENDEE 1: Yep.
13 ATTENDEE 8: So the -- so the proposal of
14 amendments are -- it's shaded and I think the
15 shading is kind of light, so I'll point out where
16 that is. So in subsection A, language was added
17 to say acceptance --
18 ATTENDEE 9: Can you tell me what page it's
19 on on our original bill? Oh, I see it. I find
20 it -- yeah. Sorry.
21 ATTENDEE 8: So it's subsection A, the
22 language added is accept this to subsection B of
23 this section. That's added in the first sentence
24 and then part way through the -- the paragraph
25 at -- to the beginning of the second sentence, so

1 that's -- we talked about carving out a
2 particular piece for BISHCA, a stand-alone
3 authority, so that references the stand-alone
4 piece. And you can see in C, the language
5 referring to the commissioner has been changed
6 slightly to say the commissioner may investigate,
7 examine or otherwise enforce a violation of the
8 subchapter by PBM under section 9412 of this
9 title, add this to PBM for health insurer. This
10 (inaudible) 9412 refers to health insurers.
11 ATTENDEE 1: What's the significance of
12 investigate, examine or otherwise enforce?
13 ATTENDEE 8: Let's see what the previous
14 language was? It used to say may enforce. I
15 think the significance of that would be just to
16 clarify that the investigation or examination
17 prior to an enforcement action was also
18 allowable. So I would presume that before BISHCA
19 would just move right into an enforcement,
20 perhaps, the commissioner would be better to
21 speak to this, before then we'd move into an
22 enforcement action they would want to investigate
23 and see if there's a basis for that.
24 ATTENDEE 1: That's not clear from just the
25 word enforcement.

ATTENDEE 11: I think that (inaudible) just to clarify (inaudible) --
ATTENDEE 1: It doesn't (inaudible) it wasn't intended in this original one.
ATTENDEE 11: No. I think it also recognizes that on (inaudible) action (inaudible).
ATTENDEE 1: Okay. Thank you.
ATTENDEE 8: And then you can see there's a new subsection D, the commissioner, meaning the commissioner BISHCA, shall have the exclusive authority to investigate, examine or otherwise enforce the provisions of this subchapter as to pharmacy benefit manager in connection with the PBM contractural relationship with, and then the other activities with respect to a health insured bind and then that's referenced to the definition. And then E is (inaudible).
ATTENDEE 1: And that's something we discussed yesterday; is that right? That we would limit -- APAG would not have an enforce (inaudible) insured (inaudible) the attorney general would have enforcement of action over all the others. And we (inaudible) all the enforcement action on the others. Is it a

shared?
ATTENDEE 12: Yeah, it's a shared enforcement on the other --
ATTENDEE 1: And exclusively yours --
ATTENDEE 12: (Inaudible).
ATTENDEE 1: That's what I thought (inaudible) okay, that's agreeable.
ATTENDEE 13: That's agreeable on --
ATTENDEE 1: That's agreeable (inaudible) all right. (Inaudible) house committee, is that acceptable?
ATTENDEE 14: Yeah.
ATTENDEE 1: Okay.
ATTENDEE 15: I only have one question and that is under D where it says the commissioner and AG may bring joint enforcement action, so AP is agreeable to that language?
(No audible response.)
ATTENDEE 15: Okay. All right.
ATTENDEE 1: Okay. Do you have -- I know you've got to leave, so do you have other things you want to tell us before we (inaudible).
ATTENDEE 8: Yes. I have on the commissioner's memorandum, which outlines what the remaining issues were, all of their issues on

here, I believe, are requested in my issues list that I handed out and I was going to raise the confidentiality issues around the prescription drug confidentiality section when we got there and we weren't quite there yet, I think.
ATTENDEE 1: Okay. (Inaudible).
ATTENDEE 8: This is detailed, so I think your discussion was really more, do we want to do this or don't we want to do this? And if you don't want to do it then we can skip the details.
ATTENDEE 1: Okay. And section -- there's one comment in section 7 (inaudible) okay. All right. So then we're back to section 13.
ATTENDEE 8: Yes. I also did get some additional information that you asked for from yesterday and I don't know if you'd rather do it now or if you'd rather wait and do that after we finish going through the bill. I think --
ATTENDEE 1: What does it pertain to?
ATTENDEE 8: You had asked questions about the cost savings and the 340 BFQAC section.
ATTENDEE 1: Okay. Let's wait on that one.
ATTENDEE 8: Okay. Does OVA (phonetic) use the same method? Would OVA be okay with using just the same methodology in that -- that's in

the federal law or do we need that language so they can do another methodology by rule?
ATTENDEE 1: Is there a quick answer for that one?
ATTENDEE 8: No.
ATTENDEE 1: Let's go back to it.
ATTENDEE 8: Because it has to do with how the federal methodology -- I mean, it's a fairly quick answer, but --
ATTENDEE 1: Okay. Let's move on, then, and we will come back to those.
ATTENDEE 8: Yeah, there's a few other things, but I think probably it makes sense to come back.
ATTENDEE 1: So when we left, we were discussing whether or not to receive (inaudible) 13, which is the confidentiality section, otherwise known as the data mining section. And I'd ask for a show of hands, and only one hand showed,
so -- so are there -- before we start going into the details on this one, are there other new feelings -- other feelings -- are there feelings on this whether to (inaudible) this section or not? You made your point (inaudible). If you

1 would like to say something. (Inaudible).
2 ATTENDEE 16: I would. There's something
3 about data mining that bothers me. The way it
4 happens bothers me greatly. And so for that
5 reason, I think we should have it in the bill.
6 There are a lot of different ways to look at this
7 and (inaudible) doesn't even cover all the
8 possibilities. But I think this -- it just
9 bothers me greatly that this kind of data is
10 available in the way that is available, period.
11 ATTENDEE 17: (Inaudible).
12 ATTENDEE 1: (Inaudible).
13 ATTENDEE 18: (Inaudible).
14 ATTENDEE 1: And I'll say from my
15 perspective, I share with those classic concerns.
16 I hadn't figured out (inaudible) to do this
17 (inaudible) see that it lowers costs. I don't
18 think it's been presented as a cost savings
19 (inaudible), but I also have (inaudible) --
20 doctors are smart people and can figure out for
21 themselves whether their (inaudible) product as
22 going -- as accomplishing certain purposes and
23 that accounting detail (inaudible) working on it.
24 This legislature has been working on it.
25 (Inaudible) market is going to (inaudible)

1 information. But anyway, having said that, I had
2 (inaudible).
3 ATTENDEE 18: I have here in my notes going
4 back to Jullie's original testimony and if I'm
5 looking at the right section here, this is -- New
6 Hampshire has (inaudible) and the decision will
7 be coming in April.
8 ATTENDEE 18: We don't know when exactly.
9 But I did double-check last night about if
10 there's any new news on the decision and my
11 understanding is it's still pending -- it hasn't
12 finished.
13 ATTENDEE 19: So --
14 ATTENDEE 18: It's at the district court
15 level, so there hasn't been a decision at all on
16 this issue yet.
17 ATTENDEE 19: (Inaudible).
18 ATTENDEE 1: Yes. Go ahead.
19 ATTENDEE 19: So my question is -- do -- I
20 do feel that we need something in here, that is,
21 something more looking at what happens with this
22 piece of litigation trying to figure out --
23 (inaudible) spending more time. I don't know.
24 ATTENDEE 1: That's a thought. I was
25 thinking about that yesterday as we left. If the

1 court determines that the New Hampshire law is
2 unconstitutional, is it being -- is there a --
3 ATTENDEE 8: There are three arguments --
4 ATTENDEE 1: (Inaudible) has the law in
5 effect being challenged or is the law been --
6 ATTENDEE 8: Enjoined. No, it's in effect.
7 And my under- -- Jan called the New Hampshire
8 Attorney General's Office and they called back
9 and said that the transfer of consumer data is on
10 hold, but it's still being collected at this
11 point. So that's their report
12 on --
13 ATTENDEE 1: But my question qualifies is if
14 it's found unconstitutional by that court, would
15 our language (inaudible) unconstitutional?
16 ATTENDEE 8: It depends on the rationale,
17 which is why I said there are three arguments.
18 One argument is a First Amendment argument. I
19 didn't do anything in this version of the bill to
20 address that because I think that's really hard
21 to address without, you know, knowing their
22 rationale. One of the arguments is that the New
23 Hampshire language was not specific enough, that
24 it applied only to transactions in New Hampshire.
25 I did try to remedy that in this version by

1 adding a definition of regulated records on page
2 26, which clarifies that it's only information or
3 documentation from a prescription written by a
4 prescriber doing business in Vermont or a
5 prescription dispensed in Vermont. So if the New
6 Hampshire case failed on that reason that doesn't
7 necessarily mean that this would fail on that
8 reason because I tried to address it. New
9 Hampshire just was silent on who, what
10 transaction they were describing in terms of the
11 location. And I've just forgotten the third
12 rationale, but -- so the answer is it depends.
13 ATTENDEE 1: It depends. All right. Now,
14 if it's found unconstitutional and the reasons
15 are such that our law is found unconstitutional
16 (inaudible) address the changes that you made,
17 this by-law would be challenged (inaudible) on
18 the same basis?
19 ATTENDEE 8: Yes.
20 ATTENDEE 1: And would the Attorney
21 General's office then be required to (inaudible).
22 ATTENDEE 8: I don't actually know that much
23 about how their office works, so I don't know.
24 ATTENDEE 1: Well, my concern is the
25 expense, that if this New Hampshire law is found

unconstitutional then we could end up under the same -- the same expense and go through the same battle with a likely similar --

ATTENDEE 8: I think if the Attorney General's -- if the Attorney General's office -- they do settle cases, so they are not required to defend it unless they think the law isn't unconstitutional. So if they agree that, yes, it's unconstitutional, they could, I think, do a settlement agreement and skip the whole court process and lower the expense. But it would depend on, kind of, their judgment as to whether or not they agreed with what the New Hampshire court said and if they thought the Vermont --

ATTENDEE 1: So it's not necessarily requiring a great expense on Vermont's part?

ATTENDEE 8: Right. It would totally depend on the circumstances, so it's hard to judge in advance.

ATTENDEE 1: And if that's found to be constitutional then ours probably wouldn't be challenged.

ATTENDEE 8: Correct. I would assume not.

ATTENDEE 1: (Inaudible).

ATTENDEE 8: Yeah. Unless there are other

things in our law that varied from New Hampshire that raise different issues.

ATTENDEE 20: What studies or analysis did (inaudible) use when (inaudible) this issues?

ATTENDEE 8: I don't have the full legislative history from New Hampshire, so I could try and contact the sponsor of the New Hampshire bill tonight and ask her that question. I do know they did get some information from AARP. AARP Vermont might know that, but I haven't really studied their complete legislative history. I just looked at their bill and looked at what the challenges were involved.

ATTENDEE 20: Mr. Chair, (inaudible) reading Section A of the (inaudible) if you remember on the medical society's testimony that -- I mean, (inaudible) and Senator (inaudible) I mean, one of the things is everyone is becoming aware of this now. (Inaudible) what it's all about. So on 150 would be to (inaudible) and the medical society would say something about (inaudible) we are not sure. There's a discussion about whether it drives up the cost because of the -- you know, so I think that if we, you know, had (inaudible) about it, it may drive up the cost. And

(inaudible) you can't tell the medical society what to do, but we can say something about it. They certainly could -- 95 percent of the doctors are members of the medical society and they certainly could opt in. I mean, there's another way. (Inaudible) doctors could opt in, maybe they could opt in to the Secretary of State's office, wherever they get registered. I think it's a medical board. They could opt into this and then they would have to check it and it would be transparent. Okay. (Inaudible) that's being collected, and -- you know, what are they opting into, they are opting into -- I don't know (inaudible) they're aware of this. (Inaudible) aware of this practice, this ability.

ATTENDEE 8: The way I've described -- I've heard described the opt in idea would be that the data would be -- not the -- the data transfer would be prohibited unless the doctor said affirmatively, I'm fine with my data being transferred. So that's how -- I think that's what you're talking about. Does that sound right?

ATTENDEE 20: But -- but isn't that reason for the -- or anyway, I thought, my opposition to

this is not for transfer of the data because that's used for other purposes also, but the commercial use of it. So I --

ATTENDEE 8: But I was using shorthand. I know -- transfer for commercial use, correct?

ATTENDEE 20: Okay. Okay.

ATTENDEE 8: Sorry. I -- that was --

ATTENDEE 20: It's okay.

ATTENDEE 21: I mean, I think (inaudible) he needs a lot of information. (Inaudible).

ATTENDEE 22: Right. And that's my question, how do we -- how do we control --

ATTENDEE 23: Well, the question I have about that is will that information be available if (inaudible) provided in this way, that's one of the key questions to this issue.

ATTENDEE 24: And we probably never will have an answer -- a definitive answer for that because we -- there's going to always be (inaudible) those of us are too skeptical (inaudible). I mean, it's -- but we might have more answers.

ATTENDEE 25: Well, then, it would be -- if (inaudible) language, you know, how (inaudible).

ATTENDEE 26: Right. That would be the

1 question.
2 ATTENDEE 1: I guess one of my concerns is
3 this, consequences (inaudible) not in terms of
4 the research. (Inaudible).
5 ATTENDEE 27: (Inaudible).
6 ATTENDEE 1: (Inaudible).
7 ATTENDEE 28: (Inaudible) testifying last
8 year.
9 ATTENDEE 1: Yeah. And, you know, he was
10 supposed to (inaudible) check with our
11 (inaudible) they don't really (inaudible) they
12 don't use a lot (inaudible). There's more data
13 coming (inaudible) 15 years about data which has
14 never been produced (inaudible). But anyway --
15 ATTENDEE 29: (Inaudible) next year.
16 ATTENDEE 1: And I didn't write it down, but
17 apparently there is information out there
18 (inaudible).
19 ATTENDEE 30: Well, and I think part of what
20 you're doing with the multi-care data base would
21 collect --
22 ATTENDEE 1: (Inaudible).
23 ATTENDEE 8: Would collect this data. So I
24 think they're doing it, vital would be doing it,
25 so there are -- in Vermont, there are other

1 entities that are collecting the Vermont
2 (inaudible).
3 ATTENDEE 1: Then there's the question of
4 who would review it? It wouldn't be public
5 information.
6 ATTENDEE 31: I wouldn't think (inaudible)
7 again, there is a question (inaudible).
8 ATTENDEE 1: (Inaudible).
9 ATTENDEE 31: (Inaudible) data is -- the
10 data is sold from the pharmacy to the
11 organization (inaudible).
12 ATTENDEE 8: And I don't know which --
13 ATTENDEE 1: Do pharmacies get paid for
14 this, is that the way it works?
15 ATTENDEE 31: That's one of my questions.
16 ATTENDEE 8: I don't know -- I don't know
17 how it works. Steve probably knows if his
18 clients are paying for the --
19 ATTENDEE 1: Steve?
20 ATTENDEE 32: I have asked my client
21 (inaudible).
22 ATTENDEE 1: They get paid for it?
23 ATTENDEE 32: They get paid for it. It's
24 their data. They have it in their computer
25 systems. Like I said, ten years ago, this kind

1 of (inaudible) fairly common.
2 ATTENDEE 33: (Inaudible).
3 ATTENDEE 34: You can have my (inaudible).
4 ATTENDEE 1: Well, I just want to -- and my
5 understanding, and correct me if I'm wrong, is
6 that the patient (inaudible) are not attached to
7 it. It's about what doctors --
8 ATTENDEE 35: Well, the health care costs of
9 America (inaudible) because there's big money in
10 it and it's how you make money.
11 ATTENDEE 1: A lot of people are making
12 money. My question is, what is this doing to
13 lower the costs of healthcare? I'm not convinced
14 (inaudible). Dr. Swartz (phonetic), you've been
15 nodding on a couple of points, do you have
16 something you want to say (inaudible) on this?
17 ATTENDEE 36: (Inaudible).
18 ATTENDEE 1: Okay. That's very much to the
19 point. And I know Susan Gretkowski wanted to say
20 something.
21 MS. GRETKOWSKI: Yeah. Just I had a lot of
22 comments yesterday (inaudible) you know, one
23 point (inaudible) and I would say no. And one of
24 the assertions made (inaudible) well, that
25 actually complies with the (inaudible). I don't

1 know if you folks saw the (inaudible) obviously.
2 (Inaudible) says sale of unbranded generics rose
3 22 percent last year. So they use the generics
4 (inaudible) Hospitals rose 7.9, physicians rose
5 7- -- (inaudible) so if it's true (inaudible)
6 it's not showing on the (inaudible.) And I also
7 think that's why that argument (inaudible) so I
8 think you're getting back into (inaudible) I
9 would say no. (Inaudible).
10 Also one other point I would just like to
11 make, AMA (inaudible) on whether or not
12 (inaudible) so if the contract is between IMS
13 (inaudible). Also, apparently, between AMA and
14 IMS (inaudible) and we found is a lot of the
15 doctors are saying, we'll see (inaudible)
16 marketing reps (inaudible) so the doctor is in
17 complete control on whether or not to see the
18 rep. So, again, going back to that (inaudible).
19 ATTENDEE 37: It's just -- you know, it's
20 wonderful that IMS exists (inaudible) But to use
21 it, I mean, I just -- I would like a safety net
22 and something to insure that this thing
23 (inaudible) is very transparent with the
24 (inaudible) so I guess that would be some
25 language about transparency that would be

(inaudible).
ATTENDEE 38: Okay. So here's where I'm getting to be, I think this is a -- this is a -- with provision, but -- and obviously, there's a bill on the wall that I sponsored that agrees to the (inaudible) but I also think that this is the first time that this committee has (inaudible) and I hear all the questions around the table, so I think while we think it's critically important to look at, I don't think that we can have all the -- either all the information or all the questions asked (inaudible) and we need to have a lot of other things (inaudible) getting some analysis on this issue.
ATTENDEE 1: Are you suggesting that (inaudible)?
ATTENDEE 38: Well, I mean, we could do that, but I don't know -- I think that we've talked about it enough, that we have sufficient questions. We could include something in here to make a determination as to whether or not -- or how this effects the (inaudible).
ATTENDEE 39: (Inaudible) and pass it for when we have more time since (inaudible) develops.

ATTENDEE 1: (Inaudible).
ATTENDEE 40: But it could also be passed next year --
ATTENDEE 41: In April.
ATTENDEE 42: I could be if they -- if they -- this doesn't preclude us from looking at this as a separate issue.
ATTENDEE 43: Right.
ATTENDEE 44: If we want to do that.
ATTENDEE 45: So do you want to turn this into a study for this issue and get more information (inaudible).
ATTENDEE 1: Does the legislative council agree?
ATTENDEE 46: Yes.
ATTENDEE 1: You don't like studies?
ATTENDEE 47: I don't like legislative council studies.
ATTENDEE 48: Zero.
ATTENDEE 1: That's why you guys end (inaudible) I mean, it's about a question --
ATTENDEE 49: I should let the rest of the committee know that legislative council (inaudible) it was killing the staff (inaudible).
ATTENDEE 1: We do recognize that.

ATTENDEE 50: How about if it wasn't due until next year?
ATTENDEE 51: Well, you know, also we'll have the (inaudible) decision from New Hampshire.
ATTENDEE 1: We'll have a decision.
ATTENDEE 52: And we'll know more then.
ATTENDEE 53: And then they can write something that isn't due back to us until next year. That at least would be somewhat better, wouldn't it, (inaudible)?
ATTENDEE : Well, we could put (inaudible) on ourselves to do --
ATTENDEE : We could.
ATTENDEE 1: To continue to work. That would be taking out of this bill altogether and saying (inaudible).
ATTENDEE 54: (Inaudible) S.140.
ATTENDEE 1: Yeah, and get 14 co-sponsors.
ATTENDEE 55: We're not going to have that.
ATTENDEE 1: Well, I don't know (inaudible). We could either approach it as a study that we do a legislative committee instead of just hand it to legislative council or we could go to the health department --
ATTENDEE 56: Or we could just (Inaudible)

and attach it to that.
ATTENDEE 1: Or we could take it up as a separate bill and spend more time on this issue after crossover. If we spend more time on it then we would advise the council while they're looking at it (Inaudible).
ATTENDEE 55: Or we could ask them to get together (inaudible) the medical society (inaudible).
ATTENDEE 1: I think as we're talking, I like that idea, but I have that group in this committee with us here. So I guess what I'm leaning towards is doing it as -- doing with Genny's bill (inaudible) and get some of the same cast of characters in here -- and all good characters and review this --
ATTENDEE 56: (Inaudible).
ATTENDEE 1: And spend a little bit more time on it.
ATTENDEE 57: Can we use -- put a place marker in here on the bill so that it's not taken out completely -- that there would be a place marker to say something about (Inaudible) we asked for a report.
ATTENDEE 58: Well, we could ask for a

1 report (Inaudible).
2 ATTENDEE 59: Yeah. Ask for the report and
3 look at the issue, the transparency of the issue
4 of the (Inaudible) transparency on it or
5 something like that. And the legislative council
6 would report to us --
7 ATTENDEE 60: On the April -- on the New
8 Hampshire --
9 ATTENDEE 61: January --
10 ATTENDEE 1: It's included in here, I don't
11 know if we need to put in there.
12 ATTENDEE 62: She just wants a place holder.
13 ATTENDEE 63: I just meant that, you know,
14 that people are going to say, oh, great, they
15 took that out and somebody says it could be in a
16 separate bill where it won't become an issue.
17 And at least we have a report, right, I mean,
18 (Inaudible) it will make the finance people be
19 happy.
20 ATTENDEE 1: (Inaudible) to hand off a whole
21 lot of work to these folks. Would it just be a
22 report on if the New Hampshire case is decided
23 that we will then report back to the legis- -- to
24 this committee or legislative council on --
25 ATTENDEE 64: Advising us somehow to proceed

1 with our own legislature.
2 ATTENDEE 1: Yeah. And we will make a
3 commitment around the table to continue looking
4 at this issue under (Inaudible).
5 ATTENDEE 65: Well, I mean --
6 ATTENDEE 1: I mean, that's up to you. I
7 was in the minority here.
8 ATTENDEE 66: I'm fine with that. I'm fine
9 with that.
10 ATTENDEE 1: The majority said --
11 ATTENDEE 67: Absolutely.
12 ATTENDEE 1: I think there are questions and
13 I will say one member of the other committee has
14 questioned (inaudible). I guess majority ruled
15 (inaudible). If that's agreeable around the
16 table then we will do that and try to give us
17 some language. I think it probably would come
18 out (inaudible) the issue has been decided.
19 ATTENDEE 68: Yeah. Yeah.
20 ATTENDEE 1: But it also, I would say,
21 (inaudible) puts the subject into the bill --
22 ATTENDEE 69: Yeah.
23 ATTENDEE 1: And if the house (inaudible)
24 and this is decision the 1st of April and the
25 house wants to take it up, it's not -- it

1 wouldn't be out of line with this bill.
2 ATTENDEE 70: Perfectly -- yeah.
3 ATTENDEE 71: (Inaudible).
4 ATTENDEE 1: And we have more time to spend
5 on it. If we come to some conclusion, we can
6 certainly make a recommendation to our
7 counter-parts (inaudible) on reasonable health
8 (inaudible) Okay. Are we done here?
9 ATTENDEE 72: We'll take up (Inaudible).
10 ATTENDEE 1: We will take up S.140 and when
11 we -- the committee is in a quiet area at the
12 beginning or end of that day, I will talk about
13 what we do (inaudible) and continue discussions.
14 ATTENDEE 8: Okay. So then we're moving on
15 to section 15.
16 ATTENDEE 1: What happened to 14?
17 ATTENDEE 8: 14 is related to 13.
18 ATTENDEE 1: (Inaudible) Thank you.
19 ATTENDEE 8: So without 13, 14 doesn't make
20 any sense. So sections 15 and 16 are related,
21 these are the sections which set up a law for
22 both pharmacists and for insurers that say if a
23 consumer goes to the pharmacy, they would pay the
24 lesser of the co-payment or the usual retail cost
25 of the drug. Senate finance is sort of looking

1 at this from the, if you're co-payment was more
2 than, for instance -- I hate to use specific
3 people, but I will because it's going to give you
4 an example, Wal-Mart has their $4 generic
5 promotion. If your co-pay is $10, you'd -- and
6 you were getting that generic, you would pay the
7 four, not the ten. And the testimony that you've
8 heard was basically that BISHCA wasn't sure if it
9 was necessary. And Anthony Otis testified from
10 the pharmacists saying that he thinks this
11 already happens in the computer system. So those
12 were the main -- that was the main testimony that
13 you heard. There's been no specific suggestions
14 about language changed just (Inaudible) --
15 ATTENDEE 73: So, then, what, when things
16 already happened as then maybe it's a good thing
17 to talk about it to reinforce it.
18 ATTENDEE 1: (Inaudible) of the statutes
19 (Inaudible) it becomes a practice, the practice
20 will change. If this happened because of statute
21 for regulations then (Inaudible). So do you have
22 an answer to that?
23 ATTENDEE 74: Well, it happens because of
24 practice not because the statute (Inaudible).
25 ATTENDEE 1: (Inaudible).

ATTENDEE 75: (Inaudible).
ATTENDEE 1: This contract with the pharmacy (inaudible).
ATTENDEE 76: (Inaudible).
ATTENDEE 1: But -- but does MBP have the same contract as we have?
ATTENDEE 77: I don't know. (Inaudible).
ATTENDEE 1: Is that something that they can regulate to look at or is that completely up to the insurer?
ATTENDEE 78: (Inaudible).
ATTENDEE 79: So practice (inaudible).
ATTENDEE 80: Well, we could. (Inaudible)
.
ATTENDEE 1: (Inaudible).
ATTENDEE 81: I think we should wait for (inaudible) pick up.
ATTENDEE 1: And then fix them.
ATTENDEE 82: And then fix them.
ATTENDEE 1: The horse and the barn door.
ATTENDEE 83: No, no. Actually --
ATTENDEE 84: (Inaudible).
ATTENDEE 1: What I'm hearing from --
ATTENDEE 85: (Inaudible).
ATTENDEE 1: But if you got that complaint

tomorrow, do you have a remedy within your department or know anything about that or would you talk to the legislature to see?
ATTENDEE 86: We would (inaudible).
ATTENDEE 1: So the contract changes the (inaudible).
ATTENDEE 87: Here's what I --
ATTENDEE 88: I don't see how anybody can force anybody to pay more than the actual cost, so there's got to be something somewhere.
ATTENDEE 89: Here's what Anthony said or what I heard --
ATTENDEE 1: Well, he's here to tell you what he said it or not.
ATTENDEE 89: I know he is, but I wrote it down, It is already done, but wouldn't work.
ATTENDEE 1: (Inaudible).
ATTENDEE 89: And your clients in this case being --
ATTENDEE 90: (Inaudible).
ATTENDEE 1: (Inaudible) does that include Wal-Mart?
ATTENDEE 90: (Inaudible) all the costs.
ATTENDEE 1: So does your price include all the costs?

ATTENDEE 90: (Inaudible).
ATTENDEE 91: (Inaudible).
ATTENDEE 1: So we should put this in? And I think anybody (inaudible) where let's not put it in.
ATTENDEE 92: (Inaudible).
ATTENDEE 1: Okay. We'll take it out then.
ATTENDEE 93: I served with somebody on the chair once (inaudible) unnecessary work, so any way. (Inaudible) Yeah, it's on a previous section.
ATTENDEE 94: Okay. (Inaudible).
ATTENDEE 1: Okay. And you're building to that. Okay. What I would like to do is get through the bill and then we'll go back to see if there's anything we need to revisit. You don't have to stay here, we can find it. There was a question up front, so let's continue on through the bill.
ATTENDEE 95: (Inaudible).
ATTENDEE 1: We will come back to it. So, Robin, if you could -- (Inaudible).
ATTENDEE 96: Skip 15 -- yeah.
ATTENDEE 1: (Inaudible) seven or eight pages?

ATTENDEE 8: No, 37.
ATTENDEE 1: (Inaudible) a member of the other body who would look at it and be like, I don't know if this is serious or not, but because it's more than ten pages, I'm voting no. I don't know if that's a true story or not (Inaudible). Okay.
ATTENDEE 8: So the next section of the bill is section 17, which is the unconscionable pricing section. I think the main testimony about that was either -- this is a direct way for you to control pricing. Then there's some discussion of legal issues. There wasn't a lot of, I think, detail and suggestions in terms of language changes or anything like that. So --
ATTENDEE 1: (Inaudible).
ATTENDEE 8: I think -- she was scheduled to testify the week when you were having people testify and then because of the delay in the committee, we couldn't get her on the phone, so it would be a reschedule from then. So it would be her comments generally on the bill. I think -- I have let her know, kind of, what decisions we've been making, so she wouldn't waste your time on, you know, other things. So I think it

1 probably would be on PBM, this section. If
2 you've got other questions on the other sections,
3 I'm sure she'd be (inaudible).
4 ATTENDEE 1: (Inaudible) We did hear from
5 her (inaudible) finance committee and she gave us
6 a list of suggestions (inaudible).
7 ATTENDEE 8: She's in Maine. She's a
8 representative (inaudible).
9 ATTENDEE 97: (Inaudible).
10 ATTENDEE 98: Well, let's figure out what we
11 want to talk to her about. We have (inaudible).
12 ATTENDEE 1: I'm not sure (inaudible) I know
13 (inaudible) testimony (inaudible).
14 ATTENDEE 98: My only question to her is
15 what you've been saying, are we saving money?
16 You know, people are going to ask us that on the
17 floor.
18 ATTENDEE 99: (Inaudible).
19 ATTENDEE 100: I mean, she's not going to be
20 able to (inaudible) saving money (inaudible).
21 ATTENDEE 1: She's one of us.
22 ATTENDEE 101: Yeah, right.
23 ATTENDEE 1: (Inaudible).
24 ATTENDEE 101: Yeah. (Inaudible).
25 ATTENDEE 1: But we still have her testimony

1 (inaudible) we still have her testimony -- her
2 previous testimony (inaudible).
3 ATTENDEE 101: Yes.
4 ATTENDEE 1: (Inaudible).
5 ATTENDEE 101: I don't know. I'm still
6 iffy.
7 ATTENDEE 1: (Inaudible) I'm trying to get
8 you out of here.
9 ATTENDEE 8: I know. Talk to (inaudible)
10 the house is holding me in.
11 ATTENDEE 1: We have to have another
12 philosophical conversation on this one, what you
13 did on the --
14 ATTENDEE 102: Data mining.
15 ATTENDEE 1: -- data mining. Yes.
16 (Inaudible) Again, tell us what it does.
17 ATTENDEE 8: Okay.
18 ATTENDEE 1: And what the proponents
19 (inaudible).
20 ATTENDEE 8: So what this would do is --
21 ATTENDEE 103: What page are we on?
22 ATTENDEE 8: We're on page 29, section 17.
23 And what this section would do, sort of the nuts
24 and bolts of it are on, kind of, 30. It would
25 say -- it would prohibit a manufacturer or its

1 licensee from selling, supplying for sell, or
2 imposing minimum retail requirements for a
3 prescription drug necessary to treat a serious
4 public health problem that results in that drug
5 being sold in Vermont for an unconscionable
6 price. And --
7 ATTENDEE 104: (Inaudible).
8 ATTENDEE 8: Serious public health problem
9 is defined in 46.54, that section would charge
10 the commissioner of health to be the person to
11 examine the issue and decide is a particular
12 condition prevalent and serious enough to
13 constitute a serious public health problem. And
14 you can see that in B, starting on line 14, there
15 are a number of factors that the commissioner
16 would determine when looking at it -- looking at
17 that, including how many people have it, what are
18 the costs of treating it, what are the costs of
19 the drugs that are used to treat it, is that drug
20 essential to maintain health or life, how are
21 consumers effected with the condition, able to
22 afford it or not afford the drug, the
23 affordability, and then other factors that
24 commissioner could consider.
25 ATTENDEE 105: (Inaudible).

1 ATTENDEE 8: Well, I think it's -- I would
2 suspect in terms of -- usually with this kind of
3 thing, the commissioner would probably do some
4 sort of regulations to kind of fill in some of
5 the gaps as well, to kind of work on that
6 (inaudible).
7 ATTENDEE 1: Is it a safe bet that this
8 would be challenged?
9 ATTENDEE 8: I think that's a safe bet.
10 ATTENDEE 1: Even though it's different from
11 the DC language.
12 ATTENDEE 8: It is different from --
13 ATTENDEE 1: (Inaudible).
14 ATTENDEE 8: Yes, yes.
15 ATTENDEE 106: Was in Sharon Treat's
16 (phonetic) testimony, the first one we heard from
17 (inaudible) that what they did in Maine is put in
18 on their general price gouging (inaudible) bill.
19 And they have a --
20 ATTENDEE 8: Maine? There are two bills --
21 there are two different things. Maine has a law
22 as do a number of other states that -- which is a
23 general price gouging law. And under their
24 general price gouging law it covers a number of
25 different things that are considered necessary,

like prescription drugs. So in Maine --
ATTENDEE 1: Oil, gasoline --
ATTENDEE 8: Oil, gas, exactly.
ATTENDEE 1: (Inaudible).
ATTENDEE 107 : (Inaudible).
ATTENDEE 1: (Inaudible).
ATTENDEE 108: No.
ATTENDEE 8: I don't know.
ATTENDEE : What we have is we have -- we passed (inaudible) --
ATTENDEE 1: The last session. But the session before that, (inaudible).
ATTENDEE 8: I can ask. Generally that's what price gouging laws do. They only deal with emergencies.
ATTENDEE 109: Do you know where that would be in our statutes?
ATTENDEE 8: I can follow up with Sam. I'm sure he --
ATTENDEE 110: But I thought the reason we had to pass the fuel one last year is because the other one didn't go anywhere, and I may be wrong.
ATTENDEE 8: Well, I can try and find out about the status --
ATTENDEE 1: What are you getting at?

ATTENDEE 110: What I'm getting at is that instead of having something so detailed about just dealing with pharmaceuticals, maybe we should have a general price gouging that deals with all necessities similar to Maine. And it's under (inaudible) so it could be -- you would -- the governor (inaudible) know how it works. But would say, okay, we're in state of emergency or where this particular thing is in emergency right now, no price increases beyond --
ATTENDEE 1: But that's different from what we have here. What we have here --
ATTENDEE 110: Right.
ATTENDEE 1: Is because there's a serious public health problem. (Inaudible).
ATTENDEE 8: Right. Correct.
ATTENDEE 110 : But if you could define a serious health problem as an emergency.
ATTENDEE 8: I think that's what this does, quite frankly. What it does is you have the traditional price gouging law, let's see if I can spit that out here, and you have the DC law, which is here, saying we're going to regulate your prices if they go above 30 percent of other industrialized nations. What this part tries to

do is kind of be in the middle and say, well, there might be circumstances in the health area where we would want to look at the prices that are short of an emergency that are still serious enough to be a public health problem, but are short of being an epidemic or a true, like, call out the National Guard kind of emergency.
ATTENDEE 1: Right. (Inaudible) which requires a certain --
ATTENDEE 8: Exactly.
ATTENDEE 1: Because the way I'm reading this is high cholesterol many (inaudible) suffer from it. The cost of the state insurance (inaudible). You know, I think high cholesterol could be treated by (inaudible) as a serious health problem, which means this is a bill (inaudible) provision of saying of 30 percent. (Inaudible).
ATTENDEE 111: Doesn't the -- I'm sorry.
ATTENDEE 1: I was just going to say that if we were going to leave anything here (inaudible). My problem with it really is the fact that -- and I remember it almost like it was yesterday, four sessions ago, the state of Vermont hired constitutional law experts and economists on this

issue and they were talking about price fixing back then. What (inaudible) said was that (inaudible) can't make it work out (inaudible) what are we doing, we're talking about (inaudible).
ATTENDEE 112: Right.
ATTENDEE 1: That's what bothers me about this section. I don't think it legally works. So the trouble is --
ATTENDEE 113: Well, because you have an out-of-state company and out-of-state (inaudible).
ATTENDEE 8: I think it could also apply to big chain pharmacies that buy directly from the manufacturers too. Because remember -- if you remember from the CVO report, it -- not everything goes manufacturer/wholesale/retailer. There's also direct sales to hospitals and direct sales to larger chains and grocery stores. So I don't think it would just effect Burlington (phonetic) Drug, but I don't know the market and how our pharmaceutical contracts work well enough to say for sure.
ATTENDEE 114: And this is involving --
ATTENDEE 8: In theory anyway.

1 ATTENDEE 115: Immunizations, flu shots, and
2 things like that.
3 ATTENDEE 1: The way its written, it could.
4 ATTENDEE 116: It could be anything.
5 ATTENDEE 1: It really could be just about
6 anything.
7 ATTENDEE 117: (Inaudible).
8 ATTENDEE 118: Doesn't the commissioner
9 (inaudible) through the state as well as any
10 public health officer have the authority to
11 declare a state of emergency and to take control
12 when their are health conditions that warrant
13 that?
14 ATTENDEE 119: I don't know whether
15 (inaudible).
16 ATTENDEE 8: I think it should.
17 ATTENDEE 120: Well, the question is making
18 availability of drugs in a way that it's
19 affordable for the state and the citizens of the
20 state, so if it is -- that's the case, then this
21 would reflect a special condition for that.
22 ATTENDEE 121: (Inaudible) I mean, that's a
23 general price gouging law. (Inaudible) having
24 something after that. (Inaudible).
25 ATTENDEE 122: I guess the question I'm

1 asking is if the commissioner (inaudible) to do
2 that than this would be an extension of that
3 query. But the question is does that -- that
4 query comes from the federal government.
5 ATTENDEE 8: No. I believe it comes out of
6 our state power. Our state power to protect
7 health and -- well, I mean, that's why in the
8 commerce clause area there is an exception that
9 with -- if there's a compelling enough state
10 interest, we can overcome the fact that we're
11 messing with interstate commerce because that's
12 how you can do the price gouging law. Because,
13 of course, oil and gas, how much of that is
14 totally in-state commerce. Not much of it since
15 I don't think we have any refineries here. So
16 there are instances where the state steps in and
17 effects interstate commerce, but they are --
18 traditionally they have been very much the
19 emergency situation. That has been -- there's
20 been case law there that's upheld that.
21 ATTENDEE 1: So you're pushing the envelope.
22 ATTENDEE 8: This goes this step closer. DC
23 went way over here, this is trying to go more
24 over here in that sort of area. And it still may
25 -- you know, the line is not clear.

1 ATTENDEE 1: Are you talking about the
2 wholesale price? So there's one wholesaler --
3 their wholesale sells directly to outside clients
4 (inaudible) and everybody else will (inaudible)
5 everybody else (inaudible) drugs come from
6 impractical (inaudible).
7 ATTENDEE 8: It specifies the manufacturer
8 or its licensee, so I think -- I don't know if we
9 have licensees in-state, probably not.
10 ATTENDEE 1: John, you've been eager.
11 MR. HOLLAR: Well, I don't know if now is
12 the right time, but I think if you just want to
13 spend a couple minutes and talk about the
14 constitutional issues (inaudible) and I hadn't
15 had a chance to talk to Robin about this. We've
16 tried but we weren't able to connect, so I'm
17 interested in hearing her news on this. But as
18 we look at it, this is -- the statute is largely
19 indistinguishable from the DC law that was struck
20 down (inaudible) constitutional analysis. And
21 I'll just read this section of the DC law, the DC
22 law says, it's unlawful for a drug manufacturer
23 or licensee excluding a (inaudible) retail saler
24 to sell or supply for sale (inaudible)
25 requirements for (inaudible) drug that results in

1 a drug being sold in which (inaudible) excessive
2 price.
3 Now, there are a couple of differences there
4 and a couple of (inaudible) but the (inaudible)
5 fact of it is, in our view is, it's unlawful for
6 a manufacturer to sell at a price that is
7 excessive and that is very similar to, as I read
8 this section, to (inaudible) provision in here,
9 which says that the manufacturer sell for an
10 unconscionable price. Now, there is the
11 additional requirement that the (inaudible)
12 commissioner has to determine if it's a serious
13 public health problem, but I don't see that. The
14 DC decision doesn't suggest that that makes any
15 difference for the constitutional (inaudible).
16 So I wanted just (inaudible) two elements of
17 the DC case (inaudible) that results in that
18 decision. The first is under the supremacy
19 clause and the court said essentially that the
20 (inaudible) prescription drugs are priced under
21 the (inaudible) federal patent laws that an
22 individual state can't enact pricing provisions
23 that underline that purpose. The court, I
24 understand, made a couple of provisions on that
25 point. The court found that the DC act was

1 (inaudible) a clear obstacle to the
2 accomplishment and execution and the purpose and
3 objective (inaudible) Congress in passing federal
4 patent laws relating to prescription drugs, and,
5 therefore, a violation of supremacy laws. I
6 think it's absolutely on point here (inaudible)
7 can individual state regulate prescription drug
8 prices. (Inaudible) DC said, no, (inaudible)
9 laws the government has decided -- made a
10 judgement that patent laws for the purpose
11 (inaudible) pharmaceutical industry. So that's
12 that section, and, again, sort of more goes
13 (inaudible) of the point. (Inaudible) struck
14 down because it (inaudible), you know, patent
15 laws, (inaudible) preempted under the supremacy
16 laws.
17 The second issue relates to what we've been
18 talking about here is the commerce laws, whether,
19 you know, to say regulate transactions that occur
20 out of state. Here you've got really two
21 scenarios and I can tell you about that, one are
22 sales that occur -- wholesale sales that occur in
23 Vermont and wholesale sales that occur outside of
24 Vermont. I think it's just beyond (inaudible)
25 really that the state cannot regulate sales that

1 occur outside of Vermont. The DC court was very
2 clear about that. The Supreme Court has held
3 that state statutes directly relating commerce
4 occurring beyond the boundaries of that state is,
5 per se, invalid and generally struck down without
6 further inquiry. Now, that's really black letter
7 law. One state can't regulate transactions that
8 occur out of state and that's what -- and this
9 bill does not restrict itself to regulated
10 in-state transactions. It says that an
11 (inaudible) it does have individual (inaudible)
12 actions. So the individual consumer could sue a
13 manufacturer for a sale that occurred between the
14 manufacturer in California to a wholesaler in
15 Indiana. I think it's -- it seems to be in
16 question whether that's not supported if the law
17 does allow that, so I think you're clearly
18 setting up a constitutional challenge in that
19 regard.
20 ATTENDEE 123: Well, yeah. Now, I say that
21 I think if we choose to do this we are
22 (inaudible) clearly at the (inaudible) and trying
23 to push the envelope and recognize that
24 (inaudible) your claim and others would take
25 (inaudible) and challenge this. And the question

1 I have is this worth (inaudible) because that
2 will -- I think this case (inaudible). I assume
3 so. (Inaudible) I think is very clear what
4 you're saying. You feel like --
5 ATTENDEE 124: I'm saying (inaudible) when
6 you're into --
7 ATTENDEE 1: Well, is it a question -- again
8 I started this -- we all started this (inaudible)
9 ways to control (inaudible) I recognize that.
10 But I think what we've been -- what the state's
11 been doing up till now is looking at commerce
12 (inaudible) the preferred drug lists, the joint
13 purchasing, purchasing pools within the law
14 (inaudible) those things have had some effect in
15 this. This is sort of the next frontier which is
16 trying to regulate (inaudible) and how it's
17 written is going to be accomplished. So the
18 question to the committee -- the philosophical
19 question is do we want to push this (inaudible)
20 do this and it will be challenged. It will be an
21 expense to the state and (inaudible) with lawyers
22 that the constitutional rights were (inaudible)
23 don't want to judge (inaudible) be successful.
24 That's really -- that's the question. I just put
25 out for the committee to see what their responses

1 to it.
2 ATTENDEE 125: (Inaudible) always talking
3 about (inaudible) designates the serious health
4 (inaudible).
5 ATTENDEE 8: Yes. The DC law did not have
6 that section where they had a process for
7 narrow -- being more narrow in the scope of the
8 bill.
9 ATTENDEE 126: This is not all (inaudible)
10 only those (inaudible) designated as a public
11 emergency or a serious --
12 ATTENDEE 8: Right. Only if the
13 commissioner did that would this even be started
14 and then it would need to go for court
15 (inaudible) before anything actually happened.
16 ATTENDEE 1: My only suggestion is that I
17 think it's written so broadly a lot of it will
18 (inaudible) if this is not an emergency, this is
19 a serious health problem.
20 ATTENDEE 8: Correct.
21 ATTENDEE 1: You've already identified that.
22 ATTENDEE 8: Yes.
23 ATTENDEE 1: Price gouging (inaudible)
24 emergency law (inaudible) this is a serious
25 health problem.

ATTENDEE 127: Serious health problem. So, I mean, I'm not so sure that the (inaudible).
ATTENDEE 8: Oh, yeah.
ATTENDEE 127 : You know, that stomach flu that went through last --
ATTENDEE 8: Well, you'd have to -- the drug would have to be 30 percent more than the other prices, so if it was -- if there's a cheap generic, it's not going to meet the test. So it would also have to be something that was expensive to treat, so it's not like the common cold. It's like a --
ATTENDEE 1: (Inaudible)
ATTENDEE 128: No.
ATTENDEE 1: Blood pressure medicine.
ATTENDEE 8: Well, they're not published health threats.
ATTENDEE 129: (Inaudible).
ATTENDEE 130: (Inaudible) goals all indicate that emergencies --
ATTENDEE 131: It would have to be (inaudible) and the only way to (inaudible) something that --
ATTENDEE 132: But that's an emergency.
ATTENDEE 132: Right.

ATTENDEE 133: But that's not what this says, a serious health problem.
ATTENDEE 1: You want to push the envelope. All right. There's one for pushing the envelope.
ATTENDEE 133: I think for serious health threats because I don't believe a lot of things are a serious health threat and we're not all of a sudden going to have 100 serious health threats.
ATTENDEE 1: I think we are.
ATTENDEE 133: I think if we do this, we better define serious health threat.
ATTENDEE 134: (Inaudible).
ATTENDEE 1: (Inaudible).
ATTENDEE 135: We better define --
ATTENDEE 1: Ed wants to push it. Kevin?
MR. MULLIN: I don't want to push it.
ATTENDEE 1: You don't want to push it?
ATTENDEE 136: I want to hear what Dr. Swartz has to say.
ATTENDEE 1: Okay. Swartz.
ATTENDEE 144: (Inaudible) for pushing it and (inaudible).
ATTENDEE 1: Okay.
ATTENDEE 145: I would like to push it and

put in our general emergency price gouging law instead of specifically.
ATTENDEE 1: Okay.
ATTENDEE 145: And I don't think we can -- I don't think we can answer all that until we know (inaudible).
ATTENDEE 1: Why don't we do that?
ATTENDEE 8: Or I can do options tonight.
ATTENDEE 145: (Inaudible) to make a determination about the serious public health problem and (inaudible). This is obviously different from that.
(Conclusion of CD 07-54)

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PROCEEDINGS

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CD 07-55/ T1
ATTENDEE 1: Taylor Lane.
ATTENDEE 2: Taylor Lane.
ATTENDEE 1: Okay. Susan, did you want to speak and then we will go -- and then we'll put Dr. Swartz (inaudible.)
MS. GRETKOWSKI: Yeah. I just need to remind the committee that I testified on the constitutionality of the (inaudible) and one of

the things that I (inaudible) on Tuesday, I delivered to Jan and she ran copies (inaudible) how this statue is written and (inaudible) specifically rejected the existence of a public health (inaudible) --
ATTENDEE 3: So --
ATTENDEE 4: Well, can I ask a question about that?
MS. GRETKOWSKI: Yeah. I just wanted to have that on the record. I want you to (inaudible). And finally just one last thing, there was some questions that you had asked (inaudible) there set out on (inaudible).
ATTENDEE 1: Okay. Thank you. And, Dr. Swartz, do you have something to add to this discussion?
DR. SWARTZ: I have some critical (inaudible) to what would be considered emergency as I hear the discussion. I would say all the things (inaudible) that is a fairly short term dire consequence to a large number of people and maybe (inaudible) part of the (inaudible) so I think that's the kind of (inaudible) talking we're about. (Inaudible). I also would comment that it wouldn't hurt (inaudible) pharmaceutical

1 companies (inaudible) and if the neighbors and
2 the rest of the country are paying 40 bucks a pop
3 (inaudible). So the other pending consequence of
4 that kind of action (inaudible) might be actually
5 (inaudible) -- I'm not sure that I'm a real
6 strong (inaudible).
7 ATTENDEE 1: I think what I'm getting around
8 the table is something (inaudible) that consensus
9 that you would like to push the envelope
10 (inaudible) emergency and epidemic dire
11 (inaudible) and make it hold tighter. Because my
12 concern on this (inaudible) without being a
13 lawyer my (inaudible) I think poisoned the law.
14 If it's interpreted very broadly including
15 diabetes and cardiovascular and cancer then it's
16 almost (inaudible). We narrow it (inaudible)
17 narrow it to be only emergency and health
18 (inaudible). Or we can leave it in here by
19 having very clearly the -- I don't know what the
20 language would be but --
21 ATTENDEE 5: Well, there's lots of -- if you
22 want to follow the Maine model where you're
23 basically doing just market destructions that's,
24 I think, a common model in many other states.
25 That's not pushing the envelope --

1 ATTENDEE 6: No.
2 ATTENDEE 5: -- that's clearly
3 constitutional, so if you want to do that.
4 ATTENDEE 1: Would that be helpful to us?
5 ATTENDEE 6: (Inaudible).
6 ATTENDEE 1: I mean, in an emergency it
7 could be.
8 ATTENDEE 7: But we don't know that we have
9 the Maine model now, Jean, we don't have an
10 overall price gouging bill for the state of
11 Vermont.
12 ATTENDEE 5: That's what -- I have to do
13 that research to determine whether I would be
14 modifying current law to make sure
15 pharmaceuticals were included or doing a whole
16 new section.
17 ATTENDEE 1: I would suggest we stop here
18 and let Robin do her homework on those revisions
19 and come back to this (inaudible). And what else
20 do we have? If that's okay with the committee?
21 ATTENDEE 8: Yeah, that's good.
22 ATTENDEE 1: (Inaudible).
23 ATTENDEE 5: So section 18, you -- and 19,
24 there weren't any additional comments to that I
25 could find. But it looks like you have a comment

1 now.
2 ATTENDEE 1: I have questions about this
3 one.
4 ATTENDEE 5: Okay.
5 ATTENDEE 1: I was just wondering how we
6 regulate advertising in this state?
7 ATTENDEE 5: In section 19.
8 ATTENDEE 1: In section 19.
9 ATTENDEE 5: Okay. In section -- in section
10 19 -- actually the way -- what we did with this
11 section in Senate finance was that -- originally
12 the way it was drafted, we put this language into
13 a current Title 18, Department of Health section,
14 which talks about regulating advertisement, but
15 it soon became apparent that because language has
16 not been revised since the '50s, some of it's not
17 probably still good law. It would be creating
18 lots of confusion and the committee didn't want
19 to completely rewrite that entire chapter when
20 they had a very narrow focus. So what we did was
21 include in a general consumer protection
22 provision about prescription drugs both
23 references to the other parts that -- of that act
24 that -- I need to write myself a note to check
25 those cites to take out the sections -- that

1 you'd already determined were consumer
2 protection. And then add that it would be a
3 violation to present an ad that had been
4 determined as not meeting the federal
5 requirement. Right now the feds have the -- FDA
6 has regulations on what is a fraud or fraudulent
7 or misleading advertisement, but their
8 enforcement authority is either sending a letter
9 or yanking the drug and nothing in between. So
10 what other states have looked at a giving the
11 state AG the authority to kind of do something in
12 between, which is pursuant in court.
13 ATTENDEE 1: Is this consistent with what
14 other states are doing?
15 ATTENDEE 5: Maine, I believe -- well, I'm
16 trying to remember. I have to look back at my
17 notes whether they passed it or whether it's
18 proposed now. I know Maine had something along
19 these lines and I have to check on if there are
20 other states. I think I got the language from
21 Maine's.
22 ATTENDEE 1: Would that be (inaudible)?
23 ATTENDEE 5: I don't remember. I would have
24 to check.
25 ATTENDEE 1: I worry what this does.

ATTENDEE 5: Well, what it does it gives the AG the authority that if the FDA sent a letter saying your ad is fraudulent that the AG could pursue a violation in court to enforce that.
ATTENDEE 1: But only if that federal action --
ATTENDEE 5: Only if the federal law is violated.
ATTENDEE 1: Okay.
ATTENDEE 5: Because we -- the federal law -- it doesn't give us broader authority to regulate advertising than what the feds have because that would be pre-emptive, so --
ATTENDEE 1: I understand the (inaudible) authority, but this would be dependant upon the prior action by the federal government.
ATTENDEE 5: I think -- well, I think the language wouldn't preclude the AGs office from saying this ad violates the federal law. But I think they're more likely to pursue it when there's been some federal action because the federal action then would be helpful in proving it violated the federal regulation.
ATTENDEE 9: What would be the federal actions, a letter or pulling the ad?

ATTENDEE 5: Right.
ATTENDEE 9: So if it's a letter and a letter is --
ATTENDEE 5: They're posted on the Web site.
ATTENDEE 9: They are posted on the Web site, and that would be caused for the AG to --
ATTENDEE 5: And, you know --
ATTENDEE 9: (Inaudible).
ATTENDEE 5: -- there's a bunch of letters and there is a report that consumers union and -- oh, no, maybe it was New Jersey (inaudible) did where they looked at all of these letters to see what drugs and what ads had received -- were you at that other Neilin (phonetic) meeting? I don't know if you remember, Senator Mullins. But there was a presentation at one of the Neilin meetings about the study where they looked at all the FDA letters and saw which ads had been sent more than one letter and whether or not the ad had been pulled and stuff like that.
ATTENDEE 1: Well, what I'm getting at is absent a federal action, the attorney general can say either this advertising has been showing up in Time Magazine. Time Magazine (inaudible) is false advertising. I think it's a violation of

the federal law. I mean, what can AG do? It can't enforce federal law.
ATTENDEE 5: They would go through the Consumer Fraud Act.
ATTENDEE 1: Vermont's Consumer Fraud Act.
ATTENDEE 5: Yes. And the -- but the ad would have to meet the federal regulation requirements, so the AG would have to prove what the Consumer Fraud Act requires them to prove. And for the fraud piece, they would have to prove that there was a violation of one of the federal regs.
ATTENDEE 1: And the AG goes to a Vermont court to do that? What actions could we take against the drug (inaudible) Time Magazine (inaudible).
ATTENDEE 5: Well, it would have to be something that was put into Vermont's stream of commerce. So I think that would -- it would be somewhat restrictive in terms of which ads they would be likely to pursue.
ATTENDEE 1: (Inaudible).
ATTENDEE 5: I don't know. You'd have to ask the AG how far they are willing to push it. So I can't say what the AG's office will and

won't do in terms of --
ATTENDEE 1: And did they write this?
ATTENDEE 5: No.
ATTENDEE 1: Did you write this?
ATTENDEE 5: Yeah. I wrote it based on a Maine law.
ATTENDEE 1: Maine?
ATTENDEE 5: Yeah, as a law -- or a bill. I'm not sure if it's a law yet.
ATTENDEE 10: I was going to say regulate (inaudible) but how do they regulate the ad in the Time Magazine (inaudible)?
ATTENDEE 5: The FDA spot checks -- they don't approve every single ad, so they periodically check different pharmaceutical ads. I think it's more TV ads than print ads. Although it could also be print ads, I'm sure.
ATTENDEE 10: Because it says magazines and newspapers sold.
ATTENDEE 5: Yes. So the FDA periodically reviews certain ads and they decide does this meet our requirements and they have a whole list of requirements. It has to, you know, be something that -- it can't mislead the consumer and the uses and that kind of thing. So how does

the FDA use it?
ATTENDEE 10: No. How did -- how does -- how does Time Magazine?
ATTENDEE 5: Time Magazine would not, and they would not be prosecuted because this doesn't do anything against Time Magazine. This says to the manufacturer, you need to comply with these federal regulations and if you don't the AG can go after you. Time Magazine would --
ATTENDEE 10: Okay. So Merck calls Time Magazine to put in a one-page ad and all the ones that are sold in the state of Vermont can't have that ad.
ATTENDEE 5: If the AG were to sue and a court said, yes, Merck, you shouldn't -- this is a false or misleading ad because the FDA sent you this letter saying it was and you filed the ad in the magazine anyway. You didn't pull the ad after you got the letter.
ATTENDEE 1: I like that part. I don't know if I like the part where Vermont is sued absent the federal action.
ATTENDEE 10: But it doesn't say false or misleading. Where does it say that?
ATTENDEE 5: That's the reference to the

federal law and regulations. They call it misbranded drugs and devices. They use the federal terms. So it doesn't say that because that's not how the federal terms are used, but that's what the content is.
ATTENDEE 10: So the regulated advertisement here isn't just these, it has be just these requirements.
ATTENDEE 5: That's -- you have to read the whole thing together. So you're looking at the definition section, the regulated ad.
ATTENDEE 10: Yeah.
ATTENDEE 5: So then you need to go back to page 34 and read C-1, it shall be a violation under this chapter for a manufacturer of the drugs to present or cause to be presented in the state a regulated advertisement, so then you skip to that definition you were looking at.
ATTENDEE 10: Okay.
ATTENDEE 5: Unless that advertisement meets the requirements --
ATTENDEE 10: (Inaudible).
ATTENDEE 5: Right.
ATTENDEE 10: So if it's determined that -- so we're not stopping advertising of

pharmaceuticals in Vermont --
ATTENDEE 5: No, we can't.
ATTENDEE 10: -- we're just stopping --
ATTENDEE 11: False advertising.
ATTENDEE 10: -- false advertising. And -- okay.
ATTENDEE 11: (Inaudible).
ATTENDEE 1: They're almost promising (inaudible).
ATTENDEE 12: Be rich and have their stock.
ATTENDEE 1: (Inaudible) walk through a field of flowers.
ATTENDEE 13: For four hours.
ATTENDEE 5: The FDA does not sign them off to be false. I mean --
ATTENDEE 14: Three's okay.
ATTENDEE 13: But fours not. Sorry about that.
ATTENDEE 16: It's very common -- common knowledge (inaudible).
ATTENDEE 17: (Inaudible).
ATTENDEE 18: All right. So, first of all, it would have to meet the -- first of all, if there's this ad in Time Magazine sold in Vermont, first the AG would have to determine that it was

false or misleading.
ATTENDEE 5: Right. Compared to the -- under the federal criteria.
ATTENDEE 18: Right. So you would have to look at that. Then if he determines that it wasn't false or misleading under the federal criteria --
ATTENDEE 5: Then there's no cause of action.
ATTENDEE 18: Right. If he determines that it is false or misleading --
ATTENDEE 5: Then the AG's office could file a Consumer Fraud complaint and it will go through the court process and the court could enjoin Merck from -- in this instance from running the ad.
ATTENDEE 18: Wouldn't the federal AG have the same ability to do it if it was not --
ATTENDEE 5: No.
ATTENDEE 18: If it doesn't meet these qualifications.
ATTENDEE 5: No. The federal attorney general doesn't have that authority. The federal law allows the FDA to yank the drug or to write a letter.

1 ATTENDEE 18: But not --
2 ATTENDEE 5: But not to sue.
3 ATTENDEE 19: Maybe that's why they hired
4 all those federal AGs.
5 ATTENDEE 5: I think you'd have to fire
6 Congress for that one because it's how the
7 federal law is written. It's not up to federal
8 AG.
9 ATTENDEE 18: So all they -- they can't say
10 this is false and misleading and you've got to
11 get rid of the ad or you've got --
12 ATTENDEE 5: That's my understanding. I
13 didn't do an exhaustive search of federal law to
14 really understand all of the US Attorney
15 General's authority, but my understanding is that
16 -- at least from the FDA's perspective that they
17 feel their enforcement is they can send these
18 letters to say this is a false ad, please pull it
19 or --
20 ATTENDEE 18: (Inaudible).
21 ATTENDEE 5: But they don't go to court and
22 they don't do fines and that kind of thing.
23 ATTENDEE 18: (Inaudible).
24 ATTENDEE 20: I like your idea of just
25 putting -- make sure there's a (inaudible).

1 ATTENDEE 1: (Inaudible) if this kicks in
2 and the feds have determined that there's false
3 advertising then the AG has -- it's already there
4 in front of them and the federal law has been
5 violated, the AG (inaudible) I guess for damages
6 or for -- just stop the advertising.
7 ATTENDEE 5: It would -- I didn't specify.
8 I just made it a big consumer fraud, so it's all
9 consumer fraud -- regular consumer fraud stuff
10 would --
11 ATTENDEE 1: It could be damages, it could
12 be (inaudible).
13 ATTENDEE 5: It could be damages. Right.
14 They would have to prove damages and I don't
15 really -- I'm not seeing immediately what damages
16 one could prove for this, but --
17 ATTENDEE 1: So what (inaudible).
18 ATTENDEE 5: It would enjoin. It would
19 probably result in an injunction.
20 ATTENDEE 21: Why would you want to wait for
21 the federal AG to come out with a letter, because
22 the federal AG may never come out with a letter
23 even if it's false advertisement.
24 ATTENDEE 5: The FDA does issue letters. I
25 mean, you may or may not want to wait, but the

1 FDA does.
2 ATTENDEE 21: Yeah. I'm sure they do, but I
3 don't trust them -- I don't trust the FDA .
4 ATTENDEE 22: Well, because -- I've been
5 thinking that meets RAD.
6 ATTENDEE 23: MRC.
7 ATTENDEE 22: (Inaudible) and say I don't
8 like all these advertisements.
9 ATTENDEE 24: Well, you would have to say
10 that they are false and misleading under this
11 criteria first.
12 ATTENDEE 1: They have to say that even
13 though the FDA can look at this (inaudible) I
14 have a problem with it. I think it is wrong. I
15 think it is a violation (inaudible).
16 ATTENDEE 25: Or maybe they haven't spot
17 checked it because they just (inaudible).
18 ATTENDEE 1: (Inaudible). Was that a good
19 thing or a bad thing? (Inaudible). Yes, Susan.
20 MS. GRETKOWSKI: There's some confusion, I
21 think (inaudible) talk about it (inaudible) if
22 the FDA found a violation then the state attorney
23 general could sue (inaudible) and that's fine. I
24 think (inaudible) to monitor each other on their
25 own (inaudible). So we would just like to get

1 clarification in there (inaudible) make some
2 determination. And the letters that they send
3 (inaudible) than the state attorney general --
4 ATTENDEE 1: To what end? (Inaudible) Cease
5 and desist letter is responded to (inaudible). I
6 would imagine they would do. It's easier to
7 redefine (inaudible).
8 MS. GRETKOWSKI: There's always a
9 possibility that a company can challenge this
10 letter, so what you would have is the FDA
11 determination (inaudible) challenge, so the state
12 attorney general can then sue (inaudible).
13 ATTENDEE 1: How often does that happen?
14 MS. GRETKOWSKI: Honestly, I don't know.
15 (Inaudible).
16 ATTENDEE 1: I think it's theoretical, but I
17 got to tell you (inaudible) a letter about the
18 challenge (inaudible) so they put a letter on
19 this proceeding anyway about the challenges
20 (inaudible) so I'm just asking if that's what
21 happened (inaudible) I understand theoretically
22 what you're saying, but what really happens
23 (inaudible) what additional revenue would be in
24 here for this day and age (inaudible). I don't
25 know what it would mean. I'm not sure what this

means --
ATTENDEE 26: (Inaudible).
ATTENDEE 1: -- if we narrow it.
ATTENDEE 26: (Inaudible).
ATTENDEE 1: (Inaudible).
ATTENDEE 1: So, yeah -- I mean, the question, just looking at that section C, (inaudible).
ATTENDEE 5: Yeah.
ATTENDEE 26: Unless the advertisement meets the requirements, so first the advertisement has to meet the requirements, and for the advertising as well as regulations (inaudible) what do those regulations include? Do they include that the day when a letter is sent they responded or is this just -- these are just the regulations that provide for appropriate branding and advertisement?
ATTENDEE 5: The latter, I believe.
ATTENDEE 26: Okay. So this does give the attorney general (inaudible) to question whether or not an advertisement meets federal law and would allow -- and would this allow for the attorney general to go right directly at the drug company or would this provide for the attorney

general to question the FDA regarding the advertisement?
ATTENDEE 5: Could the -- our AG questions the FDA directly about it?
ATTENDEE 26: As a result of this.
ATTENDEE 5: I don't think the -- our AG could sue the FDA. I'm not exactly sure what you're saying.
ATTENDEE 26: Not sue the FDA, but --
ATTENDEE 5: You mean question their decision?
ATTENDEE 26: (Inaudible) could send a letter to the FDA -- no. Even, you know, (inaudible) Time Magazine (inaudible) whatever it is and it seems to be misleading. Can our -- can our AG now send a letter to the FDA questioning the validity of that action?
ATTENDEE 5: I'm sure they could send a letter. Whether or not the FDA would act on it and then look at the ad and -- to make a decision, I don't know. I mean, I don't know how the FDA responds to that kind of complaint.
ATTENDEE 26: Would this language and the AG challenge the advertisement.
ATTENDEE 5: In court? I believe, yes, they

could if they could prove that it meant that it met -- that it did not meet all the FDA requirements.
ATTENDEE 26: Okay. And so it would be tried in federal court or would it be tried in state?
ATTENDEE 5: Well, it's a state cause of action.
ATTENDEE 26: Okay.
ATTENDEE 1: (Inaudible).
ATTENDEE 5: You've got an hour on jurisdiction venue.
ATTENDEE 1: Seriously. I'm asking -- I mean --
ATTENDEE 5: It's saving a step, then. You sue out-of-state parties.
ATTENDEE 1: That's what I was thinking.
ATTENDEE 5: Absolutely. Whether they're a drug company an individual.
ATTENDEE 1: (Inaudible).
ATTENDEE 5: There has to be some nexus or connection to the state. If there's not sufficient connections to the state then you can't.
ATTENDEE 1: So if they are selling their

product in this state and advertising in publications --
ATTENDEE 5: Right. Exactly.
ATTENDEE 1: -- in the state that would be close enough -- okay.
ATTENDEE 5: So if there was an ad on a TV station in California, couldn't sue them in Vermont.
ATTENDEE 1: But if it was an ad on a station (inaudible).
ATTENDEE 5: Right.
ATTENDEE 1: (Inaudible) resolution going before Congress (inaudible).
ATTENDEE 27: Yeah.
ATTENDEE 28: Yeah.
ATTENDEE 1: That would be a whole lot better.
ATTENDEE 29: Would for me.
ATTENDEE 1: (Inaudible).
ATTENDEE 29: What does the AG's office think about this? Why don't we hear from --
ATTENDEE 30: (Inaudible).
ATTENDEE 29: I have the whole page.
ATTENDEE 5: Do you want -- I can come up with some language that would add that -- the

1 requirement that there first be some sort of FDA
2 letter so you can see that, if that would be
3 helpful.
4 ATTENDEE 1: I don't know if I need to see
5 it. It's a concept we can either say yes or no.
6 I would say yes to that.
7 ATTENDEE 5: Okay.
8 ATTENDEE 31: (Inaudible).
9 ATTENDEE 1: I don't think with the events
10 with that language in there, I don't think
11 (inaudible) all you can do is sue for damages and
12 (inaudible) and Robin said that would be hard for
13 her. I'm trying to get the advertising in here.
14 ATTENDEE 5: I'm trying to think about how
15 the advertising -- I guess if an individual
16 consumer -- I can't -- I don't know. I'm not
17 saying it couldn't happen, but just off the top
18 of my head, I can't think of what -- you have to
19 prove damages. You just don't get damages, so
20 you'd have to prove that there was something that
21 you would get monetary harm for.
22 ATTENDEE 1: John, do you have something --
23 ATTENDEE 32: That's what I -- if you're
24 going to be looking at this again tomorrow
25 afternoon maybe (inaudible). When Terry

1 (inaudible) was here, he offered three
2 (inaudible) amendments and one was on sup D of
3 this section.
4 ATTENDEE 5: Yeah. And I was going to talk
5 about that.
6 ATTENDEE 32: And so if we could see that in
7 the amendment -- in what she brings back tomorrow
8 and talk about it then. I would appreciate that
9 opportunity. The other one was on administrative
10 services contract adding that language in.
11 ATTENDEE 5: Yeah. We talked about that
12 yesterday.
13 ATTENDEE 32: (Inaudible).
14 ATTENDEE 5: In terms of D, I haven't gotten
15 there yet, but D is about pop-up ads --
16 electronic advertising and the suggestion from
17 Medco was to use the language from the -- a
18 little bit of the language from the
19 confidentiality provision to just make it clear
20 that this didn't mean that you couldn't have
21 something that said, oops, this drug isn't on the
22 preferred drug list or (inaudible) that wasn't
23 advertising, that was really more information
24 about formulary compliance and that kind of
25 thing, so I can add that in if you would like me

1 to.
2 ATTENDEE 33: Yeah.
3 ATTENDEE 5: Okay. So I think that's it in
4 terms of there weren't any comments on Section 20
5 that I'm aware of, but insurance, marketing.
6 Other than I think BISHCA was okay with that,
7 give them slightly clearly authority in terms of
8 regulating that area.
9 ATTENDEE 1: (Inaudible) is it too late to
10 hear from Jullie (inaudible)?
11 ATTENDEE 5: Do you want that other
12 information that I got for you on the FQHC, some
13 of that earlier stuff or do you want to do that
14 with the next version?
15 ATTENDEE 1: (Inaudible).
16 ATTENDEE 5: Okay.
17 ATTENDEE 1: And (inaudible).
18 ATTENDEE: 34: (Inaudible) most things
19 require (inaudible) it would be nice if prostate
20 cancer (inaudible).
21 ATTENDEE 35: Oh, mandated coverage. You
22 don't mean mandated testing.
23 ATTENDEE 1: (Inaudible).
24 ATTENDEE 35: Well -- but I -- when you said
25 require it, I was thinking require it that all

1 men had to be -- have to be tested.
2 ATTENDEE 1: No, no.
3 ATTENDEE 35: But require the coverage of
4 it.
5 ATTENDEE 1: Coverage.
6 ATTENDEE 36: I'm for that.
7 ATTENDEE 1: You want to put (inaudible).
8 ATTENDEE 37: Sure.
9 ATTENDEE 1: I don't know any other vehicle.
10 I was trying to figure it out.
11 ATTENDEE 38: Naturopath could.
12 ATTENDEE 5: Well, you can change Naturopath
13 to something like man- -- additional --
14 ATTENDEE 1: (Inaudible).
15 ATTENDEE 39: I served two years with Vince,
16 I can't help it.
17 ATTENDEE 5: So Naturopath bill would be a
18 better one to put it on, wouldn't it.
19 ATTENDEE 1: It would be because, in fact,
20 that's a requirement on insurance.
21 ATTENDEE 40: Yes.
22 ATTENDEE 41: Which you're picking up on
23 Friday when I won't be here.
24 ATTENDEE 1: We'll make sure it gets there.
25 ATTENDEE 41: Okay.

ATTENDEE 1: Hopefully we'll take it up tomorrow. I will tell you (inaudible) naturopath (inaudible) left it open for other information.
ATTENDEE 42: And let's just do that.
ATTENDEE 5: Don Dickey (phonetic) did, I think, provide Jan with a memo and she probably hasn't handed it out yet because we haven't gone back to it. So I think JFO did do some background.
ATTENDEE 1: (Inaudible).
ATTENDEE 5: I think --
ATTENDEE 43: Who is (inaudible) Naturopath bill?
ATTENDEE 5: Cassandra. But she's -- but I think probably Marie or I would cover it tomorrow.
ATTENDEE 1: Okay. HIV -- HIV (inaudible) and the (inaudible) very interested to know (inaudible) is that there's not a (inaudible) and that's their perspective, it's better to get it right (inaudible) and that money (inaudible) that they would prefer (inaudible) further discussions might help. And I would also add to that there's (inaudible) further testimony (inaudible) to this now (inaudible) and if we

work this out and we pass a bill before the end of the session of the Senate(inaudible) go to the (inaudible) and say (inaudible).
Dr. Swartz, do you have a comment (inaudible)?
DR. SWARTZ: I have -- I just got (inaudible).
ATTENDEE 1: And if you can -- if everybody comes in holding hands tomorrow that would be great. We won't have to go back and forth to figure it out.
DR. SWARTZ: (Inaudible).
ATTENDEE 1: Okay.
DR. SWARTZ: (Inaudible) phone call to the CDC and the community (inaudible) very optimistic picture (inaudible).
ATTENDEE 1: Can you work --
DR. SWARTZ: (Inaudible).
ATTENDEE 1: Can you work this out before tomorrow?
DR. SWARTZ: I thought we had it worked out after the phone call.
ATTENDEE 1: Which phone call?
DR. SWARTZ: After -- after the phone call with the community and the CDC.

ATTENDEE 1: Okay.
DR. SWARTZ: I thought we had talked (inaudible) general outline on how to do it. (Inaudible) language about that (inaudible).
ATTENDEE 1: Okay.
DR. SWARTZ: I would pursue (inaudible).
ATTENDEE 1: Please do. I would just suggest that one committee member (inaudible) with the concern is that we don't want to tie your hands with the technology (inaudible). I would just suggest that (inaudible) five years from now, if we're here for that, we can come back and fix it.
DR. SWARTZ: (Inaudible).
ATTENDEE 1: Last August.
DR. SWARTZ: Yes. Yes.
ATTENDEE 1: Okay. If you could please try to do that. If that happens, we can get this bill out tomorrow. But if this becomes another round and round and round, I don't know if we'll (inaudible. Okay. That's it.
(Conclusion of CD 07-55)
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CERTIFICATE

THE STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Susan Taylor, Notary Public, do hereby certify that I was authorized to and did listen to CD 07-54/T1/T2 and CD 07-55/T1/T2, the Senate Committee on Health and Welfare, March 14, 2007, proceedings and stenographically transcribed from said CDs the foregoing proceedings and that the transcript is a true and accurate record to the best of my ability.

Dated this 22nd day of August 2007.

Susan Taylor, Court Reporter