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Transcriber's Office

Health and Human Services Committee  
February 27, 2018

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The Committee on Health and Human Services met at 1:30 p.m. on Tuesday, February 27, 2018, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Department of Health and Human Services compliance. Senators present: Merv Riepe, Chairperson; Steve Erdman, Vice Chairperson; Sue Crawford; Mark Kolterman; Lou Ann Linehan; and Matt Williams. Senators absent: Sara Howard.

SENATOR RIEPE: This is the Health and Human Services Committee and we are holding a public hearing today and the speaker is the representative from the Department of Health and Human Services. So, sir, we would invite you to introduce yourself in just a second. I'm going to have the committee members introduce themselves. So, Senator?

SENATOR KOLTERMAN: Senator Mark Kolterman: Seward, York, and Polk Counties.

SENATOR ERDMAN: Steve Erdman, District 47: ten counties in the Panhandle.

KRISTEN STIFFLER: Kristen Stiffler, legal counsel.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45, which is eastern Sarpy County, Bellevue, and Offutt.

SENATOR WILLIAMS: Matt Williams, District 36: Dawson, Custer, and the north portion of Buffalo Counties, right in the middle of the state.

SENATOR LINEHAN: Hi. Lou Ann Linehan: Elkhorn, Waterloo, and Valley in Douglas County.

TYLER MAHOOD: Tyler Mahood, committee clerk.

SENATOR RIEPE: Okay. And I am Merv Riepe. I'm the Chairman of the committee. We have two pages here. I saw them seconds ago. One is right here with me, and they do great work and we appreciate them very, very much.

SENATOR CRAWFORD: Just as a point of order, if we have...if there's a new...is there a new report since...was that...is that on our on-line (inaudible)?

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KRISTEN STIFFLER: You're getting copies. The pages are going to get copies of the report that came out in June and...

SENATOR CRAWFORD: I have a June report.

KRISTEN STIFFLER: Yep.

SENATOR CRAWFORD: Is that...okay. Never mind.

SENATOR RIEPE: There's not a newer one than the June one?

SENATOR WILLIAMS: We're getting the new one, right?

KRISTEN STIFFLER: If the department prepared one, then...

SENATOR CRAWFORD: Okay.

BO BOTELHO: (Inaudible).

KRISTEN STIFFLER: ...that would be really hard, I think.

SENATOR CRAWFORD: Thank you.

SENATOR RIEPE: Okay. Very good. Thank you for that point of clarification. Sir, if you'd be kind enough to introduce yourself and spell your name for the record--as you know the drill, it's routine--and please go forward.

BO BOTELHO: (Exhibits 1, 2, and 3) Thank you. Good afternoon Chairman Riepe and members of the Health and Human Services Committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o. I am the chief operating officer for the Department of Health and Human Services. We have provided you with an amended report, pursuant to Nebraska Revised Statute 84-910. In the initial report, the agency misinterpreted regulations that were required by bills passed, so legislation was included that did not specifically require the agency to promulgate regulations. The list that you now have is limited to bills that require the adoption or promulgation of regulations. The department takes the promulgation of regulations very seriously. The agency has over 400 chapters of regulations, and we are continually working to implement statutory changes and requirements, as well as revisions to our regulations based on the Governor's Executive

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Order. The regulation promulgation process is complex and includes input and approval from outside entities. These outside entities are often extremely busy and are handling a variety of other responsibilities beyond, and in addition to, the agency's regulations. There are also statutory notice requirements that must be met and require 30-day waiting periods. Finally, the agency may need to wait on federal approval or federal regulation changes before promulgating our regulations. When a state statute requires the adoption of regulations, there are times when the statutes are self-executing and our regulations end up being a recitation of the statute--a redundancy. These self-executing statutes can be implemented by the agency without the need for the regulation promulgation process. The prioritization of promulgation of these regulations needs to be balanced with the promulgation of regulations for state statutes that are not self-executing, where the agency truly needs regulations to implement or enforce the statutes. Any federal requirements for our regulations are also factored into the prioritization of regulation promulgation. Thank you for your time today and I'm happy to answer any questions that you have.

SENATOR RIEPE: Okay.

BO BOTELHO: Oh, in addition I have with me Jaime Hegr, who is basically...one of her primary duties in the agency is to shepherd their regulation process, the promulgation process. She spearheads that for the Department of Health and Human Services.

SENATOR RIEPE: Will she be testifying?

BO BOTELHO: She will not be, but she's also here if there's questions that she could help us with.

SENATOR RIEPE: Okay. Well, if we do that we need to put her at the mic so we can get her on the record.

BO BOTELHO: Okay.

SENATOR RIEPE: Let's see if we have any questions from the committee members. Senator Crawford, please.

SENATOR CRAWFORD: Thank you, Chairman Riepe, and thank you for being here today. So your position is as the chief operating officer for the Department of Health and Human Services, and so you are overseeing the regulation process as part of that. And your colleague here is the one who does the day-to-day work. Is that what you mean?

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BO BOTELHO: Yes, Senator.

SENATOR CRAWFORD: Okay. So did you manage or oversee the review of regulations that occurred between August and December of this year?

BO BOTELHO: In accordance with the Executive Order?

SENATOR CRAWFORD: Yes.

BO BOTELHO: Yes.

SENATOR CRAWFORD: Yes. Okay. And is there a public report that came out of that in terms of which regulations were determined to be targets for repeal or elimination?

BO BOTELHO: We sent our findings on to the committee,...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...and I believe the committee sent findings of the recommendations over to the Governor. I don't know if they've actually generated a final public report at this time.

SENATOR CRAWFORD: So during that time, between August and December, those six months of 2017, so there was an Executive Order that said no new regulations will be promulgated except those that had statutory deadlines. So all of the things that we pass in some ways have a statutory deadline, because they're supposed to be done in three years. So during that period, between August and December, was there any work on...in putting regulations in place for the items that had passed in 2017?

BO BOTELHO: I don't know specifically for 2017. I know we did continue promulgating regulations that were already in process and they were close to being finalized. We also had some federal deadlines or even state deadlines that had to be met, so those continued to go forward. I don't know specifically on the 2017 legislation.

SENATOR CRAWFORD: So one example of that would have been the dental...changes in the Dental Practice Acts and so getting new regulations in place for the new opportunities that we were giving for the...

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BO BOTELHO: Is that the dental assistants, dental hygienists?

SENATOR CRAWFORD: Yes, the Dental Assistants Act, right. Yes, which is still...so it's here on the...this first page of ones that are in 2017 are listed as subject but not status. So maybe if you could start, I guess, with that. That's one I was...I had particular interest in because I just knew it was creating opportunities for people and I was (inaudible). It seems that it got perhaps stalled in the effort to put this stop on all regulation work in 2017. So that would be LB18--your bill, right, Senator Kolterman?

SENATOR KOLTERMAN: Yeah.

SENATOR CRAWFORD: It's listed on our report, page 1, with '17 regulations.

BO BOTELHO: Okay, Senator, I'm not sure if I have the most up-to-date status on that. I know it had gone to public hearing. There was changes required. There was notice, a subsequent notice given, and they're in the process of redrafting to create separate sections or basically two separate chapters for the dentists and the hygienists.

SENATOR CRAWFORD: Okay. This information that you're reading to us, is that public information that's posted somewhere that allows us to keep track of status of...?

BO BOTELHO: Well, there was a notice of termination for the most recent public hearing because they have to redraft the chapters to create a chapter for dentists and hygienists. So there hasn't been a new public notice for a new hearing until those chapters are redrafted and ready to go through the promulgation process again.

SENATOR CRAWFORD: Okay.

BO BOTELHO: So...

SENATOR CRAWFORD: But I mean you are...you have a chart that you're looking at.

BO BOTELHO: Yeah, this is my notes.

SENATOR CRAWFORD: I don't know if that chart you're looking at is something we have access to or the public has access to or it's your internal working chart.

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BO BOTELHO: Yeah, these are just my notes.

SENATOR CRAWFORD: Your internal working chart.

BO BOTELHO: Yes.

SENATOR CRAWFORD: If we were to ask you, though, for information on where things are, it's information that you could tell us but it's not information that's public?

BO BOTELHO: Yes. I mean I can tell you where we are in the process.

SENATOR CRAWFORD: Okay. And so right now for the dental ones, we've terminated old regulations?

BO BOTELHO: No. We...

SENATOR CRAWFORD: No.

BO BOTELHO: ...we terminated...we gave them notice of termination for the public hearing and we're in the...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...process of redrafting the new chapters.

SENATOR CRAWFORD: Oh, I hear you. You stopped the public comment period.

BO BOTELHO: Yes.

SENATOR CRAWFORD: And now you're in a drafting period after an initial public comment period.

BO BOTELHO: Yes.

SENATOR CRAWFORD: So we've had a draft, a public comment period, and now drafting again.

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BO BOTELHO: Right, to create the two separate chapters for the hygienists and the dentists.

SENATOR CRAWFORD: And is there a date for when that drafting is expected to be done or when you expect to have hearings?

BO BOTELHO: No, not at this time, Senator.

SENATOR CRAWFORD: Okay. Thank you. I have other questions, but I'll let other people ask questions.

SENATOR RIEPE: Let's go to Senator Kolterman and then we'll come back.

SENATOR KOLTERMAN: Yeah, I'd like to...I'd like to follow up on that. So in that, in that bill, there was changes to the dental hygienists but there was also a new provision for dental assistants.

BO BOTELHO: Yes.

SENATOR KOLTERMAN: Is that all being promulgated in the same rules and regulation or is that separate sections that have to be drafted? Do you know?

BO BOTELHO: It will likely be separate sections but it will go forward, I believe, in the same promulgation process.

SENATOR KOLTERMAN: Okay. So it's all...so when it says here it's currently being drafted, that means you're working on all of it at the same time? Okay, then the other question I had...can I just keep going, Senator Riepe?

SENATOR RIEPE: Please, go forward.

SENATOR KOLTERMAN: Thank you. The other question I have is in 2016, I worked on this laboratory certification for safe drinking water.

SENATOR CRAWFORD: Uh-huh.

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SENATOR KOLTERMAN: And what that bill really did was it allowed private...the private sector to start testing water in a more cost-effective way than was being done at HHS. And that passed. I'm just curious to know where we're at in that process, because it took a lot longer than (inaudible).

BO BOTELHO: Would that be LB19?

SENATOR KOLTERMAN: Yes, sir.

BO BOTELHO: Those were already...those have been promulgated.

SENATOR KOLTERMAN: So they're done?

BO BOTELHO: They're done.

SENATOR KOLTERMAN: So they're working, they're in process, people can now utilize outside vendors to have their water tested?

BO BOTELHO: Yes. So those regulations have been promulgated and it's been completed, if that's what you're asking.

SENATOR KOLTERMAN: Okay. So I guess my question now, since this is the first time I think we've done this that I can remember,...

BO BOTELHO: I believe it is the first time.

SENATOR KOLTERMAN: ...my question is, if we pass a lot of laws...

BO BOTELHO: Yes, you do.

SENATOR KOLTERMAN: ...that come through this place and...do they just...they just come to you. and then do you have to prioritize what you can get done and what you can't get done? Or...and typically I heard Senator...talking about the idea that you have three years to get these done. Talk a little bit about the process so that we all have a better understanding on how that works.



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BO BOTELHO: That's a good question, Senator, because the prioritizing the regulations, there's a lot of different inputs that go into that calculation. You have a flowchart that kind of looks at what our internal...

SENATOR KOLTERMAN: This?

BO BOTELHO: ...process looks like. But obviously, we have to worry about deadlines. We also have to...not only your deadlines but there's federal deadlines as federal requirements. There's funding that needs to be factored in here, as well. There's obviously the public health and safety that may be impacted. In a lot of our regulations there's, in essence, independent boards, either professional boards or licensure boards, that have a vested interest if not actual input in there. So you have to work with those parties, as well, to get their input and/or approval to what the final regulation should look like. And that's all part of the drafting process and we have to decide which one goes first, based on either the need or external requirements, either in state statute or federal regulation, and start to move those through the process. And once we get through that drafting process, then we're into the promulgation process, which requires a notice and the public hearings and the Attorney General approval and that process and that approval. And lots of times you get through to the public comment, you'll get significant public comments that then require, in essence, a redrafting, and then we start over again and go forward and assuming that nothing changes on the federal level, which then requires us to stop and start over again. So it's just constant...Department of Health and Human Services is almost in this constant state of promulgation of rules and regulation, not just because of the state statute requirements but because of the professional licensing boards and those folks and those requirements, the public need, and federal regulations. It's this constant wheel of trying to prioritize what needs to get done right now. We only have so much resource. It's not just our resources. It's the Attorney General as well.

SENATOR KOLTERMAN: So, if you don't mind,...

SENATOR RIEPE: Please go forward.

SENATOR KOLTERMAN: ...I'm going to keep going with my questions.

SENATOR RIEPE: No, go ahead. That's why we're here.

SENATOR KOLTERMAN: So at any point I guess the disconnect for me, as a senator, is we pass the legislation. It has an effective date that it goes into force.

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SENATOR CRAWFORD: Uh-huh.

SENATOR KOLTERMAN: Sometimes it has the emergency clause and it's immediately; sometimes we have to wait. The typical wait, is it three years or do you get...usually get it done before the three-year period? Because, to me, something as simple as this LB19 was just changing from HHS to outside vendors. I wouldn't think that would take that long, but...

BO BOTELHO: Absent circumstances which are going to add time, we usually get them done in three years. The other thing to keep in mind is that every statute or any legislative change does necessarily require us to change the regulations. We may be working on updating regulations that aren't necessarily required by your legislation. I mean we can enact and effect most of the legislation passed without adding regulations or changing them. Sometimes we do, but not every time...and most times probably not.

SENATOR KOLTERMAN: And I would assume...I would assume that that means that it has to...as long as it meets the criteria of the statute. Is that accurate?

BO BOTELHO: Correct. I mean lots of statutes are written in such a way that...

SENATOR KOLTERMAN: Gives you flexibility.

BO BOTELHO: Right. And the statute gives the agency all the authority and jurisdiction it needs to carry out what you're tasking us to do without, basically, the redundancy of a regulation.

SENATOR KOLTERMAN: So we just have to take for granted the fact that the executive branch and the people that are working in that code agency are working to get it done.

BO BOTELHO: Yes.

SENATOR KOLTERMAN: Is that accurate?

BO BOTELHO: And we are. We are, Senator.

SENATOR KOLTERMAN: Okay.

BO BOTELHO: I mean lots of...and a lot of the promulgation process is actually removing rules and regulations that simply aren't needed. But that in itself requires the entire promulgation

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process. So you may create legislation that may remove the need for current regulations. Your legislation is self-enacting but it will start a promulgation process to remove the excess verbiage in the regulation, and that in itself is that same process.

BO BOTELHO:

SENATOR KOLTERMAN: Well, knowing the amount of dollars that are flowing through Health and Human Services, or DHHS, is there an equal counterpart to you for something like Judiciary and an equal counterpart to somebody like Transportation? In other words, are you in charge of all the different agencies or are you just DHHS?

BO BOTELHO: I'm just DHHS.

SENATOR KOLTERMAN: Okay. So everybody...if we pass a bill in Transportation, they're going to go through the same process. Is that a correct statement?

BO BOTELHO: Yeah, something similar, Senator, yes.

SENATOR KOLTERMAN: Okay. I think that's all for now. Thank you.

SENATOR RIEPE: Senator Crawford.

SENATOR CRAWFORD: Thank you, Chairman Riepe. And one comment first: Actually it's been interesting when I visited with other state legislatures. Some state legislatures actually have a committee that just tracks the rules and regs process for all the bills they pass. So they kind of, you know, their job is to check and see status and work on pushing regulations for the bills that have passed in their body. So it's kind of interesting that, in some cases, there's a special committee for that. In our case, we're doing it as our oversight jurisdiction within our committee. If there were no delays from complications but...how long does it take just to go through the steps of this process, given how many weeks you allow for comment and that kind of thing? What's the fastest path through this process?

BO BOTELHO: What do we average, about 300-some-odd days?

SENATOR CRAWFORD: Three hundred? So about a year.

BO BOTELHO: Close to a year.

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SENATOR CRAWFORD: About a year. Have you talked about...is there any ways you see to simplify this process but retain public comment?

BO BOTELHO: I'm sure there's lots of ways to simplify the process. What we can do internally at HHS is that we've looked at how we're drafting it and who is drafting it.

SENATOR CRAWFORD: Uh-huh.

BO BOTELHO: So we have legal up-front where the program expresses a need and legal actually drafts the language, so there's less time for internal legal maneuvers. Before, the program was drafted and the language was sent into legal as a sort of back and forth. So we've looked at that and decided, well, program says this is what we need to do. Legal will draft it so we can get into the promulgation process. The promulgation process is a creature of statute.

SENATOR CRAWFORD: Okay.

BO BOTELHO: That's what's defined the notice. And so that's not something that HHS has made up.

SENATOR CRAWFORD: Sure.

BO BOTELHO: So if you want to look at simplifying the process, I mean I'm sure that's something that the executive branch would be willing to look at. But that would require, in essence, examining your statutory process.

SENATOR CRAWFORD: Absolutely. I think it's something we should look at. It is, like you said, as fast as it can go is still a year, which you do want public comments. We have to balance that. But I think it is an important...we should..it is an important issue for us to discuss because it does backup progress. And, unfortunately, many of these are more than a year so they get backed up.

BO BOTELHO: Well, I mean, you could get stopped at a public comment...

SENATOR CRAWFORD: Yeah.

BO BOTELHO: ...and have to start over again or federal regulations could drop and require us...

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SENATOR CRAWFORD: Right.

BO BOTELHO: ...or many times we're waiting for guidance from the federal agency before we start drafting. And if we know it's coming, we don't want to start drafting, get it halfway through, and then start over again. This just...for this agency in particular, there's a lot of external inputs that go into these regs.

SENATOR CRAWFORD: Can I just ask a question about the difference between the old and new report, just to clarify? So LB19 was on our old report copy and then it said drafted, second public hearing scheduled for July 20, 2017. And it's not on our new copy and you just said that it's all ready to go. So this was just a mistake.

BO BOTELHO: It's been completed, yes.

SENATOR CRAWFORD: It should have been not in this report, okay. And then the other one that I think is in one report and not the other report are the nurse practitioner regulations. And as I understand, and so as I understand it, the statutes have passed and they're able to operate under the statutes. So is it the case that that's just something we don't really need the rules and regs and so we've kind of crossed them off the list?

BO BOTELHO: That's a good example where we didn't need additional rules and regulations to, in essence, carry forward with the statute. We had everything we needed to do internally. And as part of the Executive...

SENATOR CRAWFORD: We passed the details last year, so those details gave you what you needed to just run.

BO BOTELHO: Right.

SENATOR CRAWFORD: Okay.

BO BOTELHO: Self-executing statute.

SENATOR CRAWFORD: Okay.

BO BOTELHO: And part of the Executive Order from Governor Ricketts, we've looked at a lot of these regulations and how we look at promulgating going forward, do we actually need

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anything more than the statute? Is what we're putting in that regulation really need the full force of law...

SENATOR CRAWFORD: I hear you. Right.

BO BOTELHO: ...or is this more of a guidance document for the public or more of an internal policy for the agency? I think perhaps we were promulgating regulations that truly weren't necessary regulations and were spending a lot of time and energy on the promulgation process for language that really didn't need to be in a rule or reg.

SENATOR CRAWFORD: I mean I guess I would express some caution. And one of my questions that I had that I wanted to ask is, when you went through the rules and regulation review, did you also go through a review of all the administrative memos? Because I hear from stakeholders sometimes the instructions which are determining their reimbursement or whether they're following the law are being put out in memos and so you're not calling them regulations but they really are regulations. And then back in...a few years ago we passed a bill to say, if you're doing regulations, they need to really be called regulations and they need to go through the APA process.

BO BOTELHO: Yes.

SENATOR CRAWFORD: And that was, in part, because at that time we were experiencing this problem of the department executing guidance memos that really we felt were...there was too extensive of a reliance on those because it was easier because it doesn't have public comment. But if it does have the force of law it should either be passed by us or it should be passed through that APA process.

BO BOTELHO: Correct. Yes, we...

SENATOR CRAWFORD: So my concern, so how do you decide when you'll do something by a memo versus when you'll do something by regulation?

BO BOTELHO: Well, your first question is, does this require the full force of law? I mean does this language need the power of law? Is it a regulation? Your regulations, when you look at the prototypical regulation, it's either granting a right, it's creating a class of people for benefits, or it's taking something away, which is what statutes tend to do. They create some legal right...

SENATOR CRAWFORD: Uh-huh.

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BO BOTELHO: ...or they create a penalty or something like that to that effect. If it doesn't do that then what is it actually doing? Is it just telling people how to apply for a right or defining a process? That's probably not a regulation. That's not really a law. It's more of a process. And who is it speaking to? Is it speaking to the agency, what we should do? That's an internal policy or procedure. Is it speaking to the public and giving them steps of what they need to do or how they need to do something to derive a benefit? The benefit itself is the rule or regulation. The process doesn't necessarily need to be in a rule or regulation. So you look at what this thing is saying, who is it speaking to, and what is it actually doing, what is the language actually doing to tell if it's really a rule or reg or is it something else.

SENATOR CRAWFORD: So if it's essential for compliance, though, can you see how that is determining if somebody gets a benefit? So if you do a memo on here's new information you have to present to comply with our Medicaid standards, that anything where you're telling people what they have to submit or how they qualify would seem to fit this definition of force of law, even though it's a process.

BO BOTELHO: I mean, it depends on what is your...there is no real bright line rule of what's a rule and what's a reg. You have to look at what is it doing and is the language in itself creating the benefit? Is the language removing the benefit or excluding you from a benefit? And when you start to look at, for instance, service levels, if you meet this criteria you fall in this level, that language sort of creates a class of a benefit and I think that is a regulation. You need the force of law for that. If it's just telling you where to send your information or what types of documents you could send, that's probably more of a guidance document, which is also a creature of statute and binds the agency as well. You have to take it almost document by document, you know,...

SENATOR CRAWFORD: To see.

BO BOTELHO: ...to see. I mean it's hard to tell you to draw this little box and it says everything in here is a reg, because you have to look at the language itself and what is it actually doing and saying. It's not...it's not a bright line. Is this creating a benefit? Is this removing a benefit? Is it excluding? Is it creating a penalty? Is it creating a right? And if it does that, that is your prototypical rule or regulation. That's what statutes do. A rule or regulation is, in essence, a nonlegislative generated statute. You are empowering a state agency to create law under the guidance of your legislation. If it goes beyond that, it's probably not a rule or regulation, at least not in its entirety.

SENATOR CRAWFORD: Okay.

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BO BOTELHO: Lots of these documents you can pull out sections that should have the force of law and the rest of it really isn't.

SENATOR CRAWFORD: So in terms of...I think the Governor's agenda of trying to examine regulations and trying to simplify where possible, I hope that that's also being examined here in HHS, as well.

BO BOTELHO: Yes.

SENATOR CRAWFORD: And I would say that, as you're looking at what our businesses and providers have to comply with, I hear more about these memos than about the regulations themselves. So the memos or policy memos are an important part of their compliance world, as well. And so I would just urge you to consider how we could make sure we're being attentive to that, as well. It's much easier to whip out a policy memo than it is to go through this process, I see. And if it's something that's appropriate for that process, by all means, yes. But you can see how, on the client side, you're getting memos and then you get another memo, you know, and so it's changing, that it's more difficult to track and it doesn't have the public hearing, it doesn't have the public notice. And so that's a part of the regulation world and compliance world that is challenging for the people who are trying to work with us and serve our citizens.

BO BOTELHO: No, I agree, Senator.

SENATOR CRAWFORD: How many people do you have on staff who specialize in this promulgation and review process in the department?

BO BOTELHO: Jaime.

SENATOR CRAWFORD: One? (Laugh) Okay.

BO BOTELHO: Well, we have attorneys that...we have the program attorneys that work with the program folks that, I mean, you create...if there's a need for a promulgation of rules and regs, it will go to that program from which the rules would speak to. And they sort of express that need and, for instance, if it's a Medicaid rule or regulation,...

SENATOR CRAWFORD: Okay.



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BO BOTELHO: ...it will go to the Medicaid folks. And they work with their program attorneys to sort of draft out, you know, what this should be. And once they get to the draft and it comes to the operations side, Jaime, we start to move it forward through the promulgation process. And Jaime is involved in drafting as well and I would be involved in the drafting and promulgation process as well. But really, the program folks and their attorneys are the ones, because they're dealing with this day in and day out, they are the ones that, in essence, create the draft. They begin to draft the language.

SENATOR CRAWFORD: Okay. Then it goes to Jaime.

BO BOTELHO: Yes.

SENATOR CRAWFORD: And Jaime looks at the draft and decides how we might need to fix the draft before the next step. Who is responsible for watching all these time lines and saying, hey, we're five years behind here?

BO BOTELHO: Well, I mean the program.

SENATOR CRAWFORD: Each program is supposed to be watching the ones in their own program?

BO BOTELHO: Yes, and...

SENATOR CRAWFORD: And is there any reporting that's required for them at a regular time or way, other than our part, which we tell you...ask...tell us, after three years let us know? Is there any internal...internally who should be watching this and pushing Jaime if we need to change the priorities, as Senator Kolterman said, or push this one up and get it done?

BO BOTELHO: That actually would be Jaime and I.

SENATOR CRAWFORD: Okay.

BO BOTELHO: And that's something that we've thought about with the Governor's Executive Order, because it could be, you know, based on a result of the Governor's decision after he considers every agency's survey of their rules and regulations, where they have to decide how are we going to go out and...

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SENATOR CRAWFORD: Right.

BO BOTELHO: ...effect these changes. And so we're going to have to begin to prioritize what goes forward. And in addition to that, again, we still have to keep an eye on what the federal requirements are and what the state requirements are and that we will have to, Jaime and I and legal and the programs, decide how we move these things forward. Our resources are limited but it can be done. It's just a matter of tracking and prioritizing how to move forward.

SENATOR RIEPE: Okay. Senator Kolterman, did you have questions you wanted to...

SENATOR KOLTERMAN: I'd let somebody else first, but I do have some questions.

SENATOR CRAWFORD: I will say, just for the record, that the bill I was talking about was Mello, LB98 in 2013. That was amended into Senator Howard's LB276. And so that added to our APA statute the rule that no agency shall utilize, enforce, or attempt to enforce any rule or regulation or proposed rule or regulation unless the rule, regulation, or proposed rule or regulation has been approved by the Governor and filed with the Secretary of State after a hearing, pursuant to 84-907. That was what we passed in 2013 when we were worried about the proliferation of policy memos and guidance. Thanks.

SENATOR RIEPE: Okay. Senator.

SENATOR KOLTERMAN: Thank you, Mr. Chairman. Bo, again, I appreciate...I really appreciate you being here today because this is my fourth year on this committee and I never heard how this process worked. I could have sought that out, I assume, but we have plenty of things on our plate. I have some questions, though, about your flowchart, the DHHS regulation approval process, because that's very helpful to me. And my questions really go to I understand what you and your committee do and when it gets to DHHS, but then, all along the line, there's checks and balances. And I understand that. But you get down here to where it goes to the Attorney General. Typically, how long would the Attorney General have to get back to you on that process and how long does it sit at the Attorney General's Office?

BO BOTELHO: I don't think the Attorney General is necessarily bound to a time. I don't think a statute would say or put any parameters on how long these would sit with the AG before we get approval or recommendations for changes. I think the AG tries to get through these as quickly as they can but, again, it's going to depend on the complexity of the rules and regs, and volume--I mean it could...you know, we could have moved forward a whole chapter, and what, you know, how much time they have. I mean we're not the only agency out there and they're reviewing all of

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these. So I think, Senator, it really...it depends on the availability of resources of the Attorney General and depends on the complexity of the regulations that are with the AG.

SENATOR KOLTERMAN: But that actually could be a slowing point or a stalemate.

BO BOTELHO: Yes.

SENATOR KOLTERMAN: Because if it's not copacetic with the way it should be, they could send it back for...

BO BOTELHO: We have to start again, correct.

SENATOR KOLTERMAN: Okay. So then you just start over?

BO BOTELHO: Yes.

SENATOR KOLTERMAN: Or do you just go from what they recommend or...?

BO BOTELHO: We would have to redraft and you'd go back to the public hearing and go through the process again.

SENATOR KOLTERMAN: Okay. Then the next step goes to the Governor. How long does that take, typically, once it makes it to the Governor?

BO BOTELHO: Once it makes it to the Governor, the deciding process happens fairly quickly, Senator. That's...it's already gone through the entire promulgation process. It's been through all the reviews.

SENATOR KOLTERMAN: But he really, according to this flowchart, he has the ability to approve it or deny it.

BO BOTELHO: He does, Senator.

SENATOR KOLTERMAN: So does...this is just a question; I don't know. Does he have the ability to interpret the law that was written, as it was written? When it says he has the

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approval...to approve or deny, could he stop the process there, send it all the way back to the beginning?

BO BOTELHO: I believe that the law allows the Governor that authority to do so.

SENATOR KOLTERMAN: Okay. So when he signs that bill, it gets to his desk and he signs that bill or he doesn't sign that bill and it becomes law, his job isn't done. That a fair statement?

BO BOTELHO: The bill meaning (inaudible) legislation.

SENATOR KOLTERMAN: Yeah.

BO BOTELHO: If, yes, if the bill requires regulation then the Governor ultimately will have to approve and decide...

SENATOR KOLTERMAN: And we go through this process.

BO BOTELHO: Correct.

SENATOR KOLTERMAN: And that's for every aspect of the government, I assume, again going back to education and...okay. And then my last question: then it goes to the Secretary of State...who are there really to administer...?

BO BOTELHO: They file it. They receive it and they file all the rules and regulations.

SENATOR KOLTERMAN: And so all the way along the executive branch has input into how this process works and the judicial branch because of the Attorney General. Is that a fair statement?

BO BOTELHO: Well, the Attorney General is not technically (inaudible) executive, but, yes, correct. And there's the public comment period, so anyone, any interested party, has the ability to appear at these public hearings and provide comment and input, which is considered by the agency, as well.

SENATOR KOLTERMAN: Okay, now my last question...this isn't meant to put you on the spot, or Jaime either, but I'm just curious. Have you been...how long have you been with the state?

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BO BOTELHO: Oh, I've been with the state a little over six years.

SENATOR KOLTERMAN: And how long have you been in your current position?

BO BOTELHO: Maybe six months, so shy of a year.

SENATOR KOLTERMAN: Okay. And, Jaime, and I'm just curious. I'm asking because I want to know when we start this process, every time we make a change in your position, it has the ability to slow the process or speed up the process. What's your background?

BO BOTELHO: My background?

SENATOR KOLTERMAN: Are you an attorney?

BO BOTELHO: Yeah, I am. Yes.

SENATOR KOLTERMAN: Okay. So you have a legal background. And is it fair to ask what Jaime's background is?

BO BOTELHO: Jaime is an attorney as well.

SENATOR KOLTERMAN: Okay. So we do have legal counsel that's working this.

BO BOTELHO: Yes, and we have the program attorneys, as well, that are involved in drafting this, and the programs themselves, which have the program knowledge and the expertise as to how these regs should be drafted to do what you're requiring them to do.

SENATOR KOLTERMAN: And my last comment would be then I feel...I really, as I said early on, I really appreciate the fact that we're going through this process because it shouldn't take us four years once we get on this...in these seats to learn how this works. And this is the first time this has happened, so I applaud you for being here. I don't know whose idea it was to have this. Maybe it was our...

SENATOR CRAWFORD: Senator Howard's bill...

SENATOR KOLTERMAN: Was it Senator Howard's bill?

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SENATOR CRAWFORD: ...in 2013.

SENATOR KOLTERMAN: Yeah. I like this idea because it does give us the ability to ask these questions and learn about how this process works. And the other thing I would say is in learning where our Governor is at, I know he wants to debunk the regulation as much as possible, so I would assume he's supportive of the idea of streamlining this process as much as possible. Would that be a fair statement?

BO BOTELHO: I believe that the Governor is interested in any process where we can make it more efficient and effective, and certainly this would be a process that I think would be right to do so.

SENATOR KOLTERMAN: Okay. Thank you both for being here today.

SENATOR RIEPE: Senator Linehan, please.

SENATOR LINEHAN: Thank you, Chairman Riepe. I think you covered this but I want to go back to it early on. So if you...you've got the same chart, the one they handed out today, in front of you?

BO BOTELHO: Would that be the report?

SENATOR KOLTERMAN: Which one?

SENATOR LINEHAN: It's the 2017 regulations report, the one they handed out just...

BO BOTELHO: Yes.

SENATOR LINEHAN: ...when we got here. Okay. So at the bottom it says that LB...on the bottom of the first page it says year passed, 2016, LB698.

SENATOR KOLTERMAN: Yeah.

SENATOR LINEHAN: It's fingerprint-based background checks for providers. So there's no regulations. So does that mean that this isn't happening?

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BO BOTELHO: No, it means...it says, "Stakeholder review complete, working on sending through the process for a public hearing date." So we're setting the public hearing date for the comment date for the promulgation process. So these, these rules, regulations are in the promulgation, they're already in the promulgation process.

SENATOR LINEHAN: But right now we still don't...we're still not...and I'm not...I understand it takes time to get things (inaudible). So in this, it only passed in 2016. But so right now are we not fingerprinting, doing fingerprint-based background checks for providers because we don't have the regulations done yet?

BO BOTELHO: I don't know if we were able to implement this process without the regulations. I'd have to get back to you on the status of that.

SENATOR LINEHAN: That, see, I think that's at least really important to me--and I think others on the committee--because you said that up-front: Just because we don't get the regulations done doesn't mean we can't implement the law. So I think maybe if there was another chart, another box on this chart that said, okay, we don't have the regulations completed but we're still following the intent of the law. And then if you could flip back, I don't understand...I mean, I don't remember the Strengthening Families Act. On the next page under 5, that's the whole thing we had the hearing about last week, right? You've got different people won't agree to what should be in the regulations for the Mental Health Practice and Psychologist. So then I don't...I guess, I guess that's what I would ask. It seems to me if these laws are basically being implemented, even though the regulations aren't done, that's one thing, or if we're not...none of the law is actually being enacted because it's waiting on the regulations. Am I saying that right?

BO BOTELHO: Yes.

SENATOR LINEHAN: Okay. So I think maybe you need another box here.

BO BOTELHO: I can give you a little bit more status on the fingerprint background checks. Apparently since the statute went into effect, there have been additional federal changes around the issue that needed to be incorporated. And so we needed to start drafting again. This is an example of where you have your state statutes and thereafter federal regulations change, so we had to pull it back, redraft. And so we're moving forward again to incorporate the new federal changes. So that's an example of a delay that was in part caused because of federal regulation.

SENATOR LINEHAN: But, see, I think my concern would be that the Legislature decided these providers need to get fingerprint background checks and now I'm assuming--or guessing, I would

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not even assume--that the federal government is saying we need to do that, but it's still not happening. That's what I don't...that's what I don't know, if it's...because if you got both the Legislature and the federal government saying we need to get fingerprint background checks but we're not yet doing it, I don't...or maybe we are doing it, we just don't have regs. That's what I would like to understand. Thank you.

BO BOTELHO: You're welcome.

SENATOR CRAWFORD: That would be great information for the committee, yeah. Because it's only on this list if at least part of it cannot be implemented without rules and regs, right, because you took some things off the list. If it doesn't need rules and regs, if it can be implemented without rules and regs, it's not on this list? It's on this list because at least some aspect of the program needs rules...

BO BOTELHO: Correct.

SENATOR CRAWFORD: ...and regs to be put in place. And how much, is the question. Like are we doing some fingerprinting? Yeah, that's important for us to know.

BO BOTELHO: Correct.

SENATOR CRAWFORD: I agree with Senator Linehan that it would be helpful maybe on the status to let us know, oh, we're doing this part already and we're just waiting on the other. For example, on LB265 from 2013, so we have regulation in Title 395 that's tied to that statute, but that's...but I don't think that we have things there that are about this agency or the kinship provisions. So...and so right now, and maybe this will...in the absence of those statutes, what's the guidance for placing agencies and kinship home provisions? Or another example that I thought maybe we have part of it done but not all of it--and that's what I don't know, maybe it's not true, maybe I'm just misreading it--was LB853, whether we have some of that done but not all of it done.

BO BOTELHO: Okay. So on that one, that's one we have partial done where the extended guardianship is drafted and the essential registry regulations have not been.

SENATOR CRAWFORD: But perhaps no regulations on the alternative response component.

BO BOTELHO: There are regulations on alternative response.



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SENATOR CRAWFORD: Oh. Okay. For LB853. Do you happen to know what number they are or what...you can get that to me. Thank you. So let me...can I go back to the other question, which is LB265 from 2013, which we were changing, if I remember this correctly from that year, we were creating this kinship home opportunity. So if we don't have rules and regs that define kinship home and the kinship home rules, okay, are we doing kinship homes? And if so, what's the guidance for kinship homes?

BO BOTELHO: I'm not sure if I have that information, Senator. I'll have to get back to you on that one for where they are with that.

SENATOR CRAWFORD: Okay. And I had one other...well, another one that I would like to know what's going on and what's happening with the actual implementation of the program, if it is happening, is LB276 from 2014. So this is where we are allowing schools to get addition...we passed it to give schools additional Medicaid reimbursement by increasing the number of services they could offer at the schools to get that Medicaid reimbursement. That passed in 2014 and it says no date scheduled, regulations being drafted. Have there been any public hearings on regulations for LB276?

BO BOTELHO: I have a status on that, Senator, if you give me a second.

SENATOR CRAWFORD: Sure.

BO BOTELHO: It looks like the state plan amendment was approved by the federal government in February of 2018, retroactive to September.

SENATOR CRAWFORD: Of '17?

BO BOTELHO: Yes.

SENATOR CRAWFORD: So what does that mean in terms of...does that mean the state plan is all we have to do for regulations on this? Or do we still need regulations and a state plan?

BO BOTELHO: In many cases you would need both,...

SENATOR CRAWFORD: Yeah.

BO BOTELHO: ...although I'm not sure on this one in particular.

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SENATOR CRAWFORD: And so, in this case, so the state plan adjustment wasn't made until February of 2018. Why was...

BO BOTELHO: Was approved by the federal government in February of 2018.

SENATOR CRAWFORD: Yeah. Right, 2018. So why was the state plan not approved until 2018? When was it submitted, I should say, by our state before approval?

BO BOTELHO: I would have to get that to you, Senator. I don't have that information. I just have the approval date.

SENATOR CRAWFORD: Okay. If you could let me know when that state plan amendment was submitted. And it says no date scheduled for the regulation drafts from 2014. So my concern is that what is there...is there any deadline or any step that's in place to move these along? This is really important to provide our schools these resources.

BO BOTELHO: Yeah.

SENATOR CRAWFORD: Sounds like it's just been stalled.

BO BOTELHO: If...yeah, if we need the regulations. And we would comply with, if the regs are still in the promulgation process, because the promulgation process is itself long, if the statute has a requirement we would comply with the statutory requirements regardless of where the regs are. We would make the statute work. So it...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...I mean your question, if you're...if the concern is that the requirements of the statute that the agency is required or that the third-party beneficiaries, those needs will be met regardless of where the regs are in the promulgation process.

SENATOR CRAWFORD: Okay, so a school.

BO BOTELHO: So it's not like they're going to go without, if there's...if that's what you're asking. We would make it work because the promulgation process takes so long and because many times something will happen with the federal government and we have restart, or the public hearings we'll have to restart. The statute, we would make the statute work.

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SENATOR CRAWFORD: Okay. So if a school is saying we see this is in statute that we're supposed to be able to offer these services and get Medicaid reimbursements for these services, and they come and they're having trouble getting assistance because people are saying, well, we don't have those regulations yet, then they're supposed to say, well, I don't care if there's no regulations; it's in the statute and so you're supposed to make this work. But I guess also it sounds like you had to have a state plan amendment, too, so both. We needed to also do the work with the federal government. And so that also I guess is another chart, (laugh)...

BO BOTELHO: Uh-huh.

SENATOR CRAWFORD: ...is what are the things that we've passed the laws for to create opportunities that we haven't applied or gotten federal, you know, amendments for, because that's also another process where things can just get lost or get stalled if nobody is watching this. And again, this is a lot of services to our kids and money to the state that's lost maybe because somebody wasn't, I don't know, if somebody...if who is in charge of that, of watching for, I guess, watching for need to change state amendments and make those kinds of changes so we make sure that we're getting...having all the opportunities and resources we can?

BO BOTELHO: And that was part of the Governor's Executive Order to look at this process internally to the agency, look at how we're doing this. And I can tell you going through that exercise with Department of Health and Human Services was...truly was a learning experience for myself, having not having to deal with the federal government for the large majority of my career...

SENATOR CRAWFORD: Right.

BO BOTELHO: ...as Administrative Services didn't really have federal oversight. And so we need to look at when we promulgate rules and regulations or when there's legislative requirements on us, it impacts lots of things, not just the federal government and not just the agency but also, you know, the boards, licensure boards, professional boards. There's a lot of stakeholders in this that needs to be boiled down into a plan to promulgate the regs, assuming that it is going to actually require a regulation to be promulgated.

SENATOR CRAWFORD: Okay. And that's the assuming question.

BO BOTELHO: Yes.

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SENATOR CRAWFORD: So when possible, statute preempts an existing regulation that the statute conflicts with. So part of my question for these schools right now is, if the state plan amendment is passed, that's great, and you said retroactive back to September, so can they start coming to the department to get assistance with this program now that the state plan amendment has passed, even though the regulations aren't passed?

BO BOTELHO: Yeah. So I mean...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...to the extent that the law will allow us,...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...we will effect the legislative change.

SENATOR CRAWFORD: Okay. And could we...one next question is for all of these things that have "no date scheduled at this time," part of your process, as you said, is thinking about the process. Can you commit to setting a date for all the ones that are still outstanding past the three years to set a date for this year, for those that are already past three years?

BO BOTELHO: Can I commit to a date?

SENATOR CRAWFORD: To setting a hearing date for everything that's on this list past three years...

BO BOTELHO: Well,...

SENATOR CRAWFORD: ...that says "no date scheduled at this time," like it does for LB276, which was passed in 2014.

BO BOTELHO: Well, I mean the first question, is do we actually need to promulgate? And again, I keep going back to we just looked at all of this and the entire (inaudible) for Health and Human Services in the Executive Order and that we will have to then develop a plan to go forward with the promulgations of the rules and regs that have to be promulgated. And so these dates will be set.

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SENATOR CRAWFORD: So will you this year either take it off the list or set a date for it if it's on our list that we have this year, set a hearing date? Is that possible?

BO BOTELHO: It is possible. I'm not...I mean without again looking at each of these as an individual regulation process, I can't tell you when that date will be set. There's a lot of these.

SENATOR CRAWFORD: Oh, I'm not asking for the specific date. I'm just asking if you will commit to setting a date for a hearing for these that have not had a public hearing at all?

BO BOTELHO: I don't think I can commit to that, at that time, Senator, without knowing where the priority for the agency is.

SENATOR CRAWFORD: Okay. Okay. And what is the deadline you think when you are going to have this planning process to develop priorities for regulations?

BO BOTELHO: I think we're waiting on, basically, the final result from the Governor's Office.

SENATOR CRAWFORD: From the Governor's Office. Okay.

BO BOTELHO: And from there we will then plan out and map out where we're going to go.

SENATOR CRAWFORD: And you'll probably have to add in, then, to your list all of the things that are terminated, because they'll also need hearings, right?

BO BOTELHO: Right.

SENATOR CRAWFORD: Right.

BO BOTELHO: In order to remove a statute or to...

SENATOR CRAWFORD: Yes.

BO BOTELHO: ...remove language from a rule or regulation, it's the same process as it is to create it. So you want to do as much as you can. You know, you find which ones are germane and move as much (inaudible) in one process as you can just for efficiency's sake.

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SENATOR CRAWFORD: Right. Good. All right. Well, I would sure appreciate attention to, especially, some of these programs that have been...where the regulations have been stalled and also where public safety is at risk, like fingerprinting that we're...

BO BOTELHO: And I have some more information on LB276 that was provided me, Senator. Apparently there was a long negotiation process with CMS. That's the federal part. Then since it is federal money, and they do have to approve it before the law, that's the plan, can go into effect. And again, dealing with the federal government and dealing with their process, that all takes time and, in essence, it's their time line.

SENATOR CRAWFORD: Hmm. (Laugh) That is tough, I know...federal government.

SENATOR RIEPE: I have a question. You're the chief operating officer. Is that right?

BO BOTELHO: Yes.

SENATOR RIEPE: And this was a new position about six months ago. Is that correct?

BO BOTELHO: The position existed previously but had been vacant, I believe, for some time.

SENATOR RIEPE: Okay. And you have...how many staff members do you have reporting to you?

BO BOTELHO: I have quite a few, Senator. I mean I have, in addition to the regulation process...

SENATOR RIEPE: Do you have directors reporting to you, or associate, or...

BO BOTELHO: I'm sorry?

SENATOR RIEPE: I'm just trying to get...figure out your span of control because where I was going to was this position, your position, established by the department with the approval of the Governor, with the intent on focusing on promulgating of rules and regulations for these-- because it seems like we're a bit in arrears--is to try to get us caught up? Was that the intent of the position?

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BO BOTELHO: One of the intents. Senator, I have, in addition to this, I also have legal. I have purchasing and procurement for HHS. I have the logistical operations, internal audit, HR. Basically all the operational functions of the agency fall under my position, as well.

SENATOR RIEPE: Do you have finance?

BO BOTELHO: I do not.

SENATOR RIEPE: Okay. So you have HR but not finance.

BO BOTELHO: Correct.

SENATOR RIEPE: Okay. The other question I have is, again, what is the best way to draft on this promulgation? Does it help if we'd have legislation that says "may" instead of "shall"? I mean does it...

BO BOTELHO: Yes.

SENATOR RIEPE: So that you get more flexibility in that process?

BO BOTELHO: Yes, and it eliminates the problem with "shall," is that your statute may, in itself, be complete and we don't need any other additional rules or regulations.

SENATOR RIEPE: Okay.

BO BOTELHO: So that will allow us to simply not promulgate, whereas if it's a "shall" we, in essence, have to promulgate the statute verbatim.

SENATOR RIEPE: Okay. I know the feds use the word "will" sometimes instead of "shall." Is that an issue or not?

BO BOTELHO: "Will" would be the same as "shall." If you say the agency "will," it's still a mandate as opposed to "may."

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SENATOR RIEPE: I think legislatively we're more inclined to use the word "shall" instead of "will." In this report, what bills listed...do you have any that are self-execution, executing like kind of a Home Depot, a do-it-yourself kind of regulation?

BO BOTELHO: I believe in the amended report we removed any legislation that did not require rules and regulations. However, there may be some in itself that still have the word "shall" that mandate the regulations but are, in essence, self-executing. I don't know if any of those are on the list. Jaime? LB566? LB566 is an example of where the statute itself is all that really we would need. But it's in the promulgation process because "shall" is in there.

SENATOR CRAWFORD: Ah. Okay, that's interesting. Thank you.

SENATOR RIEPE: Can we...is there a list of these self-executing, the ones that...kind of a do-it-yourself going into process? Is there any kind of a list out there of those particular bills?

BO BOTELHO: One of the requirements, or what the Governor asked us to look at was, in essence, to look at all our rules and regs and which ones are, in effect, a redundancy of the statute. So we do have a list of which ones are not necessary, only mandated because of the word.

SENATOR CRAWFORD: Okay.

SENATOR RIEPE: By creating the position, it seems that the Governor has a sense of urgency and I think then the question gets to be, is that sense of urgency carried on out? Is there a sense of urgency within your own operation for being able to check off particular pieces of...saying this one is accomplished and this one is done, sealed, signed, and delivered?

BO BOTELHO: Yes, there is.

SENATOR RIEPE: Okay. And do you go through and prioritize those? Is that how you get to them?

BO BOTELHO: Yes. I mean we have to. Again, the structure of Health and Human Services is that you have it divided in divisions and each division has a director. So the divisions themselves are prioritizing those rules and regs within their own programs, and then as we combine them all, we're going to have to start to prioritize it on behalf of the agency itself just because of the amount of resources it takes to go through the promulgation process. And it's like any type of...anytime you prioritize in any type of process, some are going to move ahead and some are



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going to move behind, and not everyone is going to be happy with that. But resources are what they are.

SENATOR RIEPE: Okay. Do you have any bills that require rules and regulations that do not mandate the promulgation, that you don't have to go through all of the particular due process, if you will?

BO BOTELHO: I don't think so. I think if legislation requires us to promulgate rules, then we have to promulgate the rules. I believe the statute does allow for an emergency exception but, other than that, the promulgation process is what it is.

SENATOR RIEPE: Even with an emergency, I assume that you have to go then back and take up the promulgation process. Okay.

BO BOTELHO: Yes.

SENATOR RIEPE: Okay. Let me go to Senator Linehan.

SENATOR LINEHAN: Thank you, Chairman Riepe. Again, thank you for being here. So I'm looking at page 4 and it's...the question is, did any of these bills passed prior to 2016 have an appropriation, and the box is marked yes. And then it has LB243 and it says that the funds are being used according to the appropriation, blah-blah-blah. So they're actually doing this, LB243, even on the page before...where did I find...LB243, it's like third from the bottom: change the Youth Adult Bridge to Independence Act, addition to Medicaid eligibility. So it's with the Governor for signature, so they're not finalized yet, the regs aren't finalized yet, but the program is happening because there's been money appropriated for it, so it's happening.

BO BOTELHO: Yes. In many cases there's a lot of work that has to get done to get through the promulgation process as well. So again, the agency will meet the statutory deadline even though the promulgation process may take longer. We will make it work and lay all the groundwork.

SENATOR LINEHAN: See, I think that's, at least for me, I think this is a very confusing thing, because this has come up in some other committee I was on. And my assumption was the regs had to be done before the law was put into effect. But that's not correct, right? I mean we actually...or maybe that's not the right term. I'm not a lawyer.

BO BOTELHO: Oh. No, I understand what you're saying.

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SENATOR LINEHAN: But clearly, there's three bills here or two bills on the last page where the regs aren't completed but they're actually being funded and the Legislature's intent is being followed.

BO BOTELHO: In many cases, Senator, it would depend on what the legislation does.

SENATOR LINEHAN: If there's an appropriation, the money gets spent the way the Legislature says to spend it.

BO BOTELHO: Correct.

SENATOR LINEHAN: Okay. Well, that's helpful to know that, okay, even if the regs aren't done yet.

BO BOTELHO: Correct.

SENATOR LINEHAN: Okay. So back to the Early Intervention Act, this is something...I'm assuming if we passed the law in 2014 that said schools were going to get money for Medicaid for...I don't know if this was for...whatever they're doing in the schools. If they thought they should be getting that money, I would think they would be calling and complaining (inaudible).

BO BOTELHO: If they weren't getting the money, yes.

SENATOR LINEHAN: Yeah. So are they getting the money? Because it seems odd to me that if there was money out there they're supposed to be getting that none of my schools have called and said, we're supposed to be getting this money and we're not getting it. Or maybe I didn't get that call but...

SENATOR CRAWFORD: Yeah. It just said that the plan amendment wasn't passed until '18.

BO BOTELHO: That was the one where, because this is federal money, it requires the federal...

SENATOR LINEHAN: Okay. So they don't have...you don't have the money so you can't give the money because we don't have the money.

BO BOTELHO: Correct.

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SENATOR LINEHAN: Okay. I got it. Okay. So we can't give away federal money without the federal government saying here's the money to give away.

BO BOTELHO: It's okay. Correct.

SENATOR LINEHAN: Okay. Well, that makes sense. And that's not really on you guys. That's on the federal government and how long they take, some of it at least.

BO BOTELHO: Yes.

SENATOR LINEHAN: Okay. All right. That's helpful. Thank you.

SENATOR RIEPE: Did you have a follow-up question, Senator Linehan?

SENATOR LINEHAN: No, that's it for right now.

SENATOR RIEPE: I want to go to Senator Erdman then.

SENATOR ERDMAN: Thank you, Senator Riepe. So I listened to what Senator Kolterman said. I said, thank God, he's been here four years and he didn't understand it. So I'm not sure I do. And the longer you talk, the more confused I get. Go to page 2, if you would, of that document. It says 2007, the bill that passed was LB247. And it goes on and talks about mental health practice and then it said: draft regulations have been submitted to the Mental Health Practice Board and the board has not adopted draft regulations. What are we doing with LB247 that passed 11 years ago? Are we doing anything with that?

BO BOTELHO: I believe the issue here, and it was testified to by Dr. Williams, is the board and the agency can't agree to the form of the regulations, and I believe the issue here is the referral issue. So what we're doing is everything. Obviously, the profession is functioning and we're doing everything that we can. However, the rules are, in essence, stuck until we can come to an agreement on referrals.

SENATOR ERDMAN: Let's just wait another ten years, all the people this affects will be dead and won't need it. I mean this is...we pass regulations all the time and I expect them to be implemented. Am I missing something?

SENATOR LINEHAN: This is the hearing we had last week.

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SENATOR ERDMAN: Yeah.

SENATOR LINEHAN: So there's...

SENATOR ERDMAN: We've had this for 11 years.

SENATOR CRAWFORD: The Governor hasn't signed the regulations.

SENATOR LINEHAN: I know. So we should know what...

SENATOR RIEPE: So you're saying a de facto pocket veto kind of...

SENATOR CRAWFORD: Following up on that, I do think that the status of the regulation is not accurate for those two listings because I do believe that the board did adopt regulations. And they went to the Secretary of State, they went to the Governor, and it has gotten stalled at the Governor and other things have happened. So I just don't think that your status that you're reporting in this report is accurate on the psychology licensure. It says, "The board has not adopted the draft regulations."

BO BOTELHO: Well, I believe...

SENATOR CRAWFORD: As if from 2007 we've been sitting here and the Board of Psychology has just been sitting there and not doing anything, that's just not true.

BO BOTELHO: Well, I think the agency has been working with the board. We just can't come to final terms.

SENATOR CRAWFORD: Right. Well, it...but the step at which it is in the regulation, when it got stopped, is the Governor's desk, I believe. But anyway, so I just ask you to go back and check those two. If this is an actual report that's a public report, it's important that it's accurate. And if it's got stopped at the agency instead of the Governor, I believe the agency, the director of the agency, was in discussions with the Governor and so Director Phillips has been involved in those conversations, but (inaudible).

BO BOTELHO: In order for the regulations to get to the Governor, they have to be approved by all boards. And there are three boards that have to approve and one board has not approved. So maybe...

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SENATOR CRAWFORD: Which board has not approved the psychology regulations?

BO BOTELHO: Do we know which? I can get that to you, Senator.

SENATOR CRAWFORD: Okay. It's my understanding that the boards had all approved them...

BO BOTELHO: We have two out of three boards (inaudible).

SENATOR CRAWFORD: ...and that it was...it got through the stages to the Governor's desk at one time. And now different things have been happening with those regulations that are not really following the APA in terms of the director stepping in to make changes to the regulations and trying to send them back through the process. I'm concerned that those psychology regulations are not following the APA process as outlined in our statute. And I'd appreciate any information you can give me to assure me that that's not true.

BO BOTELHO: I will, Senator. I'm not...

SENATOR CRAWFORD: Thank you.

BO BOTELHO: They should be following the process.

SENATOR CRAWFORD: Yes, they should.

SENATOR RIEPE: Senator Linehan, please.

SENATOR LINEHAN: Okay. So this is in statute, this is the process in statute. I think you said that earlier. It's the flowchart.

BO BOTELHO: Yes. I mean some of that would be our own internal process. But when you look at the steps, the approval steps, the public hearing, the AG, yes, that is, in essence, the statute.

SENATOR LINEHAN: So in statute the Governor has the right to stop it. I mean that's...we may not like what the Governor does...probably any of us, on any other day, maybe there's something we don't like that he's doing.

SENATOR CRAWFORD: Right.

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SENATOR LINEHAN: But according to this, if this is in statute, which we're in charge of, he can stop it.

SENATOR CRAWFORD: Yes. But if that's true, then that should be what the report says. The report should say stopped at the Governor's desk. It shouldn't say...

SENATOR LINEHAN: I still have the floor.

SENATOR CRAWFORD: ...the board has not adopted regulations. I'm sorry. I'm sorry. I apologize.

SENATOR LINEHAN: So I just want to make...so we've got the Attorney General could stop it. The outside board, whether it be the psychologists board or the dentists or the doctors, they can stop it.

BO BOTELHO: If they have to approve, correct.

SENATOR LINEHAN: The federal government could stop it.

BO BOTELHO: Correct.

SENATOR LINEHAN: The Attorney General could stop it.

BO BOTELHO: Correct.

SENATOR LINEHAN: And the Governor can stop it.

BO BOTELHO: Correct.

SENATOR LINEHAN: So I don't know that we should be surprised it takes a while if that many people can weigh in, because that's a lot of people to get to agree on something to get it to the final. So I think there's two things going on here. If we don't like the Governor can stop it, then that's on us to change that. And then the other thing is being more clear if we actually pass appropriation or we put in law and you're actually doing the law, then I think it's confusing to put it on the...we've got to have some, as I said earlier, you've got to have some way to show that you're following the intent of the law as best you can. And if it's a federal problem, that's not on you either. So I'm just...thank you. That's enough, I guess.

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SENATOR RIEPE: It seems to me that the process is well-documented. I won't take issue with that. My question gets to be is maybe the speed with which we are able to move through it is the issue at hand. And in my experience on...in the hospital, private side, is fundamentally some days we would have X days and we had to...if we had a human resource thing, we had to respond within, say, five working days. That was just a requirement of us. So we kept a lot of pressure on ourselves to move things through. I don't know whether you could...whether you can put something now on the Governor that says five days, Buddy. You know, I don't know that you can do that. But my piece is acceleration is what we're, I think, looking for so that we get through some of these that are, you know, a little dated.

BO BOTELHO: It is a time-consuming process. And I would admit that probably for HHS, because of the boards and the federal partners, our regulations may take longer than some agencies who do not need to get approval for independent boards or, you know, federal because of the funding. That adds a lot of time to our process in particular.

SENATOR RIEPE: Okay.

SENATOR CRAWFORD: I have a question on a different issue.

SENATOR RIEPE: That's okay. Go ahead. That's why we're here.

SENATOR CRAWFORD: So on page, well, I don't know, it was page 4 on the old report. Let's see if...it was...so 2015, LB37; 2009, LB195. It was the Drug Safety Act.

BO BOTELHO: Is that on the new report, Senator, or it was...

SENATOR CRAWFORD: Well, that's what I'm trying to see, if it's on the new report or not. Oh, here we go. Yes, it's on page 3, one, two, three, four, five, five down. So we passed a bill in 2009, then we passed a bill in 2015, and you had a hearing a year...at the end of the year later in 2016. Now this is a topic on which we're still passing bills, like we passed another bill first round just yesterday. So we're, in that case, the bills that we pass in the meantime you're just starting a new process for them, even though they're the same kind of part of regulation? Or do you have to pull back the regulations when a new bill gets passed?

BO BOTELHO: It depends on the language of the new bill and how it would impact. If the new bill, in essence, would supersede or substantially alter the draft that we have in the promulgation process then we would have to stop and start again. On your report on this one, this is one where it went to a public hearing and the hearing itself resulted in substantial changes.

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SENATOR CRAWFORD: Okay.

BO BOTELHO: So then we had to go through again. And in your...in your "hypo," if the new legislation would then alter it, again we would stop and restart again. I mean that goes back...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...to this...sort of this perceptual...

SENATOR CRAWFORD: Right.

BO BOTELHO: ...promulgation process.

SENATOR CRAWFORD: Can I have one more?

SENATOR RIEPE: Okay, fine. Go ahead.

SENATOR CRAWFORD: So the other bill I wanted to talk about is LB264 from 2015. And I believe it...I wanted to just confirm, I think it's on the older, not in the new, so it perhaps is...

BO BOTELHO: So it...

SENATOR CRAWFORD: I wanted to confirm, is that one that you have determined does not need rules and regs? So this is the one that we're trying to ensure that all of these different boards are using military experience and considering it where appropriate.

BO BOTELHO: It either did not need rules or regs, or the regs were actually promulgated.

SENATOR CRAWFORD: Okay. Because it would be, like, inside all these other boards. It's a pretty complicated issue. So who is...who would be the person watching that? So would...did you take it off the list because all those other boards have already done this? Or did you take it off the list because it's really the board's responsibility, not yours, like the Pharmacy Board and the...?

BO BOTELHO: Okay. So this is one where we actually implemented the changes and we did not need regulations.



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SENATOR CRAWFORD: Did not need, Okay. Great.

BO BOTELHO: So it was...there was no need.

SENATOR CRAWFORD: So we're just instructing the boards, consider this military experience when you're...

BO BOTELHO: We had all the statutory authority to do...

SENATOR CRAWFORD: To do that already.

BO BOTELHO: ...what the law required and...

SENATOR CRAWFORD: Okay.

BO BOTELHO: ...we just went ahead and we just did it.

SENATOR CRAWFORD: So our oversight job now is to make sure that those boards are actually doing that. If somebody comes through and says, they didn't take my military experience, they didn't consider it, I had to start all over again, we would go back to that board and say, hey,...

BO BOTELHO: Yeah, you're looking at the process.

SENATOR CRAWFORD: ...we passed a statute, you're supposed to be following it. Thank you.

SENATOR RIEPE: Okay. Any other questions? Seeing none, thank you very much for being here.

BO BOTELHO: Thank you.

SENATOR RIEPE: I do want to say for the record, too, if we do have other...you're welcome to take a seat. I was just going on to the next phase of the meeting here, that if we have others that wish to testify we would ask you to make sure that you do fill out the orange form. I need to get this on to the record. We do invite this. This is an open hearing and we would ask you to, if you intend...want to be on record but do not want to testify on the mic, that we'd ask anyone that

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might be here to make sure that you fill out one of the white forms at the corner and make sure that we will make that a part of the official record, as well. Are there other individuals who wish to testify? Seeing none, at these hearings we do not do the pro and opposed and neutral and...we go...we're just straightforward hearings. And so if there are no further hearings, that concludes the hearing today. I think it was very informative. We appreciate everyone that was here and gave us their time. With that, that concludes this particular hearing today and meets our regulatory requirements that we have as a committee. So thank you all very much.