



**SENATE
STATE OF COLORADO
DENVER**

July 29, 2014

Ms. Marguerite Salazar, Commissioner
Division of Insurance
1560 Broadway, Suite 850
Denver, CO 80202

Dear Commissioner Salazar:

We write to ask for a full explanation of your decision of May 2 to permit insurance carriers to extend existing policies which are not in compliance with the provisions of PPACA.

As you know, state law (HB13-1266) requires that all insurance policies issued in Colorado must comply with federal law, and federal law did not change suddenly in February, March, or April. Yet, on May 2, your office made the following announcement:

"The Colorado Division of Insurance (DOI) announced today that it will allow insurance carriers to continue through 2015 health insurance plans for individuals and small groups that do not comply with new insurance rules that started in January 2014. This decision is based upon President Barack Obama's announcement in March to allow such plans to continue."

Please explain the legal basis for that May 2 change in policy, which was a total reversal from your prior statements and policies. Is it significant that you announced this reversal in policy not by way of the rulemaking process under 13-1266 but through an administrative "Bulletin"?

Since the "rollout" of Colorado Health Benefits Exchange enrollments in October of 2013, your office repeatedly stated, in public statements as well as in stakeholder meetings, that any such change in rules would require a change in Colorado law to amend the provisions of 13-1266. Moreover, according to a report today by Todd Shepherd at COMPLETECOLORADO.COM, an internal post-meeting summary of a March 2014 DOI stakeholders meeting included this bullet point: "No specific timeframe was given, but Commissioner Salazar made it clear that allowing sale of non-ACA [compliant] plans would require legislative action."

Given that clear history, we have some questions as to how you reached that decision to ignore the statutory requirements of 13-1266:

- Did you ask for or receive an opinion from the office of the Colorado Attorney General saying this change is permitted under state law?
- Whose legal advice did you rely on in making this decision?
- Did you consult with Governor Hickenlooper or any state official outside DOI in reaching that decision?
- In making that decision, did you consult with one or more of the nine members of the Colorado congressional delegation, and if so, who?
- Why did you choose to make that May 2 announcement by way of a Bulletin instead of following the normal rulemaking process?
- On what exact date did you make the decision that was announced on May 2? Did you make that decision prior to April 30 but delay the announcement in order to avert and preclude a legislative remedy being debated and possibly enacted while the General Assembly was still in session?

The only reason offered in your May 2 statement for the change in policy was that President Obama had made an “announcement...to allow such plans to continue.” Yet, both President Obama’s March 5 announcement and the CMS statement on that same date were *permissive* in their language: they merely *allow* states to undertake such actions, they did not order it or require it.

Other questions arise in connection with your May 2 announcement:

- If one of the principal reasons for creating the Colorado Health Benefits Exchange was to give Colorado more flexibility and more options in implementing PPACA, why did you not choose to utilize this flexibility by following Colorado law on the matter as established by HB13-1266?
- Is it your opinion and your judgment that a mere statement by President Obama – not expressed in HHS rulemaking -- can *legally and constitutionally amend federal law* and supersede Colorado statutes, statutes which expressly require adherence to *federal law*?

Further, we request that DOI provide to us copies of four internal emails dated March 5, 2014, which were denied to Todd Shepherd as part of his CORA request. One is on the subject “Administration announces extension of renewal period for non-compliant policies,” and three others on that same date have the subject “Senate GOP Report on Cancellations.”

Finally, we request copies of any other emails dated between March 1, 2014 and May 15, 2014, which pertain to the factors and considerations involved in making the decision to change the DOI policy on renewal of non-compliant policies.

We look forward to hearing your answers to these questions. Thank you for your assistance.

Sincerely,



Senator Bill L. Cadman
Minority Leader



Senator Kevin Lundberg
Member, Senate Health Committee



Senator Kent Lambert
Member, Joint Budget Committee



Senator Ellen Roberts
Joint Legal Services Committee

Cc: Governor John W. Hickenlooper
Attorney General John Suthers
Barbara J. Kelley, Executive Director, DORA