



The Florida House of Representatives

Dean Cannon
Speaker-Designate

October 19, 2010

The Honorable Charlie Crist
Governor, State of Florida
PL 05 The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Dear Governor Crist:

In March, 2010, the 111th Congress enacted and President Obama signed the Patient Protection and Affordable Care Act (PPACA), which nationalized numerous functions of state government. Currently, parts of Florida's executive branch are implementing the PPACA, while another part of Florida's executive branch has initiated litigation that challenges the constitutionality of the PPACA.

The executive branch agencies implementing the law are doing so without waiting for clear and comprehensive guidance from the Legislature, the entity solely responsible for policymaking under Florida's constitution. The activities of state agencies to respond to the federal law are widespread and numerous. The most serious involvement includes development of systems and capabilities for executing authority implied by the federal law, even though the authority for such actions may not be present in current state statutes.

Commandeering of state insurance regulatory resources generates the greatest concern. The new health care law assumes that state agencies will serve as the enforcement arm for federal mandates—requirements that far exceed current state policies related to mandated benefits, price controls, and limits on profits. Not only are Florida insurance officials helping the federal government to write rules on these matters, but the Office of Insurance Regulation (OIR) is jumpstarting these new regulatory functions by developing data systems necessary for enforcement. Although OIR used routine budget mechanisms to commence these actions with federal grant money, the substantive actions must be subject to more thorough legislative scrutiny.

Two examples underscore the fact that important policy questions are being relegated to federal and state bureaucrats without the involvement of elected policymakers. First, OIR intends to seek federal permission to exempt Florida insurers from federal medical loss ratio requirements. Second, Secretary Sebelius is contacting state insurance regulators to enlist their help in pressuring insurers to continue

issuing child-only policies despite the provisions of the federal law that undermine the viability of such policies. While the wisdom of these actions remains an open question, communication about agency activities is clearly deficient. Information on these matters initially came to the Legislature from media accounts rather than any direct communication from OIR.

The lack of state executive leadership on these important issues compels a more proactive role by the Legislature in monitoring Florida's involvement in implementation of PPACA. Consequently, this letter serves as notification to all state agencies that we expect their compliance with the following procedures.

1. No later than November 15, 2010, submit a complete accounting of all PPACA-related activities to-date.
2. The inventory of activities must include a complete description of the specific activity, an explanation of any particular benefit to Florida from the activity, identification of state employees involved, specification of the amount of employee time spent, enumeration of any expenditure of funds associated with the activity, and estimation of any future state costs resulting from the activity.
3. After November 15, 2010, any new activities related to PPACA should be initiated only after notification and consultation with the Legislature.

We intend to develop a clear and statutorily-defined framework for Florida agencies' activities in regard to the federal health law. Pending such legislative action, state agencies should examine each anticipated action or function in light of their specific statutory authority. The Legislature will carefully consider agency legislative proposals involving the new federal health care system.

We cannot wait until the courts sort through the many challenges by the states to the federal health law or until a wiser Congress readdresses the law's numerous problems. Many provisions are taking effect now and Florida's response must be deliberate and decided by elected state policymakers rather than by default.

Sincerely,



Dean Cannon

cc: Speaker Larry Cretul
Senate President Jeff Atwater
Senate President-Designate Mike Haridopolos
Cabinet Members
Agency Heads
Agency Administrative Officers
Director, Governor's Office of Policy and Budget
Policy Coordinators, Governor's Office of Policy and Budget