

United States Senate

WASHINGTON, DC 20510

August 1, 2013

Ms. Kathryn Ruemmler
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Ms. Ruemmler:

We write to ask for information about the activities being undertaken by twenty or more federal agencies with no responsibilities under the President's health care law in the implementation and promotion of that law, specifically about what the agencies are doing, what funds the agencies are spending, and what authorities the agencies are using. The *Washington Post* on July 8, 2013, described implementation as being a significant aspect of the White House Chief of Staff's daily responsibilities, so we are requesting your assistance in providing greater detail about involvement by White House personnel in these decisions.

According to slides dated April 2013 from the Centers for Medicare and Medicaid Services (CMS), at least 21 federal agencies were assisting in implementation efforts.¹ There have also been a number of recent examples of questionable activities, including the following:

- On June 3, the Food and Drug Administration sent a notice to families, individuals, small businesses, and clinicians promoting insurance market changes in the new health care law even though its actual statutory mission is to assure the safety of food, drugs, and medical devices.
- On June 10, the Substance Abuse and Mental Health Services Administration issued the final mental health and substance abuse block grant applications, which included a set-aside of three-percent designed to support the President's health care law.²
- During a recent interview, Secretary Duncan stated that the Department of Education will assist with the dissemination of health care information and that there is a team at the Department of Education currently helping with implementation.
- On June 30, the Institute for Museum and Library Services announced a partnership with CMS and a grant to assist public librarians in promoting the health care law.

¹ Rachana Dixit, "Health Exchange Alert," *HealthPolicyNewsStand*, July 8, 2013.

² This was apparently a new provision, and it was not immediately clear to stakeholders whether it was a requirement or an allowable use. It has since been clarified that it is not required unless Congress makes a statutory change.

- On July 9, congressional staff discovered the Department of Labor Office of Workers' Compensation Programs had posted a prominent notice promoting the health care law on its main website.

It is our understanding from the Department of Health and Human Services (HHS) that other agencies at the Departments of Agriculture, Housing and Urban Development, Labor, and Commerce, as well as the Small Business Administration are conducting similar activities.

Also, the attached three spreadsheets, which may have been sent to all government agencies, appear to specifically require agencies to provide information and undertake activities in support of the health care law regardless of their statutory missions and responsibilities. For example, the first spreadsheet appears to require a list of agency notices and forms where referral information for the President's health care law will be included in the future. The second document appears to require a list of promotional activities being conducted. The third document appears to request a stakeholder list of potential implementation target groups.

There is a cost to the taxpayers for each and every one of these actions -- particularly changing longstanding forms and notices or possibly adding new unfunded mandates or responsibilities to programs and grants without congressional consent. HHS has requested additional money to implement the health care law, and Congress denied that request. HHS now appears to be evading Congress' constitutional power of the purse by using unrelated resources and authorities dedicated to other missions.

Furthermore, given that the Administration spent the last several months warning of alleged catastrophe from cutting approximately \$85.3 billion out of a \$3 trillion budget as part of sequestration, it is particularly surprising that unrelated resources, which previously could not be reduced, are now being used to implement or promote the health care law. It is troubling that taxpayer funds are being used in this way without notice to the Congress by each agency involved. Thus, in the spirit of transparency that President Obama has often cited and to better understand the statutory authority, cost, and scope of the activities, we request the following information:

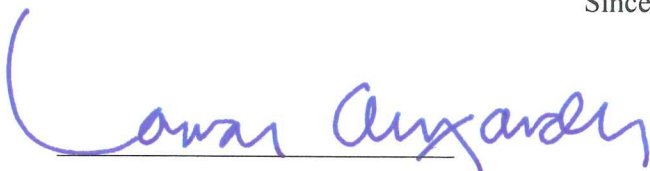
- 1) A list of all agencies, their specific activities and the associated costs for implementation or dissemination of information about the health care law to date.
- 2) All correspondence from the White House, including the Office of Management and Budget or Office of Cabinet Affairs, directing or requesting that agencies assist in the promotion or implementation of the President's health care law.
- 3) The responses/reports received by the White House from every government agency on their activities to support the health care law, including the referenced spreadsheets.
- 4) The specific statutory authority each agency and program helping to disseminate information about and/or assisting with the implementation of the health care law has to do so and a description of how their activities further the statutory missions of each agency and program involved.

- 5) Any written legal opinions clearing each and every agency activity – whether by agency counsel or your office – to explain the justification for using unrelated agencies to promote the health care law.
- 6) Is HHS reimbursing other agencies for their promotional or implementation activities and if so, what account is it using and what instructions were included with the funding?
- 7) If HHS is not fully funding these programs, how much are all federal agencies involved in this effort spending this fiscal year to further the implementation of the health care law, and how much do they anticipate spending in each fiscal year from 2014 to 2017? What specific appropriation accounts and programs are being used at each agency and how many full time equivalent employees are involved at each agency in these activities?
- 8) Is the federal government requiring promotional or implementation activities by state or local governments under any programs, including through grants? Are any such requirements being supplemented with additional federal resources? If not, how does that not constitute an unfunded mandate?
- 9) Is the federal government requiring promotional or implementation activities by non-governmental grantees or contractors as part of their grants or contracts? If so, what authorities are being used to implement these requirements?
- 10) Has the Administration ensured that agencies coordinate activities with each other and HHS to ensure that efforts are not duplicative or confusing?

We request that each congressional authorizing and appropriating committee with jurisdiction be given a detailed report on these issues no later than August 14 and that the Administration make the information available to the public so everyone is aware of the true costs of the health care law. Going forward, we also ask for regular reports on what specific activities have been or will be undertaken to promote the health care law by government entities as well as costs associated.

Thank you for your attention to this important matter.

Sincerely,



Lamar Alexander



J. S. [unclear]

Attachments

Mike Johnson
Don Cook

Michael B. Eiji
Mark

James W. Galt

Kelly A. Ayette

Lee Newsham

Clara Kim

John Bozman

Roy Johnson

Sally Chaublin

Bob Dieder

Pat Fleck

Robert Sun

James Smith

Tom Cohen

John Cornyn

Jim Heller

William B. E.

John Barrasso

John [unclear]

Susan Collins

Paul [unclear]

John [unclear]

John [unclear]

[unclear]

Mike Crayon

Pat Roberts

Boucher

Ray [unclear]

Bill McCannell

John [unclear]

Ray [unclear]

Jeff [unclear]

Lebb [unclear]

Chris [unclear]

[unclear]
