

MEMORANDUM

TO: Connect for Health Colorado

FROM: Mark Grueskin; Megan Downing

DATE: February 18, 2014

RE: Performance Audits of Connect for Health Colorado

You have asked us to review the existing legal authority for state-conducted performance audits of Connect for Health Colorado ("CHC"), the state exchange charged with implementing the Affordable Care Act in this state. We have done so and conclude that, given Colorado law's clear delegation of such authority to a federal review, as well as the existing but limited audit capacity regarding CHC that is vested in the Audit Committee rather than the State Auditor, the State Auditor simply lacks any legislative mandate to conduct such an audit.

As you know, CHC is not a state agency under state law. Instead, it is categorized as a matter of law as an "instrumentality of the state." C.R.S. § 10-22-104. For purposes of the state audit statute, instrumentalities of the state fall under the broader rubric of "special purpose authority." C.R.S. § 24-77-102(15)(a). The Auditor's statute expressly exempts certain state entities from her authority to conduct performance audits, including instrumentalities of the State such as CHC. Specifically, the State Auditor is precluded from conducting a performance audit on "[a]ny special purpose authority or state entity where the authority's or entity's actions are subject to a performance audit, or such similar audit, by the federal government." C.R.S. § 2-3-103(1)(b)(III) (emphasis added). In order for this exemption to be effective, a special purpose authority must deliver the federal audit to the State Auditor. *Id.*

We understand that CHC is required to undergo a series of federal reviews for finance, technology, performance and financial sustainability. Further, you have indicated that updated documentation of these audits have been requested and will be delivered to the State Auditor on receipt. Finally, you have stated that the federal review of CHC will be an ongoing exercise and that the results of the audit will be promptly delivered to the State Auditor in all future years.

The General Assembly has reserved to the Audit Committee certain limited audit authority in connection with CHC. "All moneys received by the board for the exchange are subject to audit by the legislative audit committee. The board shall report all moneys received for the exchange to the legislative audit committee." C.R.S. § 10-22-105(4)(b). Thus, the General Assembly built in an additional level of accountability that is specific to CHC, but did so in the context of a financial — rather than a performance — audit. There has been no suggestion that the Audit Committee is incapable or unwilling to engage in this exercise.

Please contact us if you have any question about this memorandum.