

DEPARTMENT OF REGULATORY AGENCIES
FY 2023-24 JOINT BUDGET COMMITTEE HEARING AGENDA

Friday, January 6, 2023
9:30 am – 10:30 am

9:30-9:35 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Patty Salazar, Executive Director

9:35-9:40 COMMON QUESTIONS

Main Presenters:

- Patty Salazar, Executive Director
- Justin Lippard, Budget Director

Topics:

- Question 1: Page 1, Question 1 in the packet
- Question 2: Page 1, Question 2 in the packet
- Question 3: Pages 1 & 2, Question 3 in the packet
- Question 4: Page 2 & 3, Question 4 in the packet

9:40-10:05 R1 DIVISION OF INSURANCE SENIOR STAFFING

Main Presenters:

- Michael Conway, Colorado Insurance Commissioner and Division Director for the Division of Insurance

Topics:

- Current Division of Insurance Vacancies: Pages 3 - 5, Question 5 in the packet
- Chief of Staff Positions: Page 5, Question 6 in the packet
- Colorado Option: Pages 6 & 7, Questions 7-9 in the packet

10:05-10:30 R3 RESOURCES FOR PRESCRIPTION DRUG AFFORDABILITY BOARD

Main Presenters:

- Michael Conway, Colorado Insurance Commissioner and Division Director for the Division of Insurance

Topics:

- Request for Contracting Services: Pages 8, Question 10
- Request for Additional Resources for Consulting & Data, Pages 8 & 9, Question 11
- Prescription Drug Affordability Board FTE, Page 9, Question 12

**DEPARTMENT OF REGULATORY AGENCIES
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**Friday, January 6, 2023
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COMMON QUESTIONS FOR DISCUSSION AT DEPARTMENT HEARINGS

- 1 Please describe the implementation plan for new programs added to the Department from one-time stimulus funds (such as the CARES Act, ARPA, and one-time General Fund), as well as any challenges or delays to program implementation.**

The department has not received one-time federal funds from stimulus bills and does not presently expect to receive such funding. The department continues to track current federal stimulus legislation to understand any future impacts to the department.

- 2 Please identify how many rules you have promulgated in the past year (FY 2021-22). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.**

For fiscal year 21-22, the department promulgated 217 rules; seven resulted in cost-benefit analyses (CBA). Topics covered include the following: subdivisions and timeshares; low-income programs for electric and gas utilities; age limitations of passenger-carrying motor vehicles; towing carriers; rail crossings and radon.

The department has not completed an analysis of its rules as a whole. However, 24-4-103(2.5), C.R.S., allows any person within five days of publication of the notice in the Colorado Register to request a CBA.

- 3 How many temporary FTE has the Department been appropriated funding in each of the following fiscal years: FY 2019-20, FY 2020-21, FY 2021-22, and FY 2022-23? For how many of the temporary FTE was the appropriation made in the Long Bill? In other legislation? Please indicate the amount of funding that was appropriated. What is the department's strategy related to ensuring the short term nature of these positions? Does the department intend to make the positions permanent in the future?**

The term temporary FTE is not included in the statutory definition of FTE, therefore the department cannot provide a count of temporary FTE. Section 24-75-112(1)(d)(II), C.R.S., states that FTE does not include contractual, temporary, or permanent season positions. The department has provided, as part of the November 1 request, Schedules 14A and 14B, which provide actual expenditures. For the upcoming years, the department manages the dollar

appropriation, affirmed by two Supreme Court cases (Colorado GA vs. Owens and Anderson v Lamm).

With respect to the Long Bill and change requests for Long Bill funding submitted by the department, no appropriations for FTE intended to expire after a finite timeframe have been requested or approved for the specified years. Concerning other legislation, a significant number of bills have been initiated and passed by the General Assembly over this timeframe and a significant amount of funding has been appropriated. As outlined in the following table, 66 bills have been passed, resulting in first-year appropriations of \$13.1 million and 66.2 FTE over this timeframe:

| Legislative Bills by Recent Session -- Volume and Appropriations | | | |
|---|--------------------|--------------------------|----------------------|
| Legislative Session (Fiscal Year) | Total Bills | Total New Funding | Total New FTE |
| 2019 Session (FY 2019-20) | 14 | \$3,742,270 | 18.9 |
| 2020 Session (FY 2020-21) | 8 | \$109,501 | 0.3 |
| 2021 Session (FY 2021-22) | 23 | \$5,335,791 | 29.8 |
| 2022 Session (FY 2021-22) | 21 | \$3,947,489 | 17.2 |
| Total | 66 | \$13,135,051 | 66.2 |

In no circumstance is the department retaining or paying for FTE over and above available appropriations. This includes any temporary positions and all permanent positions as well. Occasionally the number of FTE required for the initial implementation of a new program is different in the first year than the second. Customarily, the FTE is greater in out-years than in the first year during the initial implementation phase.

- 4 **Please provide a description, calculation, and the assumptions for the fiscal impact of implementing the provisions of the Partnership Agreement, including but not limited to changes in annual leave accrual, holiday pay, and paid family and medical leave. If your department includes employees who are exempt from the Partnership Agreement, please indicate whether or not you intend to implement similar benefit changes as those required for covered employees. Please provide a breakdown of the fiscal impact of implementing the provisions of the Partnership Agreement for: a) employees who are subject to the Agreement, and b) employees who are exempt from the Agreement.**

The cost to departments for employees using the paid family medical leave was requested and approved last year (DPA FY 2022-23 R-02). For FY 2023-24, the cost is part of the POTS appropriation called Temporary Employees Related to Authorized Leave. The adjustment to annual leave and the additional holiday, as noted in the fiscal note for the bill (S.B. 22-139), were expected to be minimal and, if necessary, will be addressed through the annual budget process. The Governor’s November 1, 2022 budget included funding for the economic articles of the Partnership Agreement, including funding for paid family medical leave. The

department is working with OSPB and DPA to submit a January budget amendment, if necessary, to seek additional adjustments related to the Partnership Agreement. In addition, OSPB will provide the JBC with a breakdown of the fiscal impact of implementing the Partnership Agreement by the department.

R1 DIVISION OF INSURANCE SENIOR STAFFING

CURRENT DIVISION VACANCIES

5. ***[Sen. Kirkmeyer]*** Provide the following information about the Division of Insurance's currently vacant positions:
- **Which positions are vacant?**
 - **How long has each position been vacant?**
 - **Why has the Division not been able to fill these positions?**
 - **Why doesn't the Division use vacancy savings to fill the four new requested positions?**

Currently, the Division of Insurance (DOI) has approximately 18 vacancies, resulting in a vacancy rate of less than 16%, as provided in the department's most recent vacancy rate report. This number -- which continually changes in response to normal fluctuations and attrition -- includes nine FTE added after the 2022 Legislative Session and nine vacancies related to existing positions. It is important to note that newly created FTE represents half of this vacancy figure, and without these, the current DOI vacancy rate is eight point eight percent. The Division continues to work diligently to fill these important positions, most of which are highly specialized and is committed to retaining the talent of its existing dedicated staff, as demonstrated by a turnover rate of only four point nine percent for this Division -- a figure considerably lower than the statewide turnover rate of 21.40%.

The Division is actively working through the hiring process for the recruitment and hiring of these highly specialized classified positions. Although challenges in the current job market remain a reality,¹ the Division expects to complete hires within the next several months. Most importantly, these circumstances affect hiring in all cases and for each of the positions listed in the table below, and there is no single position that is uniquely vacant for reasons beyond this very normal dynamic.

The positions which are currently vacant are critical to the work of the division and are not expected to remain vacant for a while which would afford ongoing vacancy savings. The Division has grown by 30% in the last five years, and the current request for additional senior staffing resources reflects the goal of ensuring adequate management and oversight of programs and services essential to the public interest.

Please see chart on following page describing Vacant Positions, Classification and Length of Vacancy:

¹ Data from September indicate there are two job openings for every unemployed person in Colorado. <https://www.cpr.org/2022/09/15/colorado-job-openings-unemployed/>

| Vacant Positions | Classification | Length of Vacancy |
|---|----------------------------|--|
| Rates & Forms Analyst II to support Family and Medical Leave Insurance (FAMLI) | Rate/Financial Analyst II | New position created as a result of 2022 Legislative Session. |
| Property and Casualty Policy Advisor III | Policy Advisor III | New position was created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| Prescription Drug Affordability Review Board (PDAB) Data Science Analyst | Statistical Analyst II | New position created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| PDAB Policy Research Analyst | Policy Advisor III | New position was created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| Colorado Option Program Assistant | Program Assistant I | New position created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| Behavioral Health Policy Advisor | Policy Advisor III | New position was created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| Rates & Forms Analyst to support Insurance Coverage For Loss Declared Fire Disaster | Rate/Financial Analyst II | New position created as a result of 2022 Legislative Session. The division is actively working through the hiring process. |
| Network Adequacy Rates & Forms Analyst | Rate/Financial Analyst III | New position created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| Project Manager - Unfair Discrimination in Insurance | Rate/Financial Analyst II | New position created as a result of the 2022 Legislative Session. The division is actively working through the hiring process. |
| Senior Medical Patrol (SMP) Program Manager/Senior Health Program Asst. Director | Project Manager I | one month |
| Market Conduct Director | Rate/Financial Analyst IV | one month |

| Vacant Positions | Classification | Length of Vacancy |
|---|---------------------------|--------------------------|
| Rate or Financial Analyst II (Investigator) | Rate/Financial Analyst II | one month |
| Rates & Forms Analyst to support Coverage Requirements for Health-Care Products | Rate/Financial Analyst II | one month |
| Property & Casualty Consumer Services Analyst | Rate/Financial Analyst II | two months |
| SMP Complex Issues Specialist/Medicare Fraud Prevention Advisor | Administrator III | two months |
| Operations Manager | Technician V | three months |
| Property, Casualty & Title Rates & Forms Analyst | Rate/Financial Analyst II | three months |
| Life & Health Policy Rates & Forms Director | Rate/Financial Analyst IV | four months |

6. [Sen. Kirkmeyer] Do any other Divisions or Type 1 agencies have a Chief of Staff position?

The majority of divisions, whether designated Type one or two entities within principal departments, have management-level positions that work on behalf of the Division Director/Commissioner to provide strategic leadership and administration of the division's operations and programs (a small number of exceptions to this have been observed when a division is significantly small in size). Working titles may vary depending on the specific duties (e.g., Deputy Commissioner, Deputy Division Director, Senior Deputy, etc.).

The Division/DOI Chief of Staff position proposed in this request is anticipated to function in the same way as these other such positions, with the added responsibility of supporting the Insurance Commissioner's specific cabinet-level responsibilities and priorities, such as coordinating directly with the Governor's Office in implementing the Governor's strategic policies and agenda as they relate to the Division of Insurance. With respect to whether other divisions or type one entities in DORA use the term "Chief of Staff" in the title, that exact title is not typically used elsewhere in other divisions. Still, this division is unique in having the Division Director/Commissioner serve on the Governor's cabinet, in addition to DORA's Executive Director, who is a principal department cabinet official and department head.

COLORADO OPTION

7. [Sen. Kirkmeyer] Provide a briefing on the Division's involvement in the decision to make a Colorado Option plan the default plan for Connect for Health enrollees who were insured in 2022 by a carrier that is no longer in the individual market in 2023. Did enrollees lose access to their doctors because of the decision to make a Colorado Option plan the default option?

Bright Health's national financial distress resulted in the company's exit from the Colorado individual health insurance market and exiting from every state in the country. This exit affects approximately 50,000 Coloradans, who, if they do not select a new plan during the open enrollment, will lose health coverage for the coming year. Whenever enrollees change their plans, the new plan's network will likely differ from their former plan's network. In this case, with Bright Health's complete withdrawal from the market, those individuals who had Bright Health coverage should consider their preferred providers when shopping for new coverage.

In suggesting plans for people whose plans were ending, the Division's goal was to keep people from losing health insurance coverage for 2023. Connect for Health Colorado shared that their data indicates when people receive a suggested plan, they are more likely to retain health coverage than those who do not receive a suggestion. This strategy has been used by the Division and Connect for Health Colorado for several years to help Coloradans avoid losing health insurance coverage when plans are discontinued.

Consumers receive renewal letters with plan suggestions in November, and Connect for Health Colorado sends renewals to health insurance companies in early December. After Connect for Health Colorado sends or "runs" renewals, their system resets. What this "reset" means for a consumer, who is still selecting their plan, is that the suggested plan from their November renewal letter "goes away." Today, consumers who are still selecting a plan, no longer see their suggested plan. However, if the consumer did shop for coverage in November, they would have seen the Colorado Option as the suggested plan.

It is important to note that because these plans are merely suggestions, no plans were made a "default" for any person. A plan suggestion does not result in a consumer being auto-renewed in the suggested plan. All individuals are still required to choose a plan that is best for them actively. Coloradans who received renewal notices with proposed plans must still shop for coverage and were encouraged to do so. Even with these suggestions, the person will lose coverage if a consumer does not actively choose a plan, suggested or otherwise.

It is also important to note that Colorado's plan suggestion approach differs from the federal government's. Rather than suggesting plans, the federal government auto-enrolls consumers into plans to keep as many people as possible enrolled in health insurance coverage.

Colorado Option plans were suggested because they are, on average, lower in premium than non Colorado Option plans while offering excellent coverage and benefits. These plans were designed through an intensive stakeholder process, including health insurance companies, consumer advocates, and healthcare providers and hospitals. Colorado Option plans offer first-dollar (i.e.,

pre-deductible) coverage for primary care, behavioral health, perinatal services, and prescription drugs to address stakeholder feedback.

Plan suggestions were consistent with federal regulations. The plans suggested were at the same metal level (i.e., the same level of coverage). Technical limitations in exchange systems also required the plans to have an identical service area (i.e., networks in the same geographic areas). The plans suggested were from Kaiser, Anthem, and Rocky Mountain Health Plans, depending on the county and service area. At least one Bright Health plan received no suggestion because it did not match service areas with any 2023 plan at the same metal level.

8. [Sen. Bridges] Explain why Colorado Option plans were chosen as the default option for consumers who were insured in 2022 by a carrier that is no longer in the individual market in 2023.

As explained in the initial question, in suggesting plans for people whose plans were ending, the Division's goal was to keep people from losing health insurance coverage for 2023. Data indicate that when people receive a suggested plan, they are more likely to retain health coverage than those who do not receive a suggestion. This strategy has been used by the Division and Connect for Health Colorado for several years to help Coloradans avoid losing health insurance coverage when plans are discontinued.

Because these plans were suggestions, no plans were made a "default" for any person. Even with these suggestions, all individuals must choose a plan that is best for them. If they do not actively choose a new one, they will lose coverage, whether they select a suggested plan or not.

Colorado Option plans were suggested because they are, on average, lower in premium than non-Colorado Option plans while offering excellent coverage and benefits. Colorado Option plans offer first-dollar (i.e., pre-deductible) coverage for primary care, behavioral health, perinatal services, and prescription drugs. Plan suggestions were consistent with federal regulations. The plans suggested were at the same metal level (i.e., the same level of coverage). Technical limitations in exchange systems also required the plans to have an identical service area (i.e., networks in the same geographic areas). The plans suggested were from Kaiser, Anthem, and Rocky Mountain Health Plans, depending on the county and service area. At least one Bright Health plan received no suggestion because it did not match service areas with any 2023 plan at the same metal level.

9. [Sen. Zenzinger] We are experiencing historically high inflation, but Colorado Option plan's premiums can only increase at the rate of medical inflation, which the Division has estimated to be around 1.0 percent in 2024. Please comment on how the difference between overall inflation and medical inflation could impact Colorado Option plans and Colorado's health insurance market.

The Colorado Option statute, Section 10-16-1305, C.R.S., specifically requires the Division to adjust the premium reduction targets on Colorado Option plans for medical inflation. Medical inflation is defined in Section 10-16-1303(10), C.R.S., as the 10-year average of the medical component of the consumer price index for all urban consumers (CPI-U). While inflation overall (i.e., CPI-U) over the last year has been nearly eight percent (seven point seven percent), CPI-U Medical was less than three percent until earlier this year (April) and CPI-U Medical is currently

five percent. For 2024 Colorado Option premium reduction targets, the Division calculates medical inflation allowable under the statute to be two point nine percent.

R3 RESOURCES FOR PRESCRIPTION DRUG AFFORDABILITY BOARD

10. [Sen. Zenzinger] Why is the Division requesting additional funds for contracting services when S.B. 21-175 appropriated FTE to support the board's work?

SB21-175 appropriated five FTE to implement the Prescription Drug Affordability Board (PDAB). The Division is actively working to hire two individuals, a data analyst to support analysis for affordability reviews and Upper Payment Levels (UPLs) and a policy analyst with expertise in pharmacoeconomics and prescription drug comparative effectiveness research. Working with our current team and through discussions with other states with PDABs, the Division was able to better understand the specific staffing expertise that would be most beneficial to supporting Colorado's PDAB. Through these conversations, Colorado also learned of challenges other states have had in hiring for Prescription Drug Affordability work, particularly since the staffing needs to establish the Board and its program are different from the staffing needs to run the program, with the latter needs being highly technical in data analytics and pharmacoeconomics.

As Colorado's PDAB approached the end of its first year, the Division began actively working to hire a data analyst and policy analyst. However, finding individuals with this experience has been challenging given the job market, the unique expertise required, and the fact that Colorado is the most advanced state in the country in the work of a PDAB. Using consultants to support the Division in this work allows us to continue to move forward to implement the PDAB and reduce the costs of prescription drugs for Colorado consumers while at the same time building our internal expertise within the Division.

11. [Sen. Kirkmeyer] During the hearing on S.B. 21-175, the Division indicated that they could implement the bill with the resources identified in the bill's fiscal note. Why is the Division now requesting additional resources for consulting and data?

The fiscal note allocated \$75,000 for consulting costs in year one and \$50,000 for data from the All-Payer Claims Database (APCD) in year one, and \$34,000 in subsequent years. This allocation was based on the Division's best estimate of implementation costs. However, when the legislature considered SB21-175 in 2021, there was limited experience from other state PDABs from which to build.

As the PDAB has begun its work, it has become apparent that data and APCD are needed for the Board to conduct its work, which is why the Division is requesting additional funds for data. First, the Board will need to access a subscription service for data to consider drug wholesale acquisition costs (WAC). As other state entities have access to the WAC, the division initially believed it could tap into those existing resources. However, the division determined a separate agreement was required based on subsequent discussions with the vendor.

In addition, it has become apparent that we need to include rebate data in the affordability reviews to fully understand the price of drugs. The pharmaceutical supply chain is complex, and it is complicated to estimate the flow of funds and reimbursement for a specific drug throughout the supply chain. Data from SSR Health, LLC, commonly referred to as "rebate data," includes a

broader estimate of the brand name drug's net price that is net of all price concessions. SSR Health data is a transparency tool that improves the ability to estimate the net amount paid for a brand-name drug. When conducting affordability reviews, rebate data will be incredibly informative for Board member understanding of a prescription drug's total cost compared to other prescription drugs' total cost to the system.

Second, the fiscal note allocated \$75,000 for consulting services in the program's first year. Continuing this consultant work will allow us to grow capacity in-house while promptly implementing the program. The Division intended to grow that capacity internally in the first year but found it difficult to hire quality team members in the timeline. The consultants hired would be instrumental in supporting the Board in conducting affordability reviews. Specifically, by providing expertise regarding the effect of a prescription drug's price on Colorado consumers' access to the prescription drug and the relative financial effects on health, medical, or social services costs, as the effects can be quantified and compared to baseline effects of existing therapeutic alternatives.

12. [Sen. Kirkmeyer] How many FTE are currently associated with the Prescription Drug Affordability Board?

The fiscal note for SB21-175 allocated five FTE for the Prescription Drug Affordability Board (PDAB). Three Division staff and two legal counsel. Currently, the Division has two FTE dedicated to the PDAB, a director and a policy advisor, and two part-time assistant attorneys general from the Department of Law for three FTE.

The director creates and defines program processes, plans overall program timelines, oversees stakeholder outreach strategy, collaborates with other states, manages all data needs, oversees compliance and reporting, and advises division leadership and the Governor's Office as requested. The policy analyst provides project management support, conducts research and analysis, supports the day-to-day work of the PDAB and the Advisory Council, and keeps stakeholders informed of the Board's activities.

The Division is actively hiring two FTEs for the PDAB. This includes a data analyst to support management and analysis of data for affordability reviews and UPLs, Additionally, a policy analyst is needed with expertise in pharmacoeconomics and prescription drug comparative effectiveness research.

Department of Regulatory Agencies Joint Budget Committee Hearing

January 06, 2023



COLORADO
Department of
Regulatory Agencies

DORA's Mission & Vision

The **Department of Regulatory Agencies** (DORA) is dedicated to **preserving the integrity of the marketplace** and is committed to promoting **a fair and competitive business environment** in Colorado.

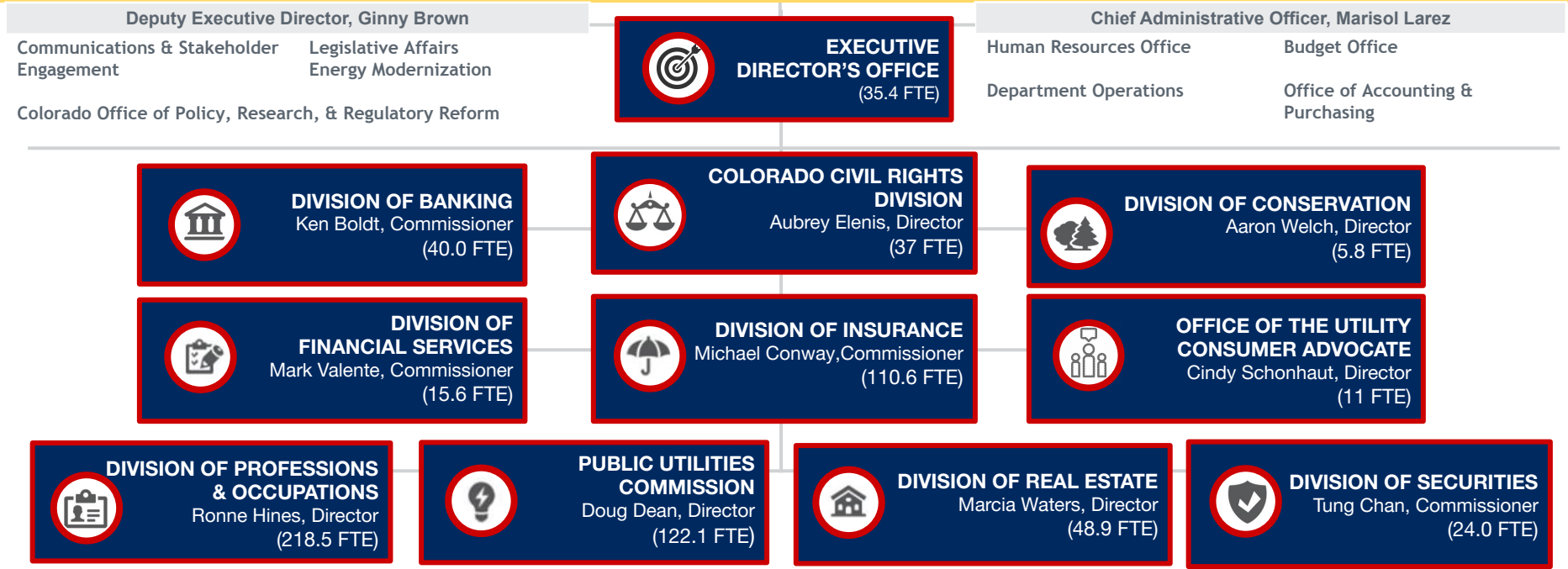
Consumer protection is our mission.

DORA's Organizational Chart



DEPARTMENT OF REGULATORY AGENCIES

Patty Salazar, Executive Director



What DORA Regulates

Financial Services



Accounting Firms
Broker-Dealer Firms
Broker-Dealer Sales
Representatives
Certified Public Accountants
Investment Adviser Firms
Investment Adviser
Representatives
Money Transmitters
Mortgage Broker-Dealers
Mortgage Loan Originators
State-Chartered Savings & Loans
State-Chartered Commercial

Banks

Insurance

Insurance Agents/Brokers
Insurance Companies

Real Estate, Buildings & Repair



Appraisers
Architects
Electricians
Engineers
Homeowners Associations (via HOA
Information and Resource Center)
Land Surveyors
Landscape Architects
Plumbers
Radon Professionals
Real Estate Brokers
Title Insurance Agents/Agencies

Cosmetology

Barbers
Barber/Cosmetology Shops
Cosmetologists
Estheticians
Hair Stylists

Nail Technicians

Healthcare & Wellness

Acupuncturists
Addiction Counselors
Athletic Trainers
Audiologists
Chiropractors
Dental Hygienists
Dentists
Direct-entry Midwives
Hearing Aid Providers
Marriage and Family Therapists
Massage Therapists
Naturopathic Doctors
Nurses
Nursing Home Administrators
Occupational Therapists/Occupational
Optometrists
Pharmacists
Pharmacies
Physical Therapy
Physicians (all types)
Physician Assistants
Professional Counselors
Psychiatric Technicians
Psychologists
Respiratory Therapists
Speech Language Pathologists
Social Workers
Surgical Assistants/Surgical Technologists

Transportation



Children's Activity and Charter Buses, Limousines,
Off-road Charters, Moving Companies (household
goods), Non-consensual Towing, Passenger
Tramways, Shuttles, Taxis and Transportation
Network Companies (TNC's)
Public Highway Railroad Crossings
Rail Fixed Guideway (RFG)

Utilities

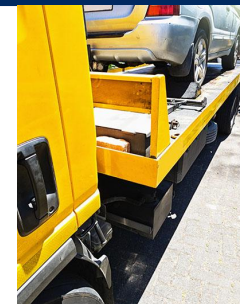


Investor-owned electric, gas,
steam and water
Some telecommunications

services

Other

Bail Bonds/Bail Bonds Agents
Boxing
Conservation Easement Holders
Conservation Easement Tax Credits
Funeral Homes, Crematories
Medicare Assistance - home of State Health Insurance
Assistance Program (SHIP)
Medicare Assistance - Senior Medicare Patrol (SMP)
Outfitters
Enforce anti-discrimination laws



JBC Common Questions 1 thru 4

Patty Salazar, DORA Executive Director &
Justin Lippard, DORA Budget Director



JBC Questions 5 thru 12

Michael Conway, Colorado Insurance Commissioner & Division
Director for the Division of Insurance



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Closing

Patty Salazar
DORA Executive Director



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