May 11, 2021

Representative Ivy Spohnholz
Co-Chair, House Labor & Commerce Committee
State Capitol Room 406
Juneau, AK 99801

Re: Opposition to HB 58 (HSS)

Dear Rep. Spohnholz:

I write on behalf of Alaska Family Action to express our opposition to House Bill 58 (HSS):

> "An act relating to insurance coverage for contraceptives and related services; relating to medical assistance coverage for contraceptives and related services; and providing for an effective date."

HB 58 takes one of the most controversial and litigated components of Obamacare—the contraceptive mandate—and grafts it into Alaska state law. It would impose a mandate on every health insurance plan in the state, including both the employer and individual market, to cover all FDA-approved contraceptive drugs or devices that require a prescription, over-the-counter emergency contraception, and sterilization procedures. It is similar to bills in the 31st Legislature (HB 21) and the 30th Legislature (HB 25), which Alaska Family Action also opposed.

Alaska Family Action does not take a position on contraception *per se*, but we do oppose the specific mandate in HB 58 for the following reasons.

<u>Coverage of abortifacients</u>

HB 58 is described by supporters as a bill to expand access to "contraceptives." However, the mandate requires coverage of drugs or devices that are "approved by the United States Food and Drug Administration" to prevent pregnancy. Unfortunately, the FDA employs a misleading definition of "contraceptive" that includes drugs and devices that involve a mechanism of action that destroys the life of an early-developing human embryo.

Specifically, HB 58 would require coverage for drugs such as Ella (ulipristal acetate), Plan B (levonorgestrel), and the Copper IUD, which act to prevent the implantation in the uterine wall of an already-developing, genetically unique, human embryo.

These abortifacients were the focal point of extensive litigation in federal court related to the Obamacare contraception mandate, especially in the cases of *Burwell v. Hobby Lobby Stores* and *Zubik v. Burwell*.

In the *Hobby Lobby* decision, the Supreme Court struck down the Obamacare contraceptive mandate, insofar as it was applied to certain closely held for-profit businesses that had religious objections to including these drugs in their health care plans.

In the *Zubik* case, the Association of American Physicians and Surgeons (AAPS) filed an *amicus curiae* brief which stated the following:

> "It is undisputed as a matter of science that a new, distinct human organism comes into existence during the process of fertilization – at the moment of sperm-egg fusion – and before implantation of the already-developing embryo into the uterine wall. **Many drugs and devices labeled by the U.S. Food and Drug Administration as 'emergency contraception,' however, have post-fertilization (i.e., life-ending) mechanisms of action which destroy the life of a human organism.**" (emphasis added)

The complete text of the AAPS brief is informative, and may be accessed at the following link:

http://www.scotusblog.com/wp-content/uploads/2016/01/Am.-Physicians-Su-Amicus-Brief.pdf

HB 58 takes away consumer choice

Similar to the overreaching Obamacare law, HB 58 would impose a sweeping, "one-size-fits-all" mandate that applies to virtually every insurance provider and plan regulated by the state of Alaska – regardless of whether the mandate is *relevant to* or *desired by* the person or persons covered by the plan. To cite one obvious example, a single woman who is beyond reproductive age and who is applying for an individual policy would be issued a plan that includes coverage for contraceptives. Or in another case, a Christian family shopping for health insurance in the individual market would be unable to select a health plan that did *not* include coverage for contraceptives and sterilizations – even if their particular religious beliefs would cause them to never make use of such coverage.

Even though only a *minority* of Alaska health care consumers would utilize the mandated contraceptive and sterilization coverage, the provisions of the bill "globalize" the financial responsibility for providing these services among all those who are insured. HB 58 stipulates, on page 2, lines 14-16:

> "Except as provided in (d) of this section, a health care insurer may not offset the costs of compliance with (a) of this section and may not require copayments or deductibles for contraceptives or services covered under (a) of this section."

This provision forces every health care consumer in the state to subsidize the coverage of elective drugs and sterilization procedures through their premium dollars—despite the fact that many of these policy holders conscientiously object to subsidizing such services.

Proponents of HB 58 argue the measure is about expanding "choice." But many Alaskans, if they had a choice, would choose not to subsidize the voluntary lifestyle choices of others.

Impacts on minors and parental rights

We are concerned about the potential impact of a provision of HB 58 found on page 3, lines 5-7:

> "A health care insurer shall provide coverage and reimbursement under (a) of this section to all insureds enrolled in a health care insurance plan, including enrolled spouses and dependents."

We are not clear how this provision would interface with an existing statute (AS 25.20.025) that allows minor children to receive drugs—including those that might cause an early abortion—without parental consent, and without a parent even being notified:

> **Sec. 25.20.025. Examination and treatment of minors.**
>
> (4) a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease;
>
> (5) the parent or guardian of the minor is relieved of all financial obligation to the provider of the service under this section.

Would the provisions of HB 58 create a situation where parents are paying, through their health insurance premiums, for their children to receive contraception or sterilizations without the parents' knowledge or consent? AS 25.20.025(a)(5) states plainly that parents are "relieved of all financial obligation" for these services that are provided without their permission. But it is difficult to square this provision with the unambiguous language in HB 58 that states, "A health insurer shall provide coverage and reimbursement…. to all insureds… including dependents."

Religious exemption is wholly inadequate

Another shortcoming with HB 58 concerns the religious exemption described on page 3, lines 8-13. This exemption follows the template of the flawed Obamacare contraceptive mandate, and it is inadequate to protect those who object to the mandate on religious or moral grounds.

First, the exemption applies only to plans offered to religious employers in the *group* market. There is simply no ability, under HB 58, for persons or families in the *individual* market to receive an exemption from this mandate on the basis of religious objection.

Second, the religious exemption for certain group plans is available only to entities identified in the Internal Revenue Code at 26 U.S.C. 6033(a)(3)(A) – see page 3, lines 12-13.

These exemptions are *extremely narrow* – essentially including only churches, associations of churches, or the "exclusively religious activities of any religious order." These categories *exclude* many entities, both in the non-profit and for-profit sectors, that serve a religious purpose.

There are numerous Christian, non-profit organizations that help the poor, provide educational services, assist with health care, etc. – but which are not associated with or controlled by any specific church, or religious order. Likewise, there are a significant number of entities in the business world, such as Christian booksellers, that also serve a religious purpose but which would not qualify for an exemption under the I.R.S. categories.

It is no surprise that the I.R.S. categories are so narrow – because this portion of federal law was *never meant to define the scope of who has religious freedom*. The focus of the Internal Revenue Code, with respect to religious entities, is to determine who is obligated to pay taxes, and who is not. Clearly, a section of federal law designed to establish obligations for filing tax returns is a very poor model for establishing which entities are "sufficiently religious" to qualify for an exemption from a mandate to cover contraceptives, including those that can cause early abortions.

Several other states with mandates to cover contraceptives and/or sterilizations have adopted robust religious exemptions that respect the diversity of thought that exists on this issue. For example, the law in Missouri provides the following:

> No employer, health plan provider, health plan sponsor, health care provider, or any other person or entity shall be compelled to provide coverage for, or be discriminated against or penalized for declining or refusing coverage for, abortion, contraception, or sterilization in a health plan if such items or procedures are contrary to the religious beliefs or moral convictions of such employer, health plan provider, health plan sponsor, health care provider, person, or entity. *(RS Mo, Section 191.724)*

Alaska Family Action believes that HB 58 is a poorly constructed measure that undermines consumer choice, religious freedom, and human dignity through the forced subsidization of drugs and devices that act as abortifacients. We respectfully urge you to oppose this bill.

Sincerely,

Jim Minnery, President
Alaska Family Action