April 15, 2017

Rep. Paul Seaton
Co-Chairman, House Finance Committee
State Capitol – Room 505
Juneau, Alaska 99801

Re: Opposition to HB 25

Dear Rep. Seaton:

We are writing to express our opposition to CS for House Bill 25 (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 25 imposes 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.

While the Alaska Family Council does not take a position on contraception *per se*, we do oppose the specific mandate in HB 25 because the definition of "contraceptive" includes drugs and devices that, instead of acting exclusively to prevent conception, involve a mechanism of action that destroys the life of an early-developing human embryo.

Specifically, the list of FDA-approved "contraceptives" includes such drugs and devices as Plan B (levonorgestrel), Ella (ulipristal acetate), 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."

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

Although our primary objection to HB 25 concerns the abortifacient mandate, we do have other concerns with the legislation.

HB 25 is structured with a sweeping, one-size-fits-all mandate that applies to virtually every insurance provider and plan issued in 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 – even if their specific religious beliefs are such that they would never make use of such coverage.

We concur with the Jan. 23, 2017 statement of Dennis DeWitt, Alaska State Director for the National Federation of Independent Business:

> "Unfortunately, HB 25 mandates specified drug coverage that may not fit employee's needs but for which small employers providing health insurance bear the cost. Increased mandates force employers to consider whether they can afford to continue coverage or are forced by increased prices to eliminate health insurance for their employees."

Even though only a *minority* of Alaska health care consumers would utilize the mandated contraceptive coverage required by HB 25, the provisions of the bill essentially "globalize" the financial responsibility for providing this new benefit among all consumers. HB 25 stipulates, on page 2, lines 10-12:

> "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 essentially forces every health care consumer in the state to subsidize the coverage of contraceptives through their premium dollars – even those policy holders who conscientiously object to being forced to subsidize the services covered.

Another potentially troublesome provision of HB 25 is found on page 2, lines 28-30:

> "A health 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."

Dependents would include, of course, minor children. A separate statute, one that we think is ill-advised, allows minor children to receive "contraceptives" – 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.**
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> (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.

It is not clear to us whether the provisions of HB 25 would create a situation where parents are essentially paying, through their health insurance premiums, for their children to receive contraception 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 25 that states, "A health insurer shall provide coverage and reimbursement…. to all insureds… including dependents."

Another shortcoming with HB 25 concerns the religious exemptions described beginning on page 2, line 31 through page 3, line 10. These exemptions follow the template of the flawed statute and regulations associated with the Obamacare contraceptive mandate. The exemptions are weak and poorly defined.

To be clear, Alaska Family Council is most fundamentally opposed to HB 25 because it represents a public policy that undermines the dignity of human life through its promotion of abortifacient drugs and devices. The inclusion of more robust religious exemptions would mitigate some of the harm of the bill, but would not result in us removing our objection. Nevertheless, we wish to outline the problems we see with the religious accommodations.

First, religious exemptions apply only to plans offered to religious employers in the *group* market. There is simply no ability, under HB 25, for persons or families in the *individual* market to receive an exemption from this mandate for reasons of a religiously-based objection.

Second, HB 25 exempts certain entities identified in the Internal Revenue Code at 26 U.S.C. 6033(a)(3)(A) – see page 2, lines 25-26. These exemptions are *extremely narrow* – essentially including only churches, associations of churches, or the "exclusively religious activities of any religious order." These categories *exclude* numerous entities, both in the non-profit and for-profit sector, 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 numerous 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 file a tax return, and who is not. That is what the I.R.S. cares about – revenue. For example, the language about the "exclusively religious activities of any religious order" is a reference to the fact that certain religious communities, such as Catholic monasteries, often sell products that are hand-made by monks or nuns, such as chocolates or jam or fruitcakes, to help support the community. Although the monastery would be generally tax-exempt, the I.R.S. could require a tax return for the component of the monastery's activity that sells jam.

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.

Third, HB 25 also states that certain entities may be exempted if they have "provided notice to the United States Secretary of Health and Human Services, under the requirements set out in 45 C.F.R. 147.131(b)(1)-(3)." (see page 3, lines 7-10). This refers to a section of federal regulations designed to implement exemptions from the Obamacare contraceptive mandate.

These regulations were at the heart of the *Zubik v. Burwell* litigation, in which a group of Catholic nuns, the Little Sisters of the Poor, joined with other plaintiffs to challenge the Obamacare contraceptive mandate. The legal issues in *Zubik* are complex, not easily summarized, and have yet to be fully resolved. What is clear, however, is that numerous religious entities felt compelled to litigate against these regulations, because they sincerely believe that the purported religious exemptions still make them complicit in offering services that violate their religious beliefs.

We believe that linking the religious exemption in HB 25 to the regulations at 45 CFR 147.131 is a mistake, because these regulations are complicated to understand, and their continued existence is tenuous. It is possible that the entire Affordable Care Act (ACA), including the contraceptive mandate, will be repealed by Congress and the President sometime during 2017.

Even if the ACA is not repealed, it is a virtual certainty that, under the new administration, the controversial regulations at 45 CFR 147.131 will be substantially changed. Thus, it seems that the religious exemptions in HB 25 are pegged to a moving target – leaving affected Alaskans with no certainty about who will be exempt, and who will not.

We recommend that any religious exemptions in HB 25 be spelled out in plain English and incorporated into Alaska law, and not linked to federal statutes and regulations that may disappear entirely or be substantially changed in the next one to two years.

We further recommend that HB 25 should include language that would permit a conscience-based exemption, regardless of whether the objection is rooted in a specific religious doctrine. Given that HB 25 promotes the expanded use of drugs and devices that can terminate a developing human embryo, there may be entities that object to this practice simply as a matter of personal conviction or organizational mission, and not due to any specific sectarian belief.

One final thought we have on HB 25 concerns the many claims that have been made by supporters of the bill, and state agencies, concerning the alleged savings that will be realized because of pregnancies that will be avoided due to expanded availability of contraceptives.

In 2012, the Charlotte Lozier Institute (CLI) released a report, *Pregnancy, Preventive Services and Cost Savings: An Ethical and Economic Mirage.* This analysis is essential reading for all policy makers who are considering claims of enormous cost savings due to averted pregnancies. The document is accessible at the following link:

https://lozierinstitute.org/pregnancy-preventive-services-and-cost-savings-an-ethical-and-economic-mirage/

The CLI report makes the point that the claimed savings are based on an extremely limited timeframe, and do not factor in the life-cycle costs – and benefits – that attach to the life of each unique human being:

> "Advocates of cost-free distribution of family planning methods frequently assert that every $1 in expenditures for these items 'saves $3.80' in yearly net government expenditures. This figure is based on predictions and formulas regarding prenatal care, treatment of complications of pregnancy, and delivery of children of women eligible for public assistance. The frame of reference of this calculation is self-evidently narrow and prejudicial. While predictions of future use of public services and benefits may be sound for an initial period, the net cost-benefit of any particular human life transcends the pregnancy and birth period and is unrepresented in these numbers.

> "Any parent, for example, can reasonably say that he or she averts personal and public 'costs' by delaying or avoiding pregnancy. In fact, the 'savings' from such a decision likely amount not to $3.80 per dollar expended but to tens of thousands of dollars over the course of every human being's birth, childhood, and adolescence. Clearly, however, the avoidance of any particular birth may not be a financial boon to either a family or to society. Positive returns from human lives in the form of taxation to pay for public services and productivity to increase private sector growth occur later in life, and the pattern of highest 'return' is subject to many influences, including broad questions of public policy, character and dependency, and the strength of civil society.
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> "Without the ability to track the value of investment in human capital and the return on an individualized basis, the presumed cost-savings of family planning even to government is a pseudo-statistic that depends on an extremely narrow frame of reference and a deterministic, faintly eugenic theory of human development. Numerous nations that have experienced sharp drops in fertility are facing crises of aging that threaten the viability of their economies and government services across the board."

For all these reasons, Alaska Family Council believes that HB 25 is a poorly-constructed measure that will likely not deliver the benefits that it claims, but will certainly undermine human dignity, religious freedom, and consumer choice 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 Council