



TESTIMONY OF MICHAEL J. NORTON  
SENIOR COUNSEL, ALLIANCE DEFENDING FREEDOM  
to the Colorado Senate State, Veterans, and Military Affairs Committee

Regarding House Bill 15-1194 concerning a \$5 million State General Fund  
Appropriation for Long Acting Reversible Contraceptives

April 29, 2015

My name is Michael J. Norton. I am an attorney with Alliance Defending Freedom, an alliance-building, non-profit legal organization that promotes religious liberty, sanctity of life, and marriage and the family. I have also had the privilege of serving as the United States Attorney for the State of Colorado. And, I have been a licensed pastor.

Alliance Defending Freedom is an alliance-building, non-profit legal organization that promotes religious liberty, sanctity of life, and marriage and the family.<sup>1</sup>

I also represent Colorado Family Action. Colorado Family Action seeks to encourage the enactment of Colorado laws which will ensure a safe, prosperous and wholesome climate in which Colorado families may live and work.

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<sup>1</sup> Alliance Defending Freedom does not engage in lobbying but is able to explain the legal impact of a legislative proposal.

Greenwood Corporate Plaza, Building No. 3  
7951 E. Maplewood Avenue, Suite 100  
Greenwood Village, CO 80111  
720-689-2410  
mjnorton@alliancedefendingfreedom.org

House Bill 1194, it is in the not in best interests of the people of Colorado, may very well be contrary to Colorado law, and will almost certainly lead to litigation. Colorado Family Action opposes House Bill 1194.

Much of my work with Alliance Defending Freedom has been to advocate for the right of people to freely live out their faith. I am currently involved in a number of lawsuits in federal and state courts concerning religious liberties and the conscience rights of private business owners, religious organizations, and individuals to be free from being required by the government to violate their sincerely held religious beliefs by providing contraceptives and abortifacients as part of their employee health insurance plans.

Alliance Defending Freedom attorneys have filed many lawsuits around the country for our clients, including several here in Colorado, against a federal mandate – the Obama Administration abortion pill mandate. Nearly all of these lawsuits have, to date, been successful. Importantly, in addition to obtaining legal relief for our clients, we have also been awarded attorney's fees and costs.

In addition, we are currently involved in a lawsuit in Colorado courts in which our client, the former Executive Director of the Colorado Department of Public Health and Environment, seeks injunctive relief against several Colorado state agencies for violations of Colorado's abortion-funding restriction amendment in our constitution. Our lawsuit alleges that the Colorado Department of Public Health and Environment and other state agencies have directed over \$14 million in state taxpayer dollars to Rocky Mountain Planned Parenthood in violation of a voter-approved state constitutional amendment that prohibits the direct or indirect public subsidizing of abortion.

Colorado Family Action, like our clients in these lawsuits against the Obama Administration abortion pill mandate, believe, affirm, and teach that each and every human person is created in the image of God and that it is immoral and contrary to God's will to interfere with human conception or to destroy innocent human life by abortion or by the use of abortion-inducing drugs and devices. As deeply held faith beliefs, Colorado Family Action and our clients believe it is morally wrong to intentionally participate in, pay for, train others to engage in, enable, or otherwise support or facilitate access to these objectionable drugs, devices and services. Likewise, our clients and Colorado Family Action believe it wrong for the Colorado taxpayer to fund such programs.

Appropriation and expenditure of state taxpayer dollars for Long Acting Reversible Contraceptives would violate the sincere religious beliefs of many Coloradans. It would override important and critical rights and responsibilities of parents to guide the upbringing and medical care of their children.

As you may know, existing Colorado regulations (attached) require Colorado Insurance Division-approved health insurance plans to cover contraceptives and abortifacients. Together, this bill and these regulations violate the sincere religious beliefs of people of faith. These regulations should be changed to protect the religious liberties of Colorado citizens.

Long Acting Reversible Contraceptives are progestin-only contraceptives. Progestin-only contraceptives cause the endometrial lining to change and become very thin and cause bleeding. In addition, progestin-only contraceptives cause changes in to the fallopian tubes which result in as much as a 5 times increased risk of ectopic pregnancy. In addition, progestin-only contraceptives may cause side effects. These include:

- irregular menstrual periods
- headache
- breast pain
- upset stomach
- dizziness
- acne
- increased hair growth
- bleeding that lasts a long time
- lack of menstrual periods
- severe stomach pain
- increased risk of breast cancer, endometrial cancer, and liver tumors

Importantly, some studies have demonstrated that women who have used progestin contraceptives have an increased chance of contracting AIDS and other sexually transmitted diseases.

In addition, early research suggests that Long Acting Reversible Contraceptives are abortifacients, *i.e.*, cause the demise of a human embryo.

If that is so, the expenditure of State taxpayer dollars on these abortifacients would be a violation of Article V, § 50, Colo. Const., which provides that “[n]o public funds shall be used by the State of Colorado, its agencies or political subdivisions to pay or otherwise reimburse, either directly or indirectly, any person, agency or facility for the performance of any induced abortion.”

Alliance Defending Freedom currently represents a client in a lawsuit against Colorado agencies for violating this very constitutional provision. You may be sure we will be vigilant to assure that no state taxpayer dollars are being expended to support induced abortions, either directly or indirectly, including by use of abortifacient drugs.

Finally, the appropriation of \$5 million for this specific purpose appears to violate Colorado Revised Statutes § 24-75-1305. This statute provides that the Colorado General Assembly “a state agency . . . **shall not request** as part of its annual budget request . . . an appropriation from the general fund or any other source of state moneys to fund a program, service, study, or other function of state government that was previously funded through grant moneys and that has not received adequate grant moneys to support the program . . .”

It is my understanding that this appropriation is being requested to replace funding for a program that was heretofore funded by private grant funds. Replacing those private grant funds with taxpayer dollars seems to be a clear violation of this statute and would be yet another basis on which litigation could almost certainly result.

We urge the defeat of this proposal. We also request that the General Assembly instruct the Colorado Division of Insurance to amend these Colorado regulations to provide for a religious exemption for Colorado citizens and their businesses.

Thank you for the privilege of appearing before this Committee on House Bill 15-1194.

[Show/Hide IDs](#)**Regulation 4-2-38 CONTRACEPTIVE BENEFITS**

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**Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of § 10-1-109 and 10-16-104(3)(a)(I) C.R.S.

**Section 2 Scope and Purpose**

The purpose of this regulation is to implement Colorado insurance law and ensure carriers are providing coverage for contraception in policies in the same manner as any other sickness, injury, disease or condition is otherwise covered under the policy or contract.

**Section 3 Applicability**

The requirements and provisions of this regulation apply to all group sickness and accident insurance policies and health service contracts issued to an employer and all individual sickness and accident, health care or indemnity contracts under parts 2, 3 or 4 of Title 10.

This regulation does not apply to supplemental policies covering a specified disease or other limited benefits under § 10-16-102(21)(b), C.R.S.

**Section 4 Definitions**

For purposes of this regulation, the following terms are defined:

- A. "Contraceptive" or "contraception" means a medically acceptable drug, device, or procedure used to prevent pregnancy in accordance with § 2-4-401, C.R.S.
- B. "Emergency contraception" means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse, including but not limited to oral contraceptive pills; except that "emergency contraception" shall not include RU-486, mifepristone, or any other drug or device that induces a medical abortion, in accordance with § 25-3-110, C.R.S.
- C. "Prescription drug" shall have the same meaning as defined in § 12-22-102(30), C.R.S.

**Section 5 Rules**

All group sickness and accident insurance policies and health service contracts issued to an employer and all individual sickness and accident insurance, health care or indemnity contracts shall provide contraceptive benefits in the same manner as any other sickness, injury, disease or condition is otherwise covered under the policy or contract.

- A. Policies or contracts with prescription drug benefits shall cover prescription contraceptive drugs in the same manner as other prescription drugs are covered under the policy or contract. However, over-the-counter contraceptive drugs or devices for which a prescription is not required and which are not otherwise covered under the policy or contract, are not required to be covered.
- B. Voluntary sterilization procedures are covered as a health care service as defined in § 10-16-102(22), C.R.S., in the same manner as any other sickness, injury, disease or condition is otherwise covered under the policy or contract.
- C. Hormone injections for contraception shall be covered in the same manner as hormone injections for any other sickness, injury, disease or condition.
- D. Emergency contraception is covered in the same manner as any other drug or device for any other sickness, injury, disease or condition is otherwise covered under the policy or contract.
- E. The drugs RU-486, mifepristone, or any other drug or device that induces a medical abortion are not contraceptives or emergency contraceptives within the definitions of such terms and are not required to be covered under a contraceptive benefit.
- F. Intrauterine devices (IUDs), subdermal implants, and the insertion, management and removal of such devices are covered in the same manner as health care services as defined in § 10-16-102(22), C.R.S. and devices as defined in § 12-22-102(8), C.R.S. to treat any other sickness, injury, disease or condition are otherwise covered under the policy or contract.

**Section 6 Severability**

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the regulation shall not be affected.

**Section 7 Enforcement**

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist order, and/or suspensions or revocations of certificates of authority. Among others, the penalties provided in § 10-3-1108, C.R.S., may be applied.

**Section 8 Effective Date**

This regulation shall become effective on January 1, 2012.

**Section 9 History**

New regulation effective January 1, 2012.

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