



TESTIMONY OF MICHAEL J. NORTON  
SENIOR COUNSEL, ALLIANCE DEFENDING FREEDOM

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

February 24, 2015

My name is Michael J. Norton. I am an attorney with Alliance Defending Freedom (ADF), 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 Colorado.

ADF itself does not engage in lobbying; but ADF is able to explain the legal impact of a legislative proposal and how, in this case, it will hurt the people of Colorado.

I also represent Colorado Family Action (CFA) today and CFA urges the defeat of this proposal.

The mission of CFA is to strengthen families by applying founding principles and faith to policy and culture. CFA seeks to establish through citizen advocacy and enactment of Colorado law a safe, prosperous and wholesome climate for families. CFA's public policy decisions are based on the principles of life, marriage, parental authority, constitutional government, and religious liberty.

Most of my work with ADF is 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 and religious organizations 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.

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Many of ADF's clients, including several we represent here in Colorado, have filed lawsuits against a similar federal mandate – the Obama Administration abortion pill mandate. Nearly all of these lawsuits have, to date, been successful.

CFA and our clients believe, affirm, and teach that each and every human person is created in the image of God and that it is 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, CFA and our clients believe it is abhorrent 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.

This proposal would not only violate sincere religious beliefs of many Coloradans, it would override important and critical parental rights and responsibilities to guide the upbringing and medical care of their children. In addition, existing Colorado regulations (see 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.

Colorado Family Action urges the defeat of this proposal. Colorado Family Action also requests 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.

Moreover, to the extent that any of the devices financed by this appropriation are considered abortifacients – and I understand these devices are abortifacients – the expenditure of State taxpayer dollars on these abortifacients is 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 constitutional provision. You may be sure we will be vigilant to assure that no state taxpayer dollars are being expended to support induced abortions.

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

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**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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