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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SKYLINE WESLEYAN CHURCH,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE; MICHELLE ROUILLARD, in her official capacity as Director of the California Department of Managed Health Care,

Defendants.

Case No.: 37-2016-00003936-CU-CR-CTL

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND NOMINAL DAMAGES

Plaintiff Skyline Wesleyan Church ("Skyline Church"), by and through its attorneys, alleges as follows:

INTRODUCTION

1. This Complaint challenges the validity of a mandate issued by the California Department of Managed Health Care (the "DMHC"), and its Director, Michelle Rouillard, on August 22, 2014, requiring group health insurance plans issued in California to provide coverage for all legal abortions, including voluntary and elective ones (the "Mandate").

2. After previously approving group health plans that excluded or limited coverage for abortion, Defendants demanded that certain group health plans immediately cover all legal abortions and that insurers remove from those plans any restrictions placed on abortion coverage, such as exclusions for "voluntary" or "elective" abortions or limiting coverage to "therapeutic" or "medically necessary" abortions. *See* **Exhibit 1.**

3. Defendants based the Mandate on a requirement in the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act") that employer health plans cover "basic health care services."

4. Until the Mandate, however, the DMHC had not interpreted "basic health care services" to include voluntary and elective abortions.

5. In fact, existing law and regulations define "basic health care services" to include services only "where medically necessary" *See, e.g.*, Cal. Code Regs. tit. 28, § 1300.67.

6. Although Defendants knew that employers like Skyline Church have sincerely held religious beliefs against paying for or facilitating abortions, Defendants nevertheless required that any group health insurance plan sold to them cover abortions, including voluntary and elective ones.

7. Thus, by issuing the Mandate, Defendants caused Skyline Church's group health plan to include coverage for voluntary and elective abortions without its knowledge and in violation of its religious beliefs.

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8. Although the Mandate implemented a new interpretation of "basic health care services," and unilaterally changed the insurance contracts of Skyline Church and other religious employers, Defendants promulgated the Mandate without any public notice or comment.

9. Skyline Church now seeks declaratory and injunctive relief and an award of nominal damages from the Court to remedy this bureaucratic overreach and unjustified infringement of its constitutionally protected rights.

JURISDICTION AND VENUE

10. This case raises questions under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 42 U.S.C. §§ 1983 and 1988. This case also raises questions under Article I, Sections 4 and 7 of the California Constitution and the California Administrative Procedures Act.

11. This Court is authorized to grant declaratory relief under section 1060 of the California Code of Civil Procedure and section 11350 of the California Government Code.

12. This Court is authorized to grant injunctive relief under sections 525 and 526 of the California Code of Civil Procedure.

13. Venue is proper in this Court under sections 393(b) and 401(1) of the California Code of Civil Procedure.

PARTIES

14. Plaintiff Skyline Wesleyan Church is a non-profit, Christian church organized exclusively for religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Skyline Church is located in La Mesa, California.

15. Skyline Church is a member of the Wesleyan denomination and adheres to the Wesleyan Doctrinal Statement, including the belief that the Holy Bible is the inspired Word of God, infallible and without error.

16. Skyline Church currently offers health insurance plans to its employees through Sharp Health Plan, with a plan year that begins and ends annually on or about December 1.

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Skyline Church started with Sharp Health Plan on December 1, 2014; its previous insurer was Aetna.

17. The California Department of Managed Health Care ("DMHC") is an executive agency of the State of California responsible for enforcing California law and regulations regarding health care service plans. As part of its regulatory responsibilities, the DMHC is charged with ensuring that health plans comply with the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act").

18. Defendant Michelle Rouillard is the Director of the DMHC, where she is responsible for the promulgation and enforcement of the Mandate. Defendant Rouillard is sued in her official capacity only.

FACTS

19. Skyline Church holds and actively professes historic and orthodox Christian beliefs on the sanctity of human life, including the belief that each human life is formed by and bears the image of God.

20. Skyline Church believes and teaches that abortion ends a human life.

21. Skyline Church believes and teaches that abortion violates the Bible's command against the intentional destruction of innocent human life.

22. Skyline Church believes and teaches that abortion is inconsistent with the dignity conferred by God on creatures made in His image.

23. Skyline Church believes and teaches that participation in, facilitation of, or payment for an elective or voluntary abortion is a grave sin.

24. Consistent with its religious beliefs, Skyline Church seeks to recognize and preserve the sanctity of human life from conception (fertilization) to natural death.

25. Among other things, Skyline Church supports local medical centers and clinics providing life-affirming counseling and medical services to women facing unexpected pregnancies and offers support groups and Bible studies for women who have had abortions.

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26. Skyline Church expects its employees to abide by the church's moral and ethical standards, including its religious beliefs and teachings on abortion, in both their work life and private life.

27. Skyline Church seeks to promote the physical, emotional, and spiritual well-being of its employees and their families and thus offers health insurance to its employees as a benefit of employment.

28. Skyline Church evaluated various options and determined that purchasing a group health insurance plan was the only affordable way for the church to provide health care coverage consistent with its call to care for its employees and its legal obligation under the Patient Protection and Affordable Care Act ("ACA").

29. Because of its religious beliefs, however, Skyline Church seeks to offer health insurance coverage to its employees in a way that does not also cause it to pay for abortions.

30. To that end, Skyline Church previously obtained a group health plan that excluded coverage for voluntary and elective abortions.

31. Skyline Church subsequently learned that, after the Mandate was issued, its group health plan was amended to include coverage for voluntary and elective abortions

32. Skyline Church has since consulted with its health insurer about purchasing a group health insurance plan that excludes or limits coverage for abortions.

33. The insurer informed Skyline Church that it could no longer offer such a plan because the Mandate requires group health insurance plans issued in California to provide coverage for all legal abortions, including voluntary and elective ones.

34. The Mandate required California insurers to amend their group health plans and remove any limitations placed on abortion coverage, such as excluding coverage for "voluntary" or "elective" abortions or limiting coverage to "therapeutic" or "medically necessary" abortions. *See* **Exhibit 1.**

35. Defendants based the Mandate on a requirement in the Knox-Keene Act that employer health plans include coverage for "basic health care services."

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36. Defendants also cited as authority the California Constitution, the California Reproductive Privacy Act, and "multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or have a legal abortion."

37. Nothing in the Knox-Keene Act, California Constitution, California Reproductive Privacy Act, or California case law requires churches or other religious employers to pay for or otherwise facilitate access to abortions through group health plans purchased for their employees.

38. The Knox-Keene Act defines "basic health care services" to include physician services; hospital inpatient services and ambulatory care services; diagnostic laboratory and diagnostic and therapeutic radiologic services; home health services; preventive health services; emergency health care services; and hospice care. *See* Cal. Health & Safety Code § 1345(b).

39. Existing law and regulations further define "basic health care services" to include services only "where medically necessary." *See* Cal. Code Regs. tit. 28, § 1300.67.

40. Defendants ignored the plain meaning and purpose of the Knox-Keene Act in interpreting "basic health care services" to include elective and voluntary abortions.

41. Interpreting "basic health care services" to include elective and voluntary abortions is a departure from how the DMHC previously interpreted that term.

42. Indeed, before issuing the Mandate, the DMHC previously allowed insurers to sell group health plans to employers that excluded coverage for elective and voluntary abortions and placed other limitations on abortion coverage.

43. Now, the Mandate requires that group health plans cover all legal abortions, regardless of whether churches or religious employers purchased the plans or whether the abortions are medically necessary.

44. Defendants adopted this new interpretation of "basic health care services" and promulgated the Mandate without any public notice or comment.

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45. Defendants instead issued the Mandate through letters sent to private health insurers and by publishing the letters on the DMHC website. *See* **Exhibits 1 and 2.**

46. The letters demanded that the private health insurers amend their group health plans to ensure that they provide coverage for all legal abortions, including elective and voluntary abortions.

47. The Mandate does not include an exemption for group health insurance plans purchased by churches or other employers that have religious beliefs against abortion.

48. Because Defendants simply read the elective abortion requirement into the Knox-Keene Act, they did not give Skyline Church or other interested employers the opportunity to comment on the Mandate before it went into effect.

49. Defendants' decision to apply the Mandate to plans purchased by churches and other religious employers is fundamentally at odds with how the Knox-Keene Act generally treats religious employers.

50. For example, the Knox-Keene Act specifically exempts religious employers from being forced to provide coverage for contraceptive methods "that are contrary to [their] religious tenets," stating that a religious employer must be given a health care plan that excludes coverage for contraceptives if requested. Cal. Health & Safety Code § 1367.25(c).

51. The Knox-Keene Act also exempts religious employers from being compelled to provide health insurance coverage for infertility treatments "in a manner inconsistent with [their] religious and ethical principles." Cal. Health & Safety Code § 1374.55(e).

52. Thus, the Mandate has created an inconsistent and untenable situation where Skyline Church and other religious employers do not have to provide health insurance coverage for contraceptives and infertility treatments but must pay for voluntary and elective abortions.

53. Defendants issued the Mandate knowing that many churches and religious employers providing health insurance coverage to their employees hold the same or similar beliefs to Skyline Church.

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54. Defendants designed the Mandate so that coverage for voluntary and elective abortions would be added into religious employers' group health plans (including Skyline Church's) without their knowledge or authorization.

55. Defendants encouraged the insurers not to notify the employers of this change in coverage, advising the insurers that they could insert the abortion coverage yet "omit any mention of coverage for abortion services in health plan documents." *See* **Exhibit 1.**

56. After learning about the Mandate, Skyline Church contacted its insurer and learned that coverage for voluntary and elective abortions had been injected into its group health plan without its knowledge or approval.

57. Were it not for the Mandate, Skyline Church would and could obtain a group health insurance plan for its employees that excludes or limits coverage for abortions in a way consistent with its religious beliefs.

58. California insurers have previously offered group health insurance plans to religious employers excluding or limiting coverage for abortions and would continue to offer such plans in absence of the Mandate.

59. Before Defendants issued the Mandate, insurers submitted evidence of coverage filings to the DMHC properly notifying Defendants of benefit plan options excluding coverage or limiting coverage for abortions.

60. Defendants approved those filings, allowing insurers to offer the group health plans to employers such as Skyline Church.

61. However, Defendants reversed their earlier decisions and issued the Mandate in response to pressure from abortion advocates who had learned that two Catholic universities in California had decided to eliminate coverage for elective abortions from their health care plans.

62. The Knox-Keene Act's "basic health care services" requirement, as interpreted and implemented through the Mandate, is neither neutral nor generally applicable because it provides for both individualized and general exemptions.

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63. For example, the Knox-Keene Act creates a system of individualized exemptions, giving the Director of DMHC—in this case, Defendant Rouillard—the authority to exempt any class of persons or plan contracts from the requirements of the Act and giving her the power to waive any requirement of any rule, including the Mandate. *See* Cal. Health & Safety Code §§ 1343(b) and 1344(a).

64. Defendant Rouillard has exercised this broad authority and granted at least one individualized exemption to the Mandate.

65. On information and belief, the individualized exemption granted by Defendant Rouillard accommodates only government-approved religious beliefs on abortion.

66. On information and belief, Defendant Rouillard has approved a group health plan for religious employers that limits abortion coverage to the cases of rape, incest, and to save the life of the mother.

67. Defendants have made no allowance for the religious freedom of religious employers and churches, such as Skyline Church, who object to paying for or providing insurance coverage for elective or voluntary abortions under any circumstance.

68. In addition to giving Defendant Rouillard broad power to grant individualized exemptions, the Knox-Keene Act (and by extension the Mandate) exempts from its requirements certain specified health care service plans, including but not limited to plans "directly operated by a bona fide public or private institution of higher learning." *See* Cal. Health & Safety Code §§ 1343(e)

69. The Mandate also did not apply to every health benefit plan offered by the California Public Employees' Retirement System (CalPERS).

70. CalPERS, which purchases health benefits for the State of California and covers over 1.4 million active and retired state, local government, and school employees and their family members, continued to offer health plans excluding or limiting coverage for elective abortions after Defendants issued the Mandate.

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71. Nor does the Mandate apply to certain multi-state health plans sold on California's individual and small business exchanges established as part of the Patient Protection and Affordable Care Act ("ACA").

72. Skyline Church was not eligible to purchase group health plans on California's small business exchange.

73. Even if it were eligible, Skyline Church could still be forced to pay for abortions in violation of its religious beliefs because California's small business exchange does not allow an employer to limit its employees' health plan options to a specific multi-state plan excluding abortion coverage.

74. Given the number of Skyline Church's full-time employees, the ACA requires Skyline Church to provide health insurance coverage to its employees.

75. Moreover, the ACA imposes crippling monetary penalties on employers that do not provide health insurance to their employees.

76. The Mandate thus forces Skyline Church to choose between violating federal law and violating its deeply held religious beliefs by paying for abortion coverage.

77. Defendants unnecessarily designed the Mandate to make it impossible for Skyline Church to comply with its religious beliefs.

78. Skyline Church relies on tithes and donations from members to fulfill its Christian mission.

79. On information and belief, members who give to Skyline Church do so with an understanding of Skyline Church's Christian mission and with the assurance that Skyline Church will continue to adhere to and transmit authentic Christian teachings on morality and the sanctity of human life.

80. Skyline Church cannot use donated funds for purposes known to be morally repugnant to its members and in ways that violate the implicit trust of the purpose of their tithes and donations.

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81. The Mandate imposes a burden on Skyline Church's ability to recruit and retain employees and places Skyline Church in a competitive disadvantage by creating uncertainty as to whether it will be able to offer group health insurance in the future.

82. Skyline Church has already devoted significant institutional resources, including both staff time and funds, to determining how to respond to the Mandate.

83. Skyline Church, along with other California churches, filed an administrative complaint with the U.S. Department of Health and Human Services Office of Civil Rights in October 2014, asking it to enforce the Hyde-Weldon Amendment and vindicate their constitutional rights. *See* **Exhibit 3.**

84. The administrative complaint explained that the Mandate constitutes unlawful discrimination against a health care entity under section 507 of the Consolidated Appropriations Act, Pub. L. No. 113-76, 128 Stat. 5 (Jan. 17, 2014) (the Hyde-Weldon Amendment).

85. The Hyde-Weldon Amendment prohibits states that receive funding under the federal Labor, Health and Human Services, and Education Appropriations Act, from discriminating against health care plans based on whether they cover abortion.

86. Under the Hyde-Weldon Amendment, none of the funds received for programs under the Labor, Health and Human Services, and Education Appropriations Act may be available to a State that "subjects any individual or institutional health care entity to discrimination on the basis that the health care entity does not provide for, pay for, provide coverage of, or refer for abortions."

87. The Hyde-Weldon Amendment defines "health care entity" to include "a health insurance plan."

88. On information and belief, the State of California receives approximately $70 billion annually in federal funds for programs under the Labor, Health and Human Services, and Education Appropriations Act.

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89. California accepted these federal funds with full knowledge of the requirements of the Hyde-Weldon Amendment.

90. Defendants chose to ignore the Hyde-Weldon Amendment when issuing the Mandate.

91. Skyline Church has sent several follow up letters to the U.S. Department of Health and Human Services Office of Civil Rights, asking it to act quickly given the ongoing violation of Skyline Church's constitutional rights. *See* **Exhibits 4, 5, and 6.**

92. To date, the U.S. Department of Health and Human Services Office of Civil Rights has failed to take any action, leading Skyline Church to file this lawsuit.

93. Without injunctive and declaratory relief as requested herein, Skyline Church is suffering and will continue to suffer irreparable harm.

FIRST CAUSE OF ACTION

Violation of the Free Exercise Clause of the First Amendment to the United States Constitution

94. Skyline Church realleges all matters set forth in paragraphs 1-93 and incorporates them herein.

95. Skyline Church's sincerely held religious beliefs prohibit it from providing coverage for voluntary or elective abortions or contracting for a group health insurance plan that covers voluntary or elective abortions.

96. Skyline Church has a sincere religious objection to providing coverage for abortions because it believes that abortion ends an innocent human life.

97. When Skyline Church complies with its sincerely held religious beliefs on the sanctity of human life, it exercises religion within the meaning of the Free Exercise Clause.

98. The Mandate imposes a substantial burden on Skyline Church's religious exercise and coerces it to change or violate its religious beliefs.

99. Defendants substantially burden Skyline Church's religious exercise when they force Skyline Church to choose between following its religious beliefs and suffering debilitating penalties under federal law or violating its conscience in order to avoid those penalties.

100. The Mandate is neither neutral nor generally applicable.

101. The Knox-Keene Act creates categorical and individualized exemptions to its requirements and, by extension, the Mandate.

102. Defendant Rouillard has broad, unilateral power to grant individualized exemptions to the Mandate and has granted at least one since it was issued.

103. The Mandate does not apply to certain specified health care service plans, including but not limited to plans "directly operated by a bona fide public or private institution of higher learning."

104. The Mandate does not apply to multi-state plans sold and purchased pursuant to the ACA.

105. The Mandate also was not applied to certain health benefit plans offered by CalPERS to active and retired state and local government employees.

106. The Mandate furthers no compelling governmental interest.

107. California already exempts religious employers like Skyline Church from being forced to include coverage for contraceptives and infertility treatments in their group health plans.

108. Guaranteeing unfettered access to elective and voluntary abortions through employee health insurance plans is not a significant social problem.

109. Compelling Skyline Church and other churches to pay for elective and voluntary abortions is hardly the least restrictive means of advancing any interest that the government might have.

110. The Mandate constitutes government-imposed coercion on Skyline Church to change or violate its sincerely held religious beliefs.

111. The Mandate chills Skyline Church's religious exercise.

112. The Mandate exposes Skyline Church to substantial monetary penalties and/or financial burdens for its religious exercise.

113. The Mandate exposes Skyline Church to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

114. The Mandate imposes a burden on Skyline Church's employee recruitment efforts by creating uncertainty as to whether or on what terms it will be able to offer health insurance or will suffer penalties therefrom.

115. If Skyline Church drops health insurance to avoid application of the Mandate, it will be in violation of federal law and will experience a competitive disadvantage in its efforts to recruit and retain employees.

116. Defendants designed the Mandate to make it impossible for Skyline Church to comply with its religious beliefs.

117. Defendants issued the Mandate to suppress the religious exercise of Skyline Church and other similarly situated churches and religious employers.

118. Defendants' implementation and enforcement of the Mandate violates the Free Exercise Clause of the First Amendment of the United States Constitution, as applied to Skyline Church.

SECOND CAUSE OF ACTION

Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

119. Skyline Church realleges all matters set forth in paragraphs 1-93 and incorporates them herein.

120. The Fourteenth Amendment to the United States Constitution guarantees Skyline Church equal protection of the laws, which prohibits Defendants from treating Skyline Church differently than similarly situated persons and businesses.

121. The government may not treat some employers disparately as compared to similarly situated employers.

122. The Mandate treats Skyline Church and other religious employers differently than similarly situated persons and businesses by granting categorical and individualized exemptions from the Mandate's requirements to similar entities but denying an exemption to Skyline Church and other religious employers.

123. Defendants lack a rational or compelling state interest for such disparate treatment of Skyline Church and other religious employers because guaranteeing unfettered access to

elective and voluntary abortions through employee health insurance plans is not a significant social problem.

124. Defendants' disparate treatment of Skyline Church and other religious employers is not narrowly tailored because compelling Skyline Church and other religious employers to pay for abortions in violation of their religious beliefs is hardly the least restrictive means of advancing any legitimate interest the government may have.

125. Defendants' implementation and enforcement of the Mandate violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, both facially and as applied to Skyline Church.

THIRD CAUSE OF ACTION

Violation of the Establishment Clause of the First Amendment to the United States Constitution

126. Skyline Church realleges all matters set forth in paragraphs 1-93 and incorporates them herein.

127. The Establishment Clause of the First Amendment prohibits the establishment of any religion and/or excessive government entanglement with religion.

128. The Establishment Clause of the First Amendment also prohibits the government from disapproving of or showing hostility toward a particular religion or religion in general.

129. The Mandate discriminates between religions and denominations and exhibits hostility towards certain religious beliefs.

130. In both issuing and implementing the Mandate, Defendants have adopted a particular theological view of what is acceptable moral complicity in provision of abortion and imposed it upon all churches and religious employers who must either conform or incur ruinous fines.

131. Defendants issued the Mandate with full knowledge that some religions and denominations object to participating in, paying for, facilitating, or otherwise supporting abortion, while others do not.

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132. Furthermore, Defendant Rouillard has since granted an exemption to the Mandate, accommodating only those employers who hold government-approved religious beliefs on abortion.

133. No exemption is available to religious employers who, like Skyline Church, believe that paying for any voluntary or elective abortion is sinful.

134. Defendants designed the Mandate to make it impossible for Skyline Church and other religious employers to comply with its religious beliefs.

135. Defendants issued the Mandate to suppress the religious exercise of Skyline Church and other similarly situated churches and religious employers.

136. The Mandate unconstitutionally prefers those religions and denominations that do not have religious objections to abortion or certain types of abortions and exhibits hostility towards those that do by forcing them to pay for abortions in violation of their sincerely held religious beliefs.

137. Defendants' implementation and enforcement of the Mandate violates the Establishment Clause of the First Amendment to the United States Constitution, both facially and as applied to Skyline Church.

FOURTH CAUSE OF ACTION
Violation of California Constitution Article I, Section 4

138. Skyline Church realleges all matters set forth in paragraphs 1-93 and incorporates them herein.

139. Skyline Church's sincerely held religious beliefs prohibit it from providing coverage for voluntary or elective abortions or contracting for a group health insurance plan that covers voluntary or elective abortions.

140. When Skyline Church complies with its sincerely held religious beliefs on the sanctity of human life, it exercises religion within the meaning of Article 1, Section 4 of the California Constitution.

141. The Mandate imposes a substantial burden on Skyline Church's religious exercise and coerces it to change or violate its religious beliefs about the sanctity of human life.

142. Defendants substantially burden Skyline Church's religious exercise when they force Skyline Church to choose between following church teaching on the sanctity of human life and suffering debilitating penalties under federal law or violating church teaching in order to avoid those penalties.

143. The Mandate is neither neutral nor generally applicable.

144. The Knox-Keene Act creates categorical and individualized exemptions to its requirements and, by extension, the Mandate.

145. Defendant Rouillard has broad, unilateral power to grant individualized exemptions to the Mandate and has granted at least one since it was issued.

146. The Mandate does not apply to certain specified health care service plans, including but not liinited to plans "directly operated by a bona fide public or private institution of higher learning."

147. The Mandate does not apply to multi-state plans sold and purchased pursuant to the ACA.

148. The Mandate also was not applied to certain health benefit plans offered by CalPERS to active and retired state and local government employees.

149. The Mandate furthers no compelling governmental interest.

150. California already exempts religious employers like Skyline Church from being forced to include coverage for contraceptives and infertility treatments in their group health plans.

151. Guaranteeing unfettered access to elective and voluntary abortions through employee health insurance plans is not a significant social problem and compelling Skyline Church and other churches and religious employers to pay for or otherwise facilitate access to abortions, including voluntary and elective ones, is hardly the least restrictive means of advancing any legitimate interest that the government might have.

152. The Mandate coerces Skyline Church to violate its religious beliefs.

153. The Mandate chills Skyline Church's religious exercise.

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154. The Mandate exposes Skyline Church to substantial monetary penalties and/or financial burdens for its religious exercise.

155. The Mandate exposes Skyline Church to substantial competitive disadvantages because of uncertainties about its health insurance benefits caused by the Mandate.

156. Moreover, the Mandate (and Defendants' subsequent implementation and enforcement of it) unconstitutionally prefers those religions and denominations that do not have religious objections to abortion or certain types of abortions and exhibits hostility towards those that do by forcing them to pay for abortions in violation of their sincerely held religious beliefs.

157. Defendants issued the Mandate to suppress the religious exercise of Skyline Church and other similarly situated churches and religious employers.

158. Defendants' implementation and enforcement of the Mandate violates Article I, Section 4 of the California Constitution, both facially and as applied to Skyline Church.

FIFTH CAUSE OF ACTION
Violation of California Constitution Article I, Section 7

159. Skyline Church realleges all matters set forth in paragraphs 1-93 and incorporates them herein.

160. Article I, Section 7 of the California Constitution guarantees Skyline Church equal protection of the laws and prohibits Defendants from treating Skyline Church differently than similarly situated persons and businesses.

161. The government may not treat some employers disparately as compared to similarly situated employers.

162. The Mandate treats Skyline Church differently than similarly situated persons and businesses by granting categorical and individualized exemptions from the Mandate's requirements to similar entities but denying an exemption to Skyline Church.

163. Defendants lack a rational or compelling state interest for such disparate treatment of Skyline Church because guaranteeing unfettered access to elective and voluntary abortions through employee health insurance plans is not a significant social problem.

164. Defendants' disparate treatment of Skyline Church is not narrowly tailored because compelling Skyline Church and other churches and religious employers to pay for abortions is hardly the least restrictive means of advancing any interest that the government might have.

165. Defendants' implementation and enforcement of the Mandate violates Article I, Section 7 of the California Constitution, both facially and as applied to Skyline Church.

SIXTH CAUSE OF ACTION

Violation of California Administrative Procedure Act Cal. Gov't Code § 11340, *et seq.*

166. Skyline Church realleges all matters set forth in paragraphs 1-93 and incorporates them herein.

167. Defendants are responsible for issuing, utilizing, enforcing, or attempting to enforce the Mandate as a guideline, criterion, bulletin, manual, instruction, order, or standard of general application for the administration of group health plans in California.

168. The Mandate was intended to apply generally rather than to a specific case.

169. Defendants have utilized, enforced, and attempted to enforce the Mandate, and the Mandate has affected policy, practice, or procedure within the DMHC.

170. Defendants issued the Mandate without following the necessary steps for promulgating a regulation as required by the California Administrative Procedure Act, Gov't Code § 11340, et. seq.

171. Defendants failed to initiate a formal rulemaking process, failed to provide any opportunity for notice and comment, and never filed the Mandate nor any related rulemaking action with the Office of Administrative Law.

172. The Mandate is therefore an invalid underground regulation in that it applies generally and implements, interprets, or makes specific the law enforced or administered by Defendants or governs the procedure of Defendants.

173. Defendants did not follow statutory standards and failed to consider the constitutional and statutory implications of the Mandate.

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174. The Mandate fails to protect the statutory and constitutional conscience rights of religious employers and churches like Skyline Church.

175. The Mandate violates the United States and California Constitutions.

176. The Mandate requires that Skyline Church provide health insurance coverage for abortions in a manner that is contrary to law.

177. The Mandate also conflicts with governing statutes and is not reasonably necessary to effectuate the purpose of governing statutes. Thus, Defendants' decision to issue the Mandate is unreasonable, arbitrary and capricious, and beyond their statutory authority.

178. The Mandate is also contrary to the provisions of the federal Hyde-Weldon Amendment, which prohibits California agencies from discriminating against health insurance plans that "do[ ] not provide, pay for, provide coverage of, or refer abortions."

179. The Mandate is contrary to existing law and regulations and is in violation of the California Administrative Procedures Act.

PRAYER FOR RELIEF

WHEREFORE, Skyline Church respectfully requests that the Court enter judgment in its favor:

a. Declaring that the Mandate and its application to Skyline Church and others not before the Court violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 4 and 7 of the California Constitution.

b. Declaring that the Mandate violates the California Administrative Procedures Act and constitutes an invalid regulation, which may not be implemented, utilized, or enforced by Defendants;

c. Permanently enjoining Defendants from enforcing the Mandate against Skyline Church, its group health insurer, and others not before the Court, and prohibiting Defendants from illegally discriminating against Skyline Church and others not before the Court by preventing them from purchasing a group health insurance plan that excludes or limits coverage for abortion consistent with their sincerely held religious beliefs;

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d. Awarding Skyline Church nominal damages for violation of its constitutional rights;

e. Awarding Skyline Church court costs and reasonable attorneys' fees under 42 U.S.C. § 1988, California Code of Civil Procedure § 1021.5, and any other applicable statute;

f. Awarding such other and further relief as the Court finds just and proper.

Respectfully submitted,

Dated: February 4, 2016

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**Pro hac vice* application forthcoming

ATTORNEYS FOR PLAINTIFF

EXHIBIT 1

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814-2725
Phone: (916) 324-8176
Fax: (916) 255-5241

August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

John Ternan
President of Aetna Health of California, Inc.
Aetna Health of California, Inc.
2625 Shadelands Drive
Walnut Creek, CA 94898

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Ternan:

It has come to the attention of the Department of Managed Health Care (DMHC) that some Aetna Health of California, Inc. (Aetna) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

---

[1] Health & Safety Code § 1340, et seq.
[2] Consistent with 42 U.S.C. § 18054(a)(6), this letter shall not apply to a Multi-State Plan.
[3] Although health plans are required to cover legal abortions, no individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstance to participate in the provision of or payment for a specific service if they object to doing so for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objections.

Regardless of existing EOC language, effective as of the date of this letter, Aetna must comply with California law with respect to the coverage of legal abortions.

Required Action

1. Aetna must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. Aetna must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. Aetna may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

Authority Cited

California Constitution, article 1, section 1; Health and Safety Code §1340, et seq. and Health and Safety Code §123460 et seq., and implementing regulations.

If you have any questions concerning the guidance issued in this letter, please contact your Plan's Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Mary V. Anderson, Western Region General Counsel, Aetna Health of California, Inc.

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
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August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Mark Morgan
California President of Anthem Blue Cross
Blue Cross of California, dba Anthem Blue Cross
21555 Oxnard Street
Woodland Hills, CA 91367

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Morgan:

It has come to the attention of the Department of Managed Health Care (DMHC) that some Blue Cross of California (Blue Cross) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

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[3] Although health plans are required to cover legal abortions, no individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstance to participate in the provision of or payment for a specific service if they object to doing so for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objections.

Regardless of existing EOC language, effective as of the date of this letter, Blue Cross must comply with California law with respect to the coverage of legal abortions.

Required Action

1. Blue Cross must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. Blue Cross must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. Blue Cross may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

Authority Cited

California Constitution, article 1, section 1; Health and Safety Code §1340, et seq. and Health and Safety Code §123460 et seq., and implementing regulations.

If you have any questions concerning the guidance issued in this letter, please contact your Plan's Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Terry German, Associate General Counsel, Blue Cross of California

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

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August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Paul Markovich
President and Chief Executive Officer
California Physicians' Service, dba Blue Shield of California
50 Beale Street
San Francisco, CA 94105

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Markovich:

It has come to the attention of the Department of Managed Health Care (DMHC) that some California Physicians' Service, dba Blue Shield of California (Blue Shield) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

---

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[3] Although health plans are required to cover legal abortions, no individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstance to participate in the provision of or payment for a specific service if they object to doing so for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objections.

Regardless of existing EOC language, effective as of the date of this letter, Blue Shield must comply with California law with respect to the coverage of legal abortions.

Required Action

1. Blue Shield must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. Blue Shield must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. Blue Shield may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

Authority Cited

California Constitution, article 1, section 1; Health and Safety Code §1340, et seq. and Health and Safety Code §123460 et seq., and implementing regulations.

If you have any questions concerning the guidance issued in this letter, please contact your Plan's Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Kathleen Lynaugh, Associate General Counsel, California Physicians' Service, dba Blue Shield of California

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
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August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Michael Myers
Chief Executive Officer
GEMCare Health Plan, Inc., dba ERD, Inc., Physicians Choice by GEMCare Health Plan
4550 California Avenue, Suite 100
Bakersfield, CA 93309

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Myers:

It has come to the attention of the Department of Managed Health Care (DMHC) that some GEMCare Health Plan, Inc., dba ERD, Inc., Physicians Choice by GEMCare Health Plan (GEMCare) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

---

[1] Health & Safety Code § 1340, et seq.

[2] Consistent with 42 U.S.C. § 18054(a)(6), this letter shall not apply to a Multi-State Plan.

[3] Although health plans are required to cover legal abortions, no individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstance to participate in the provision of or payment for a specific service if they object to doing so for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objections.

Regardless of existing EOC language, effective as of the date of this letter, GEMCare must comply with California law with respect to the coverage of legal abortions.

Required Action

1. GEMCare must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. GEMCare must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. GEMCare may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

Authority Cited

California Constitution, article 1, section 1; Health and Safety Code §1340, et seq. and Health and Safety Code §123460 et seq., and implementing regulations.

If you have any questions concerning the guidance issued in this letter, please contact your Plan's Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

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August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Steven Sell
President, Western Region Health Plan and President, Health Net of California, Inc.
Health Net of California, Inc.
21281 Burbank Blvd.
Woodland Hills, CA 91367

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Sell:

It has come to the attention of the Department of Managed Health Care (DMHC) that some Health Net of California, Inc. (Health Net) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

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[3] Although health plans are required to cover legal abortions, no individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstance to participate in the provision of or payment for a specific service if they object to doing so for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objections.

Regardless of existing EOC language, effective as of the date of this letter, Health Net must comply with California law with respect to the coverage of legal abortions.

Required Action

1. Health Net must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. Health Net must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. Health Net may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

Authority Cited

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If you have any questions concerning the guidance issued in this letter, please contact your Plan's Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Douglas Schur, Vice President, Chief Regulatory Counsel, Health Net of California, Inc.

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

Department of Managed Health Care
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Fax: (916) 255-5241

August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Wade J. Overgaard
Senior Vice President, California Health Plan Operations
Kaiser Foundation Health Plan, Inc., dba Kaiser Foundation, Permanente Medical Care Program
1950 Franklin Street, 20th Floor
Oakland, CA 94612

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Overgaard:

It has come to the attention of the Department of Managed Health Care (DMHC) that some Kaiser Foundation Health Plan, Inc., dba Kaiser Foundation, Permanente Medical Care Program (Kaiser) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

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Regardless of existing EOC language, effective as of the date of this letter, Kaiser must comply with California law with respect to the coverage of legal abortions.

Required Action

1. Kaiser must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. Kaiser must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. Kaiser may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

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If you have any questions concerning the guidance issued in this letter, please contact the Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Deborah Espinal, Executive Director of Policy, Kaiser Foundation Health Plan, Inc.

DEPARTMENT OF
Managed
Health Care

Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

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Sacramento, CA 95814-2725
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Fax: (916) 255-5241

August 22, 2014

VIA ELECTRONIC MAIL & U.S. MAIL

Brandon Cuevas
UnitedHealthcare of California, President and CEO
UHC of California
5995 Plaza Drive
Cypress, CA 92630

Re: Limitations or Exclusions of Abortion Services

Dear Mr. Cuevas:

It has come to the attention of the Department of Managed Health Care (DMHC) that some UHC of California (UHC) contracts contain language that may discriminate against women by limiting or excluding coverage for termination of pregnancies. The DMHC has reviewed the relevant legal authorities and has concluded that it erroneously approved or did not object to such discriminatory language in some evidence of coverage (EOC) filings. The DMHC has performed a survey and has discovered that such language is present in EOCs for products covering a very small fraction of California health plan enrollees.

The purpose of this letter is to remind plans that the Knox-Keene Health Care Service Plan Act of 1975[1] (Knox Keene Act) requires the provision of basic health care services and the California Constitution prohibits health plans from discriminating against women who choose to terminate a pregnancy. Thus, all health plans must treat maternity services and legal abortion neutrally.

Exclusions and limitations are also incompatible with both the California Reproductive Privacy Act and multiple California judicial decisions that have unambiguously established under the California Constitution that every pregnant woman has the fundamental right to choose to either bear a child or to have a legal abortion.[2,3] A health plan is not required to cover abortions that would be unlawful under Health & Safety Code § 123468.

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Regardless of existing EOC language, effective as of the date of this letter, UHC must comply with California law with respect to the coverage of legal abortions.

Required Action

1. UHC must review all current health plan documents to ensure that they are compliant with the Knox-Keene Act with regard to legal abortion. This includes plan documents previously approved or not objected to by the DMHC.

   In regards to coverage for abortion services, the descriptors cited below are inconsistent with the Knox-Keene Act and the California Constitution. UHC must amend current health plan documents to remove discriminatory coverage exclusions and limitations. These limitations or exclusions include, but are not limited to, any exclusion of coverage for "voluntary" or "elective" abortions and/or any limitation of coverage to only "therapeutic" or "medically necessary" abortions. UHC may, consistent with the law, omit any mention of coverage for abortion services in health plan documents, as abortion is a basic health care service.

2. To demonstrate compliance, health plans are directed to file any revised relevant health plan documents (e.g. EOCs, subscriber documents, etc.) with the Department as an Amendment to the health plan's license within 90 days of the date of this letter. The filing should highlight as well as underline the changes to the text as required by the California Code of Regulations, title 28, §1300.52(d).

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If you have any questions concerning the guidance issued in this letter, please contact the Office of Plan Licensing reviewer.

Sincerely,

Michelle Rouillard

MICHELLE ROUILLARD
Director
Department of Managed Health Care

cc: Elizabeth Hays, Director, Regulatory Affairs, UHC of California

EXHIBIT 2

Director's Letters and Opinions

April 24, 2015 - AB 1962 Guidance

- Cover Letter to AB 1962 Guidance
- Attachment 1 – Reporting Form - Revised 5/26/15. Please refer to Submit Financial Reports for an excel version of Attachment 1.
- Attachment 2 – Instructions for Reporting Form; and
- Attachment 3 – Guidance

October 31, 2013 - 14 - Adoption of Model Notice Templates implementing AB 792, AB 1180, SBX1 2 and Instructions for Use

- DL 14 Attachment: Model Notice Templates for AB 792, AB 1180, SBX1 2

April 9, 2013 - 12 - K: Gender Nondiscrimination Requirements

February 15, 2013 - 13 - K: Applicability of SB 1088 to Specialized Health Care Service Plans

February 2, 2012 - 8 - K: Revised Guidance Related to Premium Rate Filings

June 30, 2011 - 10 - K: Implementation of AB 2470

May 24, 2011 - 9 - K: Additional Guidance to Implement AB 2244

May 24, 2011 - 8 - K: Guidance Related to Premium Rate Filings

May 12, 2011 - 4 - K: Implementation of AB 2244

May 3, 2011 - 7 - K: Timely Authorization of Provider Requests

April 7, 2011 - 6 - K: Information Security

April 7, 2011 - 5 - K: Care and Treatment for Psychiatric Emergencies

December 2, 2010 - 3 - K: Electronic Rate Filings Under the SERFF System

December 2, 2010 - 2 - K: Notification of Federal Temporary High Risk Program

February 10, 2010 - 1 - K: OB/GYN Participating as a Primary Care Physician

Draft Director's Letters

No Draft Director's Letters at this time.

Director's Opinions

- May 2, 2008
  Notice of Decision on Request for Reconsideration

Laws & Regulations

+ Enforcement Actions
Administrative Actions and Decisions
Director's Letters and Opinions
Legislative Reports and Decisions on Rulemaking Petitions
Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)
+ Opportunities to Participate

Need Help with Your Health Plan?

Call the DMHC Help Center

1-888-466-2219

or submit an Independent Medical Review/Complaint Form

Follow Us

Petitioner: Salvatore D'Anna

- February 8, 2008
  Director's Opinion No. 08/1 issued February 8, 2008, to XTRACARD Corporation, Inc.
  Director's Opinion No. 08/1

- February 8, 2008
  Director's Opinion No. 08/2 issued February 8, 2008, to DentalPlans.Com
  Director's Opinion No. 08/2

- December 14, 2005
  Rescission issued December 14, 2005, reinstating Director's Opinion 4614H
  Rescission
  Director's Opinion 4614H

- June 2, 2005
  Revised AB1455 Annual and Quarterly Reports (effective 10/1/05)
  Memo
  Annual Plan Claims Payment and Dispute Resolution Mechanism Report
  Quarterly Claims Settlement Practices Report

2004

- June 29, 2004
  Plan-to-Plan Contractual Arrangements for the Provision of Mental Health Services

- January 13, 2004
  AB 1455 Advisory

Communications from the DMHC

On August 22, 2014 the DMHC issued the letters below to the following plans regarding limitations or exclusions of abortion services

- Aetna
- Anthem Blue Cross
- Blue Shield of California
- GEMCare
- Health Net
- Kaiser
- United Healthcare

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Governor

Secretary, Health & Human Services Agency

Director, Department of Managed Health Care

EXHIBIT 3

Dana Cody, Esq.
Executive Director
Catherine W. Short, Esq.
Legal Director
Mary Riley
Administrative Director
Allison K. Aranda, Esq.
Senior Staff Counsel

Northern California
(Administration)
P.O. Box 2105
Napa, California 94558
(707) 224-6675

Southern California
P.O. Box 1313
Ojai, California 93024
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LIFE: AT THE HEART OF THE LAW

United States Department of Health and Human Services
Office for Civil Rights
Via Email to OCRComplaint@hhs.gov

Complaint for Discrimination in Violation of Federal Conscience Protections

Contact attorneys for complainants:

Catherine W. Short
Life Legal Defense Foundation
P.O. Box 2105
Napa, CA 94558
(707) 224-6675
LLDFojai@earthlink.net

Casey Mattox
Matt Bowman
Alliance Defending Freedom
801 G Street NW
Washington, DC 20001
(202) 393-8690
cmattox@alliancedefendingfreedom.org

Complaint filed on behalf of:

Foothill Church and Foothill Christian School
Skyline Church
Alpine Christian Fellowship
The Shepherd of the Hills Church
City View Church
Faith Baptist Church
Calvary Chapel Chino Hills

All complainants can be reached through their counsel, identified above.

Agency and State committing the discrimination:

California Department of Managed Health Care
State of California
980 9th Street, Ste. 500
Sacramento, CA 95814-2725
(888) 466-2219

Date and nature of discriminatory acts:

Complainants are churches and a church-run school for pre-K through eighth grade. The Complainants believe that abortion is a grave moral evil and object to being morally complicit through the provision of insurance coverage for abortion to their employees.

On August 22, 2014, the California Department of Managed Health Care (DMHC) notified all private health care insurers in the state, including those through whom Complainants purchase their employee plan, that all health care plans issued in California must *immediately* cover elective abortions. The insurers were instructed to amend their policies to remove any limitations on health coverage for abortions, such as excluding coverage for "voluntary" or "elective" abortions or limiting coverage to "therapeutic" or "medically necessary" abortions. Therefore DMHC ordered elective abortion coverage into these churches' health insurance plans. Insurers have confirmed to some of the churches that these changes have already been made in their plans over their objections.

DMHC justified this change in policy by interpreting the applicable California law mandating coverage of "basic health care services" to require coverage for all abortions. Because DMHC simply read this abortion coverage requirement into the pre-existing 1975 law, Health & Safety Code section 1340 et seq., there is no exemption for any religious employer, including churches.

Each of the Complainants are nonprofit organizations. These churches are "religious employers" for purposes of California Health & Safety Code section 1367.25 and thus are not required to provide coverage in their employee health plans for any contraceptive methods contrary to its religious tenets. However, because no exemption exists from the DMHC order of August 22, 2014, these churches' staff health insurance plans were changed to include elective abortion coverage without their authorization and over their objections.

This directive of the DMHC constitutes unlawful discrimination against a health care entity under section 507 of the Consolidated Appropriations Act, Pub L. No 113-76, 128 Stat. 5 (Jan. 17, 2014) (the Hyde-Weldon Conscience Protection Amendment). DMHC is "subject[ing] Complainants' "health insurance plan" "to discrimination," by denying its approval of the plan that omitted elective abortions, solely "on the basis that the [plan] does not . . . provide coverage of . . . abortions." DMHC is an arm of the State of California and purports to be interpreting and applying the law of California, a state that receives billions of taxpayer dollars through "funds made available in this Act" in this and recent appropriations. California accepted those funds with full knowledge of the requirements of the Hyde-Weldon Amendment, but it has chosen to ignore this law. *The need to remedy this discrimination is urgent because it is immediately forcing Complainants to offer their employees a health plan that includes elective abortions.*

DMHC's requirement is contrary to California law and DMHC's prior approval of health care plans excluding coverage for elective abortion for Complainants and others. DMHC's novel reading of California law to discriminate against Complainants' plans is also belied by California's history of excluding elective abortion coverage in its own plans for its own state employees. Nothing in California law or the California Constitution requires private health plans to cover abortions.

On August 22, 2014, counsel sent a letter to Shelley Rouillard, the director of the DMHC, pointing out the fact that her interpretation of California law, while not only erroneous in its own right, also violated the Hyde-Weldon Conscience Protection Amendment. On September 8, Ms. Rouillard responded via letter, in which she restated the department's position that California law mandates that health plans cover all legal abortions. She did not address the conflict with the Hyde-Weldon Conscience Protection Amendment other than saying the DMHC had "carefully considered all aspects of state and federal law in reaching its position."

Complainants request that this Office enforce the terms of the Hyde-Weldon Amendment and prevent California from discriminating against them in violation of this federal law. Because DMHC's discrimination is causing immediate injury, resulting in the immediate inclusion of elective abortion coverage by the Complainants in violation of their religious convictions and forcing Complainants to consider cancellation of these plans, we ask that you act urgently.

Date: October 9, 2014

By: Catherine W. Short

Catherine W. Short
Legal Director

EXHIBIT 4

ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

March 5, 2015

Molly Wlodarczyk
Region IX EOS Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103
Molly.Wlodarczyk@hhs.gov

Re: CA DMHC Order Requiring Elective Abortion Coverage

Dear Ms. Wlodarczyk:

Thank you for hosting last week's phone conference. As you know, the DMHC Order is presently in effect and forbids approval of any health insurance plan that excludes any legal abortion as a covered benefit. Our clients object to this Order and, were it lifted, would exclude abortion coverage from their health insurance plans. The DMHC Order is a clear violation of the Weldon Amendment and no additional facts are necessary to confirm or can change that fact. We urge you to immediately enforce the Weldon Amendment.

In September 2014 Kaiser Permanente sent Foothill Church and Foothill Christian School the following, confirming the impact of the DMHC Order:

> ***KAISER STATEMENT:*** *I want to formally share with you that on August 22, 2014, the Department of Managed Health Care (DMHC) notified Kaiser Permanente and other affected health plans in writing regarding group contracts that exclude "voluntary termination of pregnancy."*
>
> *This letter made clear that the DMHC considered health care services related to the termination of pregnancies – whether or not a voluntary termination – a medically necessary basic health care service for which all health care services plans must provide coverage under the Knox-Keene Health Care Service Plan Act. You may recall that at the request of some employer groups with religious affiliations, Kaiser Permanente submitted a regulatory filing in May 2012 properly notifying the DMHC of a benefit plan option that excluded coverage of voluntary terminations of pregnancies. The DMHC did not object to this filing, permitting Kaiser Permanente to offer such a coverage contract to large group purchasers that requested it. The DMHC acknowledged that it previously permitted these contract exclusions, but now is requiring health care service plans to provide coverage of all terminations of pregnancies, effective immediately. To that end, the DMHC requires Kaiser Permanente and similar*

health care service plans to initiate steps to modify their plan contracts accordingly.

Effective August 22, Kaiser Permanente will comply with this regulatory mandate.

Prior to the DMHC Order, Kaiser had agreed to exclude elective abortion coverage from Foothill's health insurance plan. After the DMHC Order Kaiser informed Foothill it would no longer be able to honor this agreement and must include elective abortion coverage in their health insurance plan. We are in communication with other California religious employers, in addition to our clients, that have also received the same notice from Kaiser.

Additionally, as we mentioned on the call we have gathered some documents from the DMHC by means of requests under the California Public Records Act. These documents confirm earlier research indicating the DMHC's long-term de facto discrimination against plans that do not cover abortion. Moreover, an e-mail from DMHC director Shelley Rouillard to the entire staff of the DMHC demonstrated that, far from the DMHC's action being a correction of a prior oversight, as her August 22 letter to the insurance companies suggested, the DMHC's move was in fact the result of an agency-wide project. As you can see in the attached e-mail, Ms. Rouillard thanked the many people in the agency "who contributed to this important action," calling it "truly a team effort." This email confirms that the DMHC Order is not a regulator's neutral application of the law to a complaint within her jurisdiction. Instead, the DMHC Order of August 22 was the culmination of the agency's long-term effort to drive plans excluding abortion coverage out of the market in violation of the Weldon Amendment.

To date, DMHC has refused to release any further documents relating to this "team effort," on the grounds that they are all protected from disclosure by attorney-client privilege or attorney work product protection. Presumably your office will have access to those e-mails and other communications as part of your investigation.

Ultimately this additional information only confirms the DMHC's agenda to violate the Weldon Amendment and the impact this is having on our clients. While we are pleased to provide any additional information that might aid the investigation, the DMHC Order itself is all that is required to demonstrate that California is in violation of the Weldon Amendment. The Order facially violates federal law. We ask that your office promptly enforce the Weldon Amendment and ensure California's compliance with its obligations.

Sincerely,

M. Casey Mattox

EXHIBIT 5

ALLIANCE DEFENDING
FREEDOM
FOR FAITH FOR JUSTICE

April 13, 2015

Molly Wlodarczyk
Region IX EOS Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103
Molly.Wlodarczyk@hhs.gov

Re: CA DMHC Order Discriminating Against Plans That Do Not Cover Abortion (File Nos. 14-193604 and 15-195665)

Dear Ms. Wlodarczyk:

As you know, the California Department of Managed Health Care issued an order requiring every health plan to include elective abortion coverage on August 22, 2014. This order unquestionably discriminates against plans that do not cover elective abortions in violation of the Weldon Amendment. After unsuccessfully attempting to address the problem directly with the California DMHC, we filed complaints with the HHS Office of Civil Rights on behalf of individuals and churches being forced to fund abortion through their health insurance plans as a result of this illegal order. Your office accepted jurisdiction of the complaints on December 16, 2014. On February 26, my clients and I met with you and your colleagues by phone and answered your questions. I also sent a follow-up letter to you on March 5, once more explaining my clients' position and the need for action.

The DMHC Order is a clear violation of the explicit terms of the Weldon Amendment. DMHC has expressly forbidden any insurance plan from being sold in California if it does not include coverage for elective abortion. As a result of this order, every insurance plan in the state – as a condition of licensure – must cover all abortions. There is no possible construction of this order that does not violate the Weldon Amendment. My clients are currently suffering ongoing injury as a result of this illegal order.

We again ask that you immediately enforce the Weldon Amendment. Please let me know if we can answer any further questions toward that end.

Sincerely,

M. Casey Mattox

cc: Interested parties

EXHIBIT 6

ALLIANCE DEFENDING
FREEDOM
FOR FAITH FOR JUSTICE

June 5, 2015

Molly Wlodarczyk
Region IX EOS Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103
Molly.Wlodarczyk@hhs.gov

Re: CA DMHC Order Discriminating Against Plans That Do Not Cover Abortion (File Nos. 14-193604 and 15-195665)

Dear Ms. Wlodarczyk:

As you know, on August 22, 2014, the California Department of Managed Health Care issued an order requiring every health plan to include elective abortion coverage. This order unquestionably discriminates against plans that do not cover elective abortions, in violation of the Weldon Amendment. We filed complaints with the HHS Office of Civil Rights on behalf of individuals and churches being forced to fund abortion through their health insurance plans as a result of this illegal order. Your office accepted jurisdiction of the complaints on December 16, 2014. On February 26, my clients and I met with you and your colleagues by phone and answered your questions. I also sent follow-up letters to you on March 5 and April 13, once more explaining my clients' need for prompt action.

As some of my clients' policies would renew on July 1, I must again ask that you promptly enforce the law. The DMHC Order is a clear violation of the explicit terms of the Weldon Amendment. DMHC has expressly forbidden any insurance plan from being sold in California if it does not include coverage for elective abortion. As a result of this order, every insurance plan in the state – as a condition of licensure – must cover all abortions. There is no possible construction of this

order that complies with the Weldon Amendment. Indeed, at a recent hearing on a bill to reverse this order the proponents of the mandate made no such attempt, simply asserting that enforcement of the Weldon Amendment is the responsibility of the federal government. See https://vimeo.com/126539714 (at 25:15).

We again ask that you immediately enforce the Weldon Amendment. Please let me know if we can answer any further questions toward that end.

Sincerely,

M. Casey Mattox

cc: Interested parties