EXHIBIT P

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, Plaintiff, v. DONALD J. TRUMP *et al.* Defendants.	**NO. 2:17-cv-04540-WB**

DECLARATION OF SETH A. MENDELSOHN

I, Seth A. Mendelsohn, declare and state as follows:

1. I am the Executive Deputy Insurance Commissioner for the Pennsylvania Department of Insurance (the "Department"). In this capacity I oversee, *inter alia*, the Office of Insurance Product Regulation and Administration, including the Bureau of Life, Accident and Health Insurance.

2. The Department is the primary regulator for all health insurance products sold in the Commonwealth of Pennsylvania.

3. Insurance providers are subject to a complex set of federal and state laws and regulations, and federal and state agencies have distinct but overlapping responsibilities in regulating these entities.

4. For instance, the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (ERISA), governs most employee health care coverage and other benefit plans offered by private employers. ERISA preempts certain state laws relating to the regulation of insurance.

5. As a result of the preemption provisions of ERISA, the Department does not regulate self-funded health care coverage plans offered by private employers, which are plans established and maintained by an employer or by an employee organization for which the employer or employee organization bears the direct financial risk for the cost of claims for health care benefits. These plans are subject to ERISA and are regulated primarily by the U.S. Department of Labor.

6. The Department does regulate fully-insured employer group health insurance policies. These are health plans that an employer group purchases from an insurer, for which the insurer assumes the direct financial risk for the cost of claims for health care benefits.

7. In addition, the Department regulates health insurance policies offered in the individual market.

8. I am familiar with the Affordable Care Act's requirement that group health plans and health insurance issuers offering group or individual health insurance coverage cover preventive health services, including FDA-approved methods of contraception, without any cost-sharing requirements (the "Contraceptive Care Mandate").

9. The Contraceptive Care Mandate applies both to ERISA-regulated plans as well as almost all insured group and individual health insurance plans that are regulated by the Department.

10. More than 2.5 million women in Pennsylvania could benefit from the Contraceptive Care Mandate. This total includes women who receive insurance through their employer or through a spouse or other family member's employer, along with those who purchase insurance for themselves and their families through the individual market.

11. The Department estimates that the women in Pennsylvania who have benefited from the Contraceptive Care Mandate have saved over $250 million annually as a result.

12. Many states have enacted laws requiring insurers that cover prescription drugs to provide coverage for any Food and Drug Administration-approved contraceptive. These statutes are commonly referred to as "contraceptive parity" laws.

13. Pennsylvania, however, does not have a "contraceptive parity" statute. As a result, employers offering Department-regulated plans that opt out of the ACA's Contraceptive Care Mandate will not be subject to any requirement to provide contraceptives to their employees and beneficiaries. Thus, women in plans provided by these employers will not receive contraceptive coverage through these plans.

14. Similarly, employers offering plans that are subject to ERISA that opt out of the Contraceptive Care Mandate will also not be subject to any requirement to provide contraception to their employees and beneficiaries.

15. The Department anticipates that women who lose contraceptive coverage through employer plans – whether the plan of their own employer or that of another family member – may seek contraceptive coverage from other sources, including state-funded programs, or face the financial burden of paying for the full cost of contraceptives themselves.

16. Further, insofar as the Final Rules[1] effectively expand the universe of employers that may claim a contraceptive coverage exemption, even more women may be denied access to contraceptive coverage.

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[1] "Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act", 83 Fed. Reg. 57536 et seq. (Nov. 15, 2018) and "Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act", 83 Fed. Reg. 57592 et seq. (Nov. 15, 2018) (the "Final Rules").

17. Moreover, because the Final Rules contemplate that individuals, covered by employer plans that provide contraceptive care, may nevertheless opt out of the ACA's Contraceptive Care Mandate, and, in so doing, effectively deny contraceptive care to all of the individual's female dependents covered by the same plan, still more women may be denied access to contraceptive coverage.

18. In any case, whether it is the employer's choice or the individual's choice or the choice of the individual as to whom a woman is a dependent, women who have access to affordable employer-based coverage but who lose contraceptive coverage as a result of the Final Rules will be unable to purchase individual coverage on the marketplace with any applicable premium tax credit and cost sharing reductions. Again, the Department anticipates that women put in this position may seek contraceptive coverage from other sources, including state-funded programs, or face the financial burden of paying for the full cost of contraceptives themselves.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Seth A. Mendelsohn

SETH A. MENDELSOHN

Dated: December 12, 2018