



**Written Testimony of Danielle Pimentel, J.D.
Policy Counsel, Americans United for Life
In Support of L.D. 995
Submitted to the Joint Committee on Health Coverage,
Insurance and Financial Services
May 8, 2023**

Dear Chair Bailey, Chair Perry, and Members of the Committee:

My Name is Danielle Pimentel, and I serve as Policy Counsel at Americans United for Life (“AUL”). Established in 1971, AUL is a national law and policy nonprofit organization with a specialization in abortion, end-of-life issues, and bioethics law. AUL publishes pro-life model legislation and policy guides,¹ tracks state bioethics legislation,² and regularly testifies on pro-life legislation in Congress and the States. Our vision at AUL is to strive for a world where everyone is welcomed in life and protected in law. As Policy Counsel, I specialize in life-related legislation, constitutional law, and abortion jurisprudence.

Thank you for the opportunity to testify in support of LD 995 (“LD 995” or “bill”), which requires abortion providers to inform pregnant women of their right to a second opinion and “the availability of health insurance coverage for that second opinion, including the waiver of any cost-sharing requirements” after the abortion provider recommends an abortion due to “the health or safety of the pregnant person or fetus.”³ Further, at a pregnant woman’s request, LD 995 requires health insurance carriers to provide coverage for the costs of a second opinion and any additional testing.⁴ Health plans may not impose any

¹ *Pro-Life Model Legislation and Guides*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/> (last visited May 4, 2023). AUL is the original drafter of many of the hundreds of pro-life bills enacted in the States in recent years. See Olga Khazan, *Planning the End of Abortion*, ATLANTIC (July 16, 2020), www.theatlantic.com/politics/archive/2015/07/what-pro-life-activists-really-want/398297/ (“State legislatures have enacted a slew of abortion restrictions in recent years. Americans United for Life wrote most of them.”); see also Anne Ryman & Matt Wynn, *For Anti-Abortion Activists, Success of ‘Heartbeat’ Bills was 10 Years in the Making*, CTR. FOR PUB. INTEGRITY (Jun. 20, 2019), <https://publicintegrity.org/politics/state-politics/copy-paste-legislate/for-anti-abortion-activists-success-of-heartbeat-bills-was-10-years-in-the-making/> (“The USA TODAY/Arizona Republic analysis found Americans United for Life was behind the bulk of the more than 400 copycat [anti-]abortion bills introduced in 41 states.”).

² *Defending Life: State Legislation Tracker*, AMS. UNITED FOR LIFE, <https://aul.org/law-and-policy/state-legislation-tracker/> (last visited May 4, 2023).

³ LD 995, § 1599-A (3), 2023 Leg., 131st Sess. (Me. 2023).

⁴ *Id.* at § 4320-M (1-A).

deductible, copayment, coinsurance, or other cost-sharing requirement for the costs of the second opinion.⁵

I have thoroughly reviewed LD 995, and it is in my opinion that the bill furthers the state’s legitimate interest in protecting maternal and prenatal life, ensures that pregnant women have the information necessary to make an informed, voluntary choice regarding their pregnancies, and ensures that pregnant women have access to compassionate care and treatment for fetal disabilities. For these reasons, I urge this Committee to vote in favor of LD 995.

I. Maine has Robust Powers to Safeguard the Informed Consent of Women and Protect Life

Maine has authority to enact laws that protect maternal and prenatal life. In *Dobbs v. Jackson Women’s Health Organization*, the United States Supreme Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and returned the abortion issue to the democratic process.⁶ This means that “States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot ‘substitute their social and economic beliefs for the judgment of legislative bodies.’”⁷ The Court acknowledged that “[t]hese legitimate interests include respect for and preservation of prenatal life at all stages of development . . . the protection of maternal health and safety . . . [and] the preservation of the integrity of the medical profession.”⁸

Even with Maine’s statutory protections for abortion,⁹ the standard principles of the practice of medicine must be followed. Informed consent, a foundational principle of modern medicine, “is a process by which the treating health care provider discloses appropriate information to a competent patient so that the patient may make a voluntary choice to accept or refuse treatment.”¹⁰ A woman cannot agree to medical treatment unless she is “competent, adequately informed and not coerced” in giving informed consent.¹¹ If abortion is “medicine,” then healthcare professionals must receive a woman’s voluntary, informed consent before performing an abortion. *Dobbs* emphasized that the states have a legitimate interest in “the protection of maternal health and safety.”¹²

LD 995 acknowledges that that the choice to have an abortion is a life-altering decision. Allowing a pregnant woman to seek the expertise from more than just one doctor after receiving a potentially life-threatening diagnosis ensures that she has information necessary to make an informed, voluntary choice. Seeking a second opinion may lead to a pregnant woman receiving an entirely different, but accurate, diagnosis or even an

⁵ *Id.* at § 4320-M (2).

⁶ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242–2243 (2022).

⁷ *Id.* at 2283–2284 (citations omitted).

⁸ *Id.* at 2284.

⁹ Me. Stat. tit. 22 § 1598.

¹⁰ Christine S. Cocanour, *Informed Consent—It’s More Than a Signature on a Piece of Paper*, 214 AM. J. SURGERY 993, 993 (2017).

¹¹ *Id.*

¹² *Dobbs*, 142 S. Ct. at 2284.

alternative treatment plan that does not require an abortion. Thus, by informing pregnant women of their right to a second opinion and that their insurance will cover the associated costs, LD 995 furthers Maine's legitimate interest to protect life because some women may ultimately decide to not have an abortion and instead choose medical alternatives that allow them to safely carry their child to term.

II. LD 995 Ensures that Pregnant Women Are Fully Informed of a Medical Diagnosis and Receive Appropriate Medical Treatment

For a pregnant woman to have authentic choice, it is important for her to be fully informed of all available medical treatments and options after receiving a diagnosis that threatens her life or the life of her unborn child. One way a woman can ensure that she knows all of her options is by obtaining a second opinion from another medical professional. According to the Mayo Clinic, “[g]etting a second opinion can help you feel more confident about your diagnosis and treatment plan.”¹³ “[T]aking the time to learn about your condition, and getting a second or third opinion is a reasonable approach.”¹⁴ It is therefore recommended that patients “[m]ake decisions regarding [their] health after [they] have been thoroughly informed about [their] diagnosis, prognosis and available treatment options.”¹⁵

Obtaining a second opinion is vital given that different doctors may have varying opinions on diagnoses and treatments based on their experience and expertise.¹⁶ In a 2017 study, as many as 88% of patients who sought a second opinion or diagnosis confirmation for a complex condition reported being given a new or refined diagnosis from a second medical professional.¹⁷ Twenty-one percent of patients received final diagnoses that were *distinctly different* than their first diagnosis from their original doctor.¹⁸

Additionally, a second opinion may be necessary in order to fully understand the medical nature of the abortion procedure. Many women have reported that their abortion provider failed to adequately inform them about the abortion procedure, the risks associated with abortion, and the alternatives to abortion. In fact, one provider of post-abortive counseling reported that, in any given year, 75%-85% of women who received counseling after an abortion reported that “they felt they were misled by the abortion clinics and that their decision were uninformed.”¹⁹ These women reported that abortion providers did not fully disclose how the abortion was going to be performed and did “not disclose the direct injury to the child that leads to its death” or “the psychological and physical risks to the mother.”²⁰ Furthermore, many women reported that abortion providers did not fully inform them of the risks that the abortion procedure would have on their own health, the dangers

¹³ *Advice on Second Opinions*, MAYO CLINIC: CONNECT, <https://connect.mayoclinic.org/champions/advice-on-second-opinions/> (last visited May 7, 2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Thomas Beckman et al., *Extent of Diagnostic Agreement Among Medical Referrals*, 23 J. EVALUATION CLINICAL PRACTICE 870, 871 (Feb. 28, 2017).

¹⁸ *Id.*

¹⁹ S.D. TASK FORCE, REPORT OF THE SOUTH DAKOTA TASK FORCE TO STUDY ABORTION, at 20–21 (2005).

²⁰ *Id.* at 37.

of the medical procedure, the emotional problems that would arise after the abortion, and other after-effects.²¹ “Even the admissions of Planned Parenthood agents show that many abortion providers make active misrepresentations of fact to pregnant women regarding the physical and emotional risks posed by abortion.”²²

Given the lack of information women receive before an abortion and the differences between doctors’ opinions on diagnoses and appropriate medical treatments, it is essential for women to know of their right to seek a second opinion after receiving a potentially life-threatening diagnosis. LD 995 allows for more women to act on this right by extending insurance coverage not only for a second opinion, but also for any testing associated with it. In doing so, women will be able to ensure that they have received an accurate diagnosis and treatment plan that they are comfortable with.

III. LD 995 Protects the Welfare of Pregnant Women Navigating Difficult Fetal Diagnoses

LD 995 protects the psychological wellbeing of pregnant women by affording them the opportunity to seek out alternatives to abortion and compassionate support from medical professionals. Studies show that aborting a child with a fetal disability or life-limiting condition can cause women great psychological harm.²³ Accordingly, researchers have stressed the importance of adequate psychological support and guidance from the mother’s caregiver during the decision-making process.²⁴ When pregnant women receive a diagnosis of a fatal fetal disability, most women decide to have an abortion,²⁵ while approximately 20% of women decide to continue their pregnancy.²⁶ However, when medical professionals present women with perinatal hospice as an option in a supportive environment, more than 80% of parents choose the option.²⁷ One article reported that 87% of their patients carrying a child diagnosed with a lethal congenital disorder choose to

²¹ *Id.* at 40.

²² Moria Gaul, *Protecting Women from Coerced Abortions: The Important Role of Pregnancy Help Centers*, CHARLOTTE LOZIER INST., 2 (Mar. 2022), https://lozierinstitute.org/wp-content/uploads/2022/03/On-Point-78_Protecting-Women-from-Coerced-Abortion_2022.pdf.

²³ One study from 2004 revealed that maternal grieving after such abortions continued for over six months and included pathological anxiety and depression. Anette Kersting et al., *Grief After Termination of Pregnancy Due to Fetal Malformation*, 25 J. PSYCHOSOMATIC OBSTETRICS & GYNECOLOGY 163 (2004). In 2005, a study revealed that a 17.3 percent of the participants showed pathological scores for posttraumatic stress. Marijke J. Korenromp et al., *Long-Term Psychological Consequences of Pregnancy Termination for Fetal Abnormality: A Cross Sectional Study*, 25 PRENATAL DIAGNOSIS 253 (Mar. 25, 2005). In 2009, a follow-up to the 2004 study revealed that at 14 months post-abortion, 16.7 percent of women were diagnosed with a psychiatric disorder. Anette Kersting et al., *Psychological Impact on Women After Second and Third Trimester Termination of Pregnancy Due to Fetal Anomalies Versus Women After Preterm Birth: A 14-Month Follow Up Study*, 12 ARCHIVES OF WOMEN’S MENTAL HEALTH 193 (Aug. 2009).

²⁴ Korenromp, *supra* note 23.

²⁵ *Id.*

²⁶ Michelle D’Almeida et al., *Perinatal Hospice: Family-Centered Care of the Fetus with a Lethal Condition*, 11 J. AM. PHYSICIANS & SURGEONS 52 (2006); Byron C. Calhoun & Nathan J. Hoeldtke, *The Perinatal Hospice: Ploughing the Field of Natal Sorrow* (2000).

²⁷ D’Almeida, *supra* note 26.

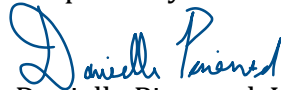
continue pregnancy in an environment of care.²⁸ Experts explain that the options presented to parents when a life-limiting disability or condition is diagnosed generally include abortion or simply continuing the pregnancy with routine medical care.²⁹ This “bare presentation” of options can leave parents with the perceived choice of helplessly watching their baby die, which can be misunderstood as increasing the child’s suffering, or “actively doing something to end this sudden, emotionally-wrenching dilemma.”³⁰

With the prevalence of prenatal diagnosis, parents need compassionate support for children with disabilities much sooner than at birth; thus, the concept of perinatal hospice begins with the prenatal diagnosis of a lethal fetal disability or condition. Unfortunately, most women and their families are not presented with the option of perinatal hospice when considering whether to abort unborn children with life-limiting disabilities or conditions. It is imperative that women considering abortions be given all information about their choices, including the choice of supportive perinatal care. LD 995 ensures that women are made aware of the option to seek out a second opinion after receiving a devastating fetal diagnosis. This will allow women to obtain material information about the medical treatment and care available to her unborn child, including supportive perinatal care. Not only will this information help guide a pregnant woman in her decision, but it will also let her know that she is not alone and has access to compassionate care and a supportive environment if she chooses to continue her pregnancy.

IV. Conclusion

Pregnant women have the right to be provided with the information necessary to make informed, voluntary decisions regarding their pregnancy. This bill guarantees that a woman knows and understands her option to seek out a second opinion after receiving a life-changing diagnosis, and that she does not have to worry about the financial burden of seeking out a second opinion if she chooses to do so. I strongly encourage this Committee to support LD 995, which ensures women have authentic choice, are fully informed of the real alternatives to abortion, and are able to choose the best medical care and treatment available to them and their unborn child.

Respectfully Submitted,



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²⁸ Byron C. Calhoun et al., *Perinatal Hospice: Comprehensive Care for the Family of the Fetus with a Lethal Condition*, 48 J. REPROD. MED. 343 (May 2003).

²⁹ D’Almeida, *supra* note 26.

³⁰ *Id.*