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Jerome M. Adams, MD, MPH
Indiana State Health Commissioner
2 North Meridian Street
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Dear Dr. Adams:

I represent House District 85 in the Indiana House of Representatives and was the primary author of House Enrolled Act 1016 (the "Act" or "HEA 1016"), a law laying the groundwork for the utilization of newborn safety incubators as a means to save the lives of abandoned newborns. The Act passed the 2015 Session of the Indiana General Assembly unanimously, and Governor Pence signed it into law on April 27, 2015. It was codified at I.C. 16-35-9-6, and I have enclosed a copy for your reference. I write regarding the failure of the Department of Health ("Department") to comply with the Act.

As you may be aware, the Act required the Department to "prepare and submit to the general assembly . . . recommendations concerning standards and protocols for the installation and operation of newborn safety incubators" ("Standards") at certain health and emergency service facilities. In preparing the Standards, the Department was to bear in mind:

- Sanitation standards for newborn safety incubators;
- Manufacturing and manufacturer standards for newborn safety incubators;
- Design and function requirements, [...]
- The operating policies, supervision, and maintenance of a newborn safety incubator, [...]
- Procedures and forms for the registering of qualified service providers that install newborn safety incubators;
- Costs concerning the registration and regulation of newborn safety incubators and fees for registration to offset the costs;
- Preparation and posting of signs near or on newborn safety incubators;
- Enforcement
- Actions and remedies for violations concerning newborn safety incubators;

These Standards were due to the Governor's Office and the General Assembly before January 1, 2016.

On Monday, January 11, 2016, after numerous requests to the Department from interested parties, I received a two-page memorandum dated December 30, 2015 (the "Memo") that purports to comply with I.C. 16-35-9-6. It does not come close. In fact, the Memo contains no

standards or protocols at all. It does not even claim to include Standards but is instead styled as a "Newborn Safety Incubator Report."

Rather than complying with the Act, the Memo outlines a policy position against the concept of newborn safety incubators based on statements from the United Nations Committee on the Rights of the Child ("UN Committee") calling "for a ban on baby boxes across Europe." The Memo appears to basically restate much of an earlier report issued by the Task Force on Infant Mortality and Child Health (a task force of the Commission on Improving the Status of Children). Interestingly, the Department's (and, for that matter, the Task Force's) reliance on the UN Committee undercuts the Department's own argument that the State of Indiana focus on the existing Safe Haven Law.

In addition to opposing "baby boxes," the UN Committee would clearly dispose of Indiana's Safe Haven Law as well, because the UN Committee's criticism of newborn safety incubators focused on "the right of the child to be known and cared for by his or her parents." The same argument would apply against Indiana's Safe Haven law. We have recognized in Indiana, however, that the life of the child is the paramount concern, because without preservation of that life, all other rights are meaningless. Further belying the UN Committee's concern, while it espouses advancing "the rights of the child," it has declared that other nations should "make the conditions for abortion less restrictive."¹ The UN Committee is hardly an example for Indiana to follow.

During consideration of HEA 1016 in 2015, it became apparent that in order for the General Assembly to best implement the concept of newborn safety incubators, some development criteria would be needed so that the General Assembly could properly gauge the functional components of such a proposal and exercise its policy discretion accordingly. Moreover, the original version of HB 1016 (which passed the House unanimously) provided civil immunity protections for those entities who would voluntarily choose to implement newborn safety incubators. Even though the original version was not enacted, that discussion brought into focus that no law exists *prohibiting* emergency service providers from implementing newborn safety incubators without immunity protection, if they so desired.

Thus, the Standards required by the final version of the Act advanced two important policies: (1) they would provide important design, function, sanitation, implementation and maintenance guidelines which would put a future General Assembly in the position of exercising policy discretion over whether and in what circumstances to extend immunity protections for the utilization of such devices; and (2) they would provide guidance to interested emergency service providers who choose to implement newborn safety incubators regardless of any civil immunity protections.

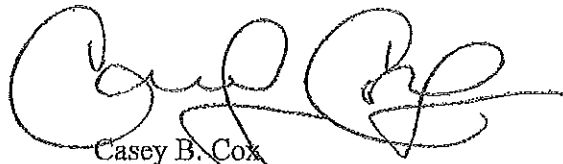
As author of the Act, I envisioned that the Commission on Improving the Status of Children (the "Commission") and the Department would coordinate their review. The Department would focus on functional issues related to newborn safety incubators, and the Commission, in consultation with the Department, would advise on immunity-related considerations. However, the Department's obligations under the Act were not in any way contingent on the recommendations the Commission made.

¹ UN Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland. Vol. 30 Oct. 2015. Pg 10.

To my dismay, the Department appears to have done nothing until the Commission issued its report and then used the Commission's report to avoid abiding by its own duties under the Act. The Department, therefore, effectively supplanted the policymaking function of the General Assembly and responded to an administrative requirement to provide "standards and protocols" with a policy direction to do nothing. In short, the Department's Memo subverts the legislative process and ignores the obligations required of it under Indiana law.

I have cc'd on this correspondence all twenty co-authors and co-sponsors of HEA 1016 so that they may be informed of this matter. I ask that you please consider this letter in conjunction with the attached materials and order the Department to abide by its requirements under the Act. To that end, please confirm within seven (7) days of the date of this letter that the Department will be providing Standards as required by the Act, and provide those Standards within sixty (60) days of the date of this letter. I look forward to your response.

Very Truly Yours,



Casey B. Cox
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