

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 13, 2012

3:07 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Alan Dick, Vice Chair
Representative Bob Herron
Representative Bob Miller
Representative Charisse Millett
Representative Paul Seaton

MEMBERS ABSENT

Representative Beth Kerttula

OTHER LEGISLATORS PRESENT

Representative Bob Lynn
Senator Fred Dyson

COMMITTEE CALENDAR

PRESENTATION: STATE FUNDING FOR PREGNANCY TERMINATION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

WILLIAM STREUR, Commissioner
Office of the Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

KAREN LEWIS, Educational Director
Alaska Right to Life
Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

CANDY MILLER
(No address provided)

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

DEBBIE JOSLIN, President
Eagle Forum Alaska
Delta Junction, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

CLOVER SIMON
Planned Parenthood of the Great Northwest
Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

ILONA FARR, MD
Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

MARGARET MULLINS
Delta Junction, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

CHRISTINE KURKA, Chair
Fair Committee
Alaska Right to Life
40 Days For Life
Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

MIKE DUNLEAVY
Wasilla, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

JENNIFER MEYER

Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

MIRIAM LANDAU

Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

MATT JOHNSON, Executive Director

Alaska Right to Life

Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

CHRISTOPHER KURKA, Chair

Political Committee

Alaska Right to Life

Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on state funding for pregnancy termination.

ACTION NARRATIVE

[3:07:40 PM](#)

CHAIR WES KELLER called the House Health and Social Services Standing Committee meeting to order at 3:07 p.m. Representatives Keller, Dick, Herron, Miller, and Millett were present at the call to order. Representative Seaton arrived as the meeting was in progress. Also in attendance were Senator Dyson and Representative Lynn.

Presentation: State Funding for Pregnancy Termination

[3:08:17 PM](#)

CHAIR KELLER announced that the only order of business would be a presentation about state funding for pregnancy termination. He explained that the hearing "is meant to put information on the record related to one question, that question is, should the state use public money, tax dollars, to pay for elective abortions, or should it not." He stated that this was not a debate "whether abortion is good or bad. That's an ongoing discussion that I am sure we have all been part of and will

continue." He suggested that a definitive statement of policy could be made. He stated that the purpose of the presentation was purely informational.

[3:11:03 PM](#)

CHAIR KELLER, referring to the letter from the Department of Health and Social Services [Included in members' handout], reported that the state had spent \$546,000 on abortion related services during the last [calendar] year. He declared that this money was spent despite the declaration in House Bill 108, page 23, lines 15 - 20, which he read, as follows:

no money in this appropriation [Medicaid services] may be expended for an abortion that is not mandatory service under AS 47.07.030(a). The money appropriated for Health and Social Services may be expended only for mandatory services under Title 19 of the Social Security Act and for optional services offered by the state under the plan for medical assistance that has been approved by the U.S. Department of Health and Human Services.

CHAIR KELLER asked for Commissioner Streur [Department of Health and Social Services (DHSS)] to explain why this money was spent despite the intent language written in House Bill 108.

[3:12:38 PM](#)

CHAIR KELLER explained that he had researched back to 1971 on the question of public money being spent for abortion. He expressed his desire to review the topic "with thought and not debate passion and confusion" in order to get the information on the record so the legislature could address the issue. He offered his belief that there were conflicting decrees from the Alaska Supreme Court and the Alaska State Legislature.

[3:14:21 PM](#)

WILLIAM STREUR, Commissioner, Office of the Commissioner, Department of Health and Social Services (DHSS), agreed that this was an important issue, and as he wanted to be perfectly clear, he read from a prepared statement [original punctuation included]:

There may not be an issue facing the Department that has drawn more of my attention than this particular one.

The federal Hyde Amendment is a rider to the annual Labor/Health and Human Services (HHS)/Education appropriations bill which prevents Medicaid and any other programs under these departments from funding abortions, except in limited cases. It is named after Rep. Henry J. Hyde (R-IL) who, as a freshman legislator, first offered the amendment. Various amendments over the years since 1977 have clarified those limited cases to generally include rape or incest and when following through with the pregnancy threatens the life of the pregnant woman.

In 2001, the Alaska State Supreme Court established that the State could not selectively deny payment for medically necessary care to Medicaid-eligible women because the threat to their health arises from pregnancy. The court reasoned that the state is required to use neutral criteria when it places restrictions on medical care, concluding that regulations that prohibited payment for medically necessary abortions were based on criteria that were unrelated to Medicaid's program purpose of granting uniform and high quality medical care to all needy persons in the state. The court specifically determined that the differential treatment that is created by regulations that deny payment for medically necessary abortions fails an equal protection analysis. A Superior Court decision in 1999 ruled that 7 AAC 43.140 limited when and how the state could pay for medically necessary abortions and the court said the criteria in the regulation was not neutral and therefore violated the Equal Protection clause. That is a quick snapshot of how we got to here. With that decision, we are one with a dozen other states under court order to publically fund medically necessary abortions under broader criteria than Hyde.

So, what options do we have to minimize our exposure in paying for elective abortions that do not meet the court's criteria of being "medically necessary"?

One effort may be to impose a definition of medical necessity, either specific to abortions or for

Medicaid services as a whole. Under the old General Relief Medical (GRM) program, which paid for abortions for two decades until the program was defunded in 1998, a therapeutic abortion had to be "certified by a physician as medically necessary to prevent the death or disability of the woman, or to ameliorate a condition harmful to the woman's physical or psychological health." The GRM standard was perceived by many as not materially restricting access to state-funded abortions. Some believe the current system does not adequately ensure some Medicaid services, including abortion services, are not conclusively supported by strong medical necessity criteria.

It has been suggested that statute may be able to define medical necessity and that any services be measured against that criteria. While one can place a definition of medical necessity in statute or regulation, it bears little weight as the ultimate decision for the necessity for care rests with the physician and his or her determination that an abortion is necessary due to rape or incest or the woman was in danger of death due to physical disorder, physical injury or physical illness. OR, in Alaska's case; the abortion is not elective and was necessitated because the pregnancy endangered the health of the woman, Medicaid must pay some or all of the costs. The caution still remains that we had a regulation before and it was challenged and we lost.

In 2010, the DOL researched the 13 states under court order to fund abortions beyond the reasons permitted under Hyde (rape, incest or life endangerment) and those state definitions of "medically necessary" in the context of Medicaid funded abortions and other health care services. The research did not show any states that apply a narrower or stricter definition of "medically necessary" to Medicaid funded abortions in comparison to other Medicaid funded services. In the case of six states the definitions are quite broad and provide physicians with wide latitude to use their professional judgment on the necessity.

Alaska Medicaid may have some opportunity to define medical necessity or to require physicians to certify that an abortion is medically necessary and not an elective procedure. We have played with both and

continue to attempt to seize what might have been an opportunity afforded by the Supreme Court to do so.

We have designed and are finalizing the efficacy of a medical certification completed and signed by a physician performing an abortion for which federal or state funding is requested. That signed certification must affirm the abortion is the result of rape or incest or condition that places the woman in danger of death unless an abortion is performed, OR, in the case of request for state funding only, the abortion is performed due to the health of the woman being endangered by the pregnancy.

This issue is both perplexing and challenging as we move forward with Medicaid funded healthcare and the proposed Medicaid expansion. To address this issue we need to enlist the assistance of our tribal partners and the medical community, as well as the State Legislature. I am bound under the Alaska Supreme Court's Constitutional determination that I must protect a woman's right to a medically necessary abortion and ask for your indulgence to not place us in an, even more difficult situation, by legislating a prohibition to not provide that access.

Thank you for your consideration and allowing me the time to discuss this issue. I am happy to answer any questions you may have or discuss further my testimony today.

[3:23:30 PM](#)

CHAIR KELLER, in reference to the aforementioned letter from DHSS, asked for a definition of abortion related services, and asked if this included "pro-life counseling."

[3:24:27 PM](#)

COMMISSIONER STREUR, in response, explained that the presenting symptom dictated whether a billing was for services under abortion related counseling. He affirmed that "pro-life counseling" could also be included.

[3:24:56 PM](#)

REPRESENTATIVE BOB LYNN, Alaska State Legislature, asked if the "abortionist" decided what was medically necessary, and he questioned whether this would be a conflict of interest.

COMMISSIONER STREUR, pointing out that the provider was a physician, confirmed that the physician did make this decision. He offered his belief that the Hippocratic Oath would preclude the relatively small fee that the physician would receive for performing an abortion. He declared his faith in mankind.

[3:26:09 PM](#)

REPRESENTATIVE MILLETT confirmed that this was "an emotional issue to both men and women, it's a tough issue to talk about, it's a tough issue to legislate." She asked if the medical certification that Commissioner Streur had referenced would be issued by the State of Alaska and would certify that the abortion had been done for reasons under the federal definition of medically necessary abortions. She asked what the penalty was for not completing the medical certification or for perjuring the medical certification. She asked how it would be determined that either of these had occurred.

[3:27:10 PM](#)

COMMISSIONER STREUR, in response, said that the proposed certification form was still going through numerous reviews. He reported that it would contain two certification boxes, one box for the aforementioned Hyde Amendment, and the second certification box for state funding only; and, it would declare that the services were medically necessary for the psychological or physical health of the mother. He clarified that the physician would choose which box to check, and the certification was subject to review. He pointed out that, without a certification, there would not be any payment.

[3:28:08 PM](#)

REPRESENTATIVE MILLETT asked for the definition of psychological damage to the mother.

COMMISSIONER STREUR replied that this related to a medication regimen whereby the medication could cause harm to the fetus or the mother. He offered to research and to provide a broader definition.

[3:29:01 PM](#)

REPRESENTATIVE MILLETT asked if the psychological component was only considered when the mother was on medication for psychological issues.

COMMISSIONER STREUR replied that he would research that question.

[3:29:37 PM](#)

REPRESENTATIVE HERRON asked what would happen if the legislature decided not to provide funding.

COMMISSIONER STREUR confirmed that this "was the horns of my dilemma," as he was under orders of the supreme court to ensure that the services were not only provided, but also paid. He relayed that the issue of payment was an annual problem when the funding was eliminated from the department budget. He established that "it's a tough and thorny issue, and it's the issue that I ask that I not be put into, but I'm there."

REPRESENTATIVE HERRON asked what action the commissioner chose when he was put into this dilemma.

COMMISSIONER STREUR confirmed that he would continue to make the services available and to pay for them, although he would also continue his attempt to clarify what was a medical necessity. He affirmed that he worked with the provider community to "move toward a level of comfort that the abortions that we are performing are indeed medically necessary."

[3:31:39 PM](#)

REPRESENTATIVE HERRON asked if there was a distinction between abortion related and abortion preventive services.

COMMISSIONER STREUR stipulated that abortion services needed "to help the pregnant female come to a decision about the choices before them." He emphasized that women were given the best advice possible by ensuring that the best advice was available. He stated that he did not make a distinction between abortion related and abortion preventive services.

REPRESENTATIVE HERRON offered his belief that it was more than semantics. He opined that people live up to expectations, and he suggested changing the phrase to abortion preventive

services, which the state would pay. He declared that this would engender expectation for abortion preventive services.

[3:34:32 PM](#)

CHAIR KELLER, declaring this to be an "unholy stalemate," recounted that six commissioners over the past 10 years had this same dilemma. He asked if there were any current regulations to better serve the legislative purpose as outlined in the intent language of the bill.

COMMISSIONER STREUR, directing attention to the physician form certifying medical necessity, endorsed that this would be in regulation. He opined that any attempt to define medical necessity was "a mighty thorny road to go down," and he questioned whether this was mandating, legislating, or regulating the practice of medicine. He declared that his professional experience in health care had determined that this was not a good course of action. He suggested a partnership with the physician community for adherence to the rules of the Hyde Amendment and the supreme court.

[3:36:32 PM](#)

CHAIR KELLER offered his belief that most other states were closer to the CMS (Centers for Medicare and Medicaid Services) guidelines on abortion, which he read:

If the pregnancy is a result of an act of rape or incest, or ... if a woman suffers from a physical disorder, a physical injury, or physical illness, including a life endangering physical condition caused or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

CHAIR KELLER shared that this CMS standard went on to list the specific examples. He shared a story of a doctor's definition for medically necessary, which was "medically necessary is necessary if I say so. I decide if an abortion is necessary or not based on what the patient wants." He opined that these different standards necessitated exploration for a tightening of the definition "without stepping unduly on the toes of the physicians."

[3:39:09 PM](#)

REPRESENTATIVE DICK suggested a tightening of the language, so that "people of both sides of the argument would have peace with it." He offered a second suggestion, that by adding abortion services to Pick, Click and Give, "this whole problem would go away." He likened the violation of physical rape to an ethical and moral violation "of having to participate in our state funding abortions."

[3:42:22 PM](#)

CHAIR KELLER asked if the category "abortion related services" included transportation.

COMMISSIONER STREUR said that it did not.

[3:42:59 PM](#)

REPRESENTATIVE MILLETT asked for the locations in Alaska where abortions were performed.

COMMISSIONER STREUR replied that the majority were performed in the Anchorage area, with a smaller number in Fairbanks and, he added, "quite a few in Seattle."

[3:43:37 PM](#)

REPRESENTATIVE MILLETT asked for a cost estimate of transportation to a clinic performing state funded abortions. She asked if the State of Alaska paid for this transportation.

COMMISSIONER STREUR explained that some cases involved a Medicaid recipient arranging their own transportation and arriving at the office of a physician, and other cases included transportation paid by state funding. He declared that each case of abortion related services was reviewed in order to determine whether transportation for that individual had occurred during that same time period. He affirmed that he would research the costs.

REPRESENTATIVE MILLETT asked when the proposed medical certification would be available for public comment. She asked if the certification would be mandatory for participation by all physicians, was there an "opt out," or was it only required for state funding.

COMMISSIONER STREUR confirmed that the medical certification was only required for state payment through Medicaid.

REPRESENTATIVE MILLETT asked if abortions provided in Seattle would require medical certification.

COMMISSIONER STREUR explained that any abortion paid by Medicaid would require medical certification for payment.

[3:46:22 PM](#)

REPRESENTATIVE DICK clarified that abortion was legal but that the question was whether the State of Alaska would pay for the procedure.

[3:47:10 PM](#)

COMMISSIONER STREUR emphasized that there was not a choice of payment by the State of Alaska. He stated that the Alaska Supreme Court had established that the State of Alaska could not "selectively deny payment for medically necessary care to a Medicaid-eligible recipient because the threat to their health arises from pregnancy."

REPRESENTATIVE DICK offered his belief that there was "tremendous wiggle room" in the definition for medically necessary, and he suggested that the committee tighten up the definition.

[3:48:00 PM](#)

CHAIR KELLER offered his belief that the Alaska Supreme Court justices had endorsed an opportunity for the definition of an "elective abortion." He declared that the definition would be tested if the legislature "is to press on with trying to define this once and for all." He reiterated that this hearing was to gather information for whether the state should pay for elective abortions. He requested that all testifiers be respectful and precise.

[3:49:20 PM](#)

KAREN LEWIS, Educational Director, Alaska Right to Life, declared that she spoke for herself and others who were morally opposed to tax payer funding for elective abortions. She opined that 50 percent of the population "considered themselves to be pro-life." She expressed her support for the suggestion by Representative Dick to "let those who embrace abortion pay for those who want one."

3:51:02 PM

CANDY MILLER offered her belief that privatization was the solution, and that "no government should be paying for abortion or pregnancy, adoption, all of those." She suggested a stop to the enablement by the government, that private organizations could facilitate adoptions. She asked if the state paid for contraceptives and abortions for foster children; and, how much federal money was paid for abortions.

REPRESENTATIVE MILLETT asked if there was funding for the state program for adoption.

COMMISSIONER STREUR replied that the Office of Children's Services offered subsidies to encourage adoptions.

3:55:50 PM

DEBBIE JOSLIN, President, Eagle Forum Alaska, stated that she represented herself, and directing attention to the inherent rights section of the Alaska State Constitution, she said "that all persons have a natural right to life, liberty, and the pursuit of happiness." She opined that assistance in ending a life was not living up to the constitution. She said she would direct her comments to "medically necessary." She shared stories of her own abortion and of her diagnosis for trisomy 13 during a subsequent pregnancy. She disagreed with payment of abortions for "mental illness" and suggested that adoption was an alternative. She offered her belief that payment for "medically necessary" abortions was a cover. She urged the committee to stop government payment for abortions. She referred to Planned Parenthood as "a business, it is an abortion business. It is not about helping women or healing women, it's a business and they make a good deal of money." She opined that it was wrong for Planned Parenthood to receive state or federal funding for abortions.

4:03:00 PM

CLOVER SIMON, Planned Parenthood of the Great Northwest, endorsed that Alaskans valued independence and privacy, and she opined that "many Alaskans believe that the government should not interfere in a decision between a woman, her doctor, her family, and her faith when she's deciding what to do with an unintended pregnancy." She declared this to be a value for the daily operation of Planned Parenthood. She relayed that the

Alaska Supreme Court had already decided that pregnancy care and other medically necessary procedures, including abortion when medically necessary, would be covered by Medicaid. She offered her belief that any attempt to legislate what was or was not medically necessary was "a grey and sticky ground." She expressed her agreement with Ms. Joslin that a definition of medically necessary could vary between women, reiterating that it was a decision for each individual woman and her doctor.

[4:04:46 PM](#)

REPRESENTATIVE MILLETT asked for the Planned Parenthood definition for when a life begins.

MS. SIMON replied that Planned Parenthood did not "take a stance on when life begins. We leave that decision up to the woman, and her physician, and her family, and her faith." She declared that Planned Parenthood was not interested in making that decision for women, as it was a personal decision.

[4:05:27 PM](#)

REPRESENTATIVE DICK offered his belief that pregnancy was an issue for both a man and a woman. He declared:

If a woman chooses to carry the child, then the man is totally responsible for the child; yet if the woman chooses not to carry the child, all of a sudden it's her individual personal choice as to whether she's gonna carry that child or not. So, there's a double standard there that really troubles me. I don't think it's really her pregnancy because it's their pregnancy and, if anything, that decision to have an abortion should be made not only by the woman, but the man who was also involved and who also will live with the decision whether that child should enter life or not be able to enter life.

[4:06:40 PM](#)

MS. SIMON confirmed that Planned Parenthood counseled for everyone involved in the pregnancy to be included with the decision making. She summarized the Planned Parenthood education programs, which included discussions of healthy relationships and the importance of communication about birth control and unintended pregnancy in sexual relationships.

REPRESENTATIVE DICK declared that double standards had always bothered him, and "if I thought that a man's signature was required in order for a woman to have an abortion, I'd have a little more peace about it."

[4:08:33 PM](#)

CHAIR KELLER asked if there was any conflict of interest for Planned Parenthood with any profit to be made from abortion services.

[4:08:48 PM](#)

MS. SIMON emphasized that Planned Parenthood had no "interest in profiting off of abortion services." She disclosed that the revenue versus the cost as a provider of prevention services was not profit generating. She stated: "we're a medical provider. We provide lots of services, most of them are prevention services." She offered her belief that there was not a conflict of interest.

[4:09:31 PM](#)

REPRESENTATIVE MILLETT asked for the profit margin at Planned Parenthood.

MS. SIMON replied that Planned Parenthood of the Great Northwest did not make a profit for the last year.

[4:09:57 PM](#)

MS. SIMON, in response to Representative Lynn, stated that the definition for a medically necessary area should be made between a patient and a physician, not by the legislature. In response to a second question from Representative Lynn, she affirmed that "doctors have different opinions about what is or isn't medically necessary, and that's why it's really important that the patient is involved in that decision making process."

[4:11:37 PM](#)

ILONA FARR, MD, declared that she was a pro-life physician. She expressed her belief that most abortions are elective, "because people don't want the consequences of what their action is, essentially." She reported her "difficulty as a physician, as a person in the State of Alaska, having my tax dollars pay for abortion." She declared the importance to each of the

following: parental involvement while women were minors, involvement of the father of the child, and ultra sounds for full knowledge. She opined that the State of Alaska should "stay out of this and not to fund abortions."

CHAIR KELLER asked if the legislature should write the definition for medically necessary, even without any medical background. He asked Dr. Farr if she would help write this definition.

DR. FARR offered her belief that guidelines were necessary for physician discretion, and she offered her support and that of other physician colleagues, some of whom provided abortion services, in order to "get the language correct with this legislation."

[4:16:11 PM](#)

MARGARET MULLINS said that this is "basic to right to life, which I know is not the issue here." She offered a personal story about the right to life. She asked to clarify whether 600 abortions had been paid by Medicaid in Alaska.

CHAIR KELLER replied that the \$546,000 had been spent on 901 individuals for abortion related services. He offered his belief that at least 600 abortions had been paid by Medicaid in Alaska.

MS. MULLINS reflected on her personal experiences with good and evil, and power. She discussed definitions for adulthood, and the development of the brain. She declared that funding for abortions "makes a nation an abomination" and she urged the legislature not to fund "abortions with tax payer's dollars."

[4:23:43 PM](#)

CHRISTINE KURKA, Chair, Fair Committee, Alaska Right to Life, 40 Days For Life, reflected that a duty of government was to protect life, and it was not an appropriate use of state funds for abortion services. She affirmed that it was different in the event that it was medically necessary to save a life. She offered her belief that 51 percent of Americans were opposed to public funding of abortions. She shared a story of a woman who had an abortion. She opined that a consideration for legislation needed to be "in favor of life."

[4:28:27 PM](#)

MIKE DUNLEAVY offered his belief that a primary role of the state should be security of its citizens, and that state dollars should not be used "for the termination of its citizens, the termination of life of its citizens."

[4:29:17 PM](#)

JENNIFER MEYER shared that she had worked in health care for more than a decade and declared "abortion is something that nobody likes it. Nobody wants to be put in a position where that has to be a decision that's made, from the patient side or from the care provider side." She suggested that the committee work harder on prevention, health education, information, and easier access for contraception. She offered her belief, that although it would not solve everything, it would "make a significant dent in the abortion rates." Reflecting on the high teen birth rate statistics in the United States as opposed to many other developed countries, she suggested a study on how other countries had kept a low teen birth rate. She reiterated the need for an investment in prevention.

[4:31:59 PM](#)

MIRIAM LANDAU offered her belief that our culture allowed conversation about "how terrible abortion is," but made it difficult to discuss that "women are in control of our own destiny." She opined that the decision for abortion should be made by a woman, her doctor, her faith, her family and her partner. She specified that this discussion should be about low income Alaskan women who did not have access to health care. She suggested that, instead of a discussion for limiting access to a legal medical procedure, there should be discussion to increase funding for family planning to people with incomes up to 175 percent of the federal poverty level. She encouraged the committee to consider family planning as the best way to reduce unplanned pregnancies.

[4:34:22 PM](#)

MATT JOHNSON, Executive Director, Alaska Right to Life, directing his questions to Commissioner Streur, asked how many abortions were paid through Denali Kid Care or Medicaid which were under the parameters of the Hyde Amendment exceptions of "rape, incest, and the life of the mother." He also asked what the Department of Health and Social Services deliberative

process was to determine whether to follow the directives of the legislature if there was a conflict with the judiciary.

[4:36:20 PM](#)

COMMISSIONER STREUR, in response to Mr. Johnson's first question, stated that no abortions were claimed "under Hyde last year." He replied that he would have to research the previous years for that information. In response to the second question, he stated that he worked for the executive branch, and his boss was the governor.

[4:36:59 PM](#)

CHAIR KELLER asked Mr. Johnson why he questioned the Hyde Amendment payment.

MR. JOHNSON replied that it was his understanding that the FMAP (Federal Medical Assistance Percentage) would pay for any abortions that were not covered under the parameters of the Hyde Amendment.

[4:37:35 PM](#)

COMMISSIONER STREUR explained that FMAP would pay for 50 percent of any abortions performed under the parameters of the Hyde Amendment. He noted that any abortions performed outside those parameters, were paid with 100 percent of general funds.

[4:38:00 PM](#)

MR. JOHNSON asked to receive the information for the number of abortions which had been paid for under the parameters of the Hyde Amendment. Expressing his agreement with the earlier analysis by Representative Dick, he opined that the medical necessity language was amorphous, "basically whatever the health care provider or the mother decides it is." He offered his belief that the legislature should better define the language.

COMMISSIONER STREUR, in response to Mr. Johnson, said that the supreme court had determined that abortion was included with pregnancy related services, and that the legislature had the option to not cover pregnancy related services.

[4:40:29 PM](#)

MR. JOHNSON stated:

In Planned Parenthood One, the court argued that it is a violation of equal protection to pay for pre-natal services and not pay for abortion services and they argued it upon an argument that they called equal footing. I just want to point out, for the record, that the court artificially divided women into two classes that, I believe, were not necessary. I believe it's a piece of sophistry. The two classes were those who choose to have abortions and those who chose to carry their child to term. I would submit that that is the class of two choices, not a class of two kinds of persons. On its face, it seems to me like it's preposterous to claim that there's even a remote equivalent between covering a service, in this case pre-natal care, that covers medical procedures for all women potentially, and all women definitely who go through a natural birthing process, and one that intrudes upon and pre-empts nature.

MR. JOHNSON assessed that any legislative relevance was to be determined by the legislature. He offered his opinion that the logic of the decision by the supreme court, "inexorably leads us back to the first question I asked ... it seems to me the logic of the courts, if it were carried to its conclusion, would lead us to the place where the state would perforce be required to pay for any medical choice any patient wanted to make." He voiced his objection for "the activism of the Alaska State court system." He declared that this was "fundamentally undemocratic. The courts have moved to circumvent the will of the electorate, as expressed in the legislature and in the executive branch, and in addition to the federal laws that are in place." He declared a desire to register his protest.

[4:43:35 PM](#)

REPRESENTATIVE DICK conveyed:

Just for the record, the fact that a committee member's eyes are closed may mean that that committee member is napping, but it also might mean that that committee member is deeply contemplative.

CHAIR KELLER asked Representative Dick if the camera had caught him sleeping.

[4:44:21 PM](#)

CHRISTOPHER KURKA, Chair, Political Committee, Alaska Right to Life, declaring that he was speaking for himself, reminded the House Health and Social Services Standing Committee and Commissioner Streur that "we have a state constitution, and every member of the legislature, including the courts and the governor, have an oath to uphold that document." He directed attention to Article 9, Section 13, [Alaska State Constitution] and read: "no money shall be withdrawn from the treasury except in accordance with the appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void." He expressed that the legislature and the governor should be more concerned that the courts have usurped the delegation of power. He stated:

The courts, as far as I can tell, have no place in deciding what we do and do not spend money on. That is the prerogative of the legislature and the governor. The court doesn't make law; they merely interpret law that is written by the legislature. If the legislature decides it does not want to fund abortions, it is not the prerogative of the court to tell the legislature well we think that's a violation of whatever contrivance they want to come up with at the time.

MR. KURKA offered his belief that "if we as a people and as a legislature and the governor think that it is entirely up to the court to interpret everything that the constitution has to say, then the other branches of the government become meaningless in their actual authority." He expressed that "there are no checks and balances under that system." He further prescribed that "each person who has an oath to uphold the constitution has then some semblance of responsibility to interpret that for themselves using plain English of the constitution. It's not rocket science, and it's pretty clear to me that the legislature is the one who control the purse strings."

[4:47:11 PM](#)

CHAIR KELLER, in response, acknowledged:

That's one that personally outrages me. To me, it's very clear that it's the legislative job to appropriate and when we have a supreme court case that

says we will appropriate, especially in light of the fact that we keep saying no you won't, on a very illegal level, that the whole big picture just seems like it is a fundamental question that is being challenged in this whole process. We have a constitution that's very different. We've got the privacy and we've got the equal access issues that we have case law around, and we're looking for a way forward to challenge it, and I'm not sure what that will be, but I got some ideas.

[4:47:42 PM](#)

COMMISSIONER STREUR emphasized that he had taken an oath "to defend and uphold the Constitution of the United States against all enemies foreign and domestic" although there were things with which he did not always agree. He shared that he had taken a similar oath "to support the people of the great State of Alaska." He offered his belief that he took that role "fully as conscientiously" as the oath he had taken to uphold the U.S. Constitution. He affirmed that this was a difficult situation, and he requested that everyone work together for a solution. He declared "I do believe in providing the best care that we can for the people of the great State of Alaska and I will continue to do that as long as you let me."

[4:49:50 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:49 p.m.