

HOUSE FINANCE COMMITTEE  
February 25, 2014  
1:33 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:33 p.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair  
Representative Bill Stoltze, Co-Chair  
Representative Mark Neuman, Vice-Chair  
Representative Mia Costello  
Representative Bryce Edgmon  
Representative Les Gara  
Representative David Guttenberg  
Representative Lindsey Holmes  
Representative Cathy Munoz  
Representative Steve Thompson  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Michael Barnhill, Deputy Commissioner, Department of Administration; William Streur, Commissioner, Department of Health and Social Services; Stacie Kraly, Assistant Attorney of Law, Department of Law; Senator John Coghill; Representative Gabrielle Ledoux.

SUMMARY

SSSB 49 (FIN)

MEDICAID PAYMENT FOR ABORTIONS; TERMS

SSSB 49 (FIN) was HEARD and HELD in committee for further consideration.

#sb49

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 49 am

"An Act relating to women's health services and defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

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Co-Chair Stoltze continued deliberations on HB 49. He invited the administration to testify and introduced committee members.

Representative Wilson asked if the "medically necessary" clause could be used for both state insurance and Medicaid.

MICHAEL BARNHILL, DEPUTY COMMISSIONER, DEPARTMENT OF ADMINISTRATION, replied that the legislature had the ability to clarify a definition applying to the state's employee health plan. He offered to discuss the potential to amend the state's health care plan.

Representative Wilson appreciated the effort. She wished to clarify the definition of "medically necessary" for both Medicaid and the state health plan.

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Mr. Barnhill discussed statistics related to the state's employee health plan, AlaskaCare. He listed seven claims for induced abortions in 2010, five were denied, one was approved, reviewed and denied, and the seventh was processed incorrectly. He stated that most insurance plans required medical procedures to be deemed medically necessary. He wished to identify a more concrete and explicit definition of the term "medically necessary." He added that all claims submitted for abortion in 2011 were denied.

Mr. Barnhill stated that insurance plans preferred not to pay for care that was not certified as medically necessary. He pointed out other medical procedures that were not deemed necessary. The state employee health plan required analysis for the medical necessity of treatment. He noted that the new state health care provider, AETNA had compiled a list of procedures and treatments deemed medically necessary. Elective abortion was not covered by the state

insurance clinical policy bulletins. If a procedure was done for the convenience of a patient, it was not medically necessary. He believed that the current administration of the state plan was standard and appropriate.

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Representative Wilson appreciated the information. She stated that the process used by the state seemed sound. She wondered why a similar process was not used by Medicaid.

Co-Chair Stoltze asked if a preapproval period was similar to a waiting period.

Mr. Barnhill replied that precertification was required for some medical procedures; abortion was not included. The list of procedures was compiled by AETNA with the view that certain procedures required precertification for various reasons.

Co-Chair Stoltze asked about the approval process time required for an elective procedure.

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Mr. Barnhill replied that approval required longer than 24 hours.

Representative Wilson repeated her question.

WILLIAM STREUR, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, replied that Medicaid was an entitlement program. He stated that the program did observe allowable medical procedures in a method similar to that of the state's insurance. He mentioned the program's practice of prior authorization and retrospective review for procedures suspected to be elective rather than necessary.

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Representative Wilson understood that the regulations were undergoing a change in process. She hoped to imitate the successful state insurance practice of paying for procedures that were thoughtfully deemed medically necessary.

Commissioner Streur stated that the Medicaid process was similar to the one used by the state healthcare system. He explained that the fear of a lawsuit was present regarding denial of payment for pregnancy terminations. He offered to review the rigorous process offered to state employees by AETNA.

Representative Wilson wished to remain consistent in her position of supporting groups receiving insurance from Medicaid and those receiving insurance from other sources. She advocated for consistency among the approaches and services offered in the state.

Co-Chair Stoltze discussed the potential for litigation in many capital project proposals. He opined that a decision for public policy should not be made with litigation in mind.

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Representative Wilson argued that if one state plan was not challenged, then why not incorporate a similar method for Medicaid.

Representative Edgmon clarified that Medicaid patients were in the lower income strata. He believed that the different strata should be viewed differently.

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Commissioner Streur noted that SB 49 discussed a definition, while Mr. Barnhill discussed a process. He stated that that a published definition for abortion coverage did not exist in the state employee health plan. He agreed that comparisons of the two plans were difficult.

Mr. Barnhill agreed that abortion was not specifically defined in the state employee health plan book.

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Representative Costello asked about the process regarding a Medicaid recipient who had an abortion. She understood that the paperwork was submitted to the Department of Health and Social Services following completion of the procedure.

Commissioner Streur concurred. He noted that recipients were sometimes flown to Anchorage without knowing whether the appointment was for family planning counseling or an abortion. If an abortion was performed, the provider submitted a form stating that the pregnancy was either the result of rape or incest or medically necessary. He noted that all of the forms for the last three years were identified as "medically necessary." In 2012, he implemented strict use of the Medicaid form. In 2013, the current form was drafted and included approximately 20 examples of potential medical necessity. He added that Alaska had the highest rate of domestic violence and sexual assault in the nation.

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Representative Costello asked if the bill would change the course of events. She wondered if women on Medicaid would wait for approval to move forward with a planned abortion if the legislation were to pass.

Commissioner Streur stated that the statute would not change the process significantly. He believed that the stricter rules and parameters would be established for abortions paid for by Medicaid under the statute.

Representative Costello asked if Medicaid recipients would undergo the abortion procedure prior to the submission of the insurance paperwork. She asked the price of a medical abortion procedure.

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Commissioner Streur believed that there was no requirement for a waiting period prior to the procedure; the legislation did define which abortions would be eligible for payment. The cost of the procedure was approximately \$600.

Representative Gara asked how long Mr. Barnhill was an assistant Attorney General.

Mr. Barnhill replied 12 years.

Representative Gara asked if the greatest opportunity for lawsuit was during a violation of a Supreme Court order. He stated that a Supreme Court order defined abortions allowed

under state law. The state signed a consent decree in 2011 to define medically necessary.

Mr. Barnhill replied that people can sue any time about anything. A complaint in the United States could be heard before a court of law in any state in the country.

Representative Gara asked if it was very likely that violating a Supreme Court order would result in litigation.

Mr. Barnhill refused to testify about whether an action was very likely to result in litigation.

Representative Gara argued that a definition for medical necessity already existed in state law. He asked if the definition in SB 49 was different from that established in the Supreme Court opinion and the settlement between the state and the parties.

STACIE KRALY, ASSISTANT ATTORNEY OF LAW, DEPARTMENT OF LAW, requested further information about the consent decree.

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Representative Gara replied that the consent decree defined medically necessary shall be certified by a physician to ameliorate a condition harmful to the woman's physical or psychological health.

Co-Chair Stoltze asked for the consent decree in writing for members and sponsors to refer to.

Representative Gara responded that the consent decree included language related to harm to a woman's physical and psychological health, while the definition in SB 49 omitted the words "psychological health."

Ms. Kraly replied that the Supreme Court did articulate a list of conditions with a reference to bipolar disorder. The list was not identified as a definition of medical necessity. She wished to see the consent decree to determine whether it related to the 2001 Planned Parenthood decision.

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Representative Gara asked for an estimate for the potential litigation cost.

Commissioner Streur replied that he did not have an estimate of the cost of a potential litigation.

Representative Gara wished to review facts related to the women's health program.

Co-Chair Stoltze replied that the issue was discussed earlier.

Representative Gara wished to gain an understanding about the elimination of the women's health program from the CS earlier in the day.

Co-Chair Stoltze allowed the discussion.

Representative Gara asked the commissioner about the differences between coverage of family planning under the women's health program, which was deleted from the legislation. He asked if the women's health program covered women without children, while Medicaid extended family planning services to women with children.

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Commissioner Streur concurred; the two options were different. The "people" were not eligible for Medicaid.

Representative Gara asked if Medicaid did not cover family planning coverage for women with children at a certain income level.

Commissioner Streur replied that childless adults not eligible for Medicaid coverage under 100 percent of poverty level were few. Most adults with children had some level of coverage within Medicaid and would be eligible for family services.

Representative Gara asked about a pregnant woman without children.

Commissioner Streur replied that once a woman became pregnant, she was eligible for an array of Medicaid service upon application.

Co-Chair Stoltze requested that committee members request answers instead of validation.

Representative Gara asked if the family planning services were the same ones available under the women's health program.

Commissioner Streur believed so.

Representative Gara asked about the income limit for participation in the program for family planning services.

Commissioner Streur stated 100 percent of federal poverty level was the requirement for Medicaid; the family planning amendment removed in the morning meeting was 175 percent. A pregnant woman who qualified for Denali Kid Care (DKC) would be eligible up to 175 percent of poverty level.

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Representative Gara asked which pregnant women would not be covered by DKC.

Commissioner Streur replied that most pregnant women at or below 175 percent of poverty level would be covered by DKC. He noted that the women must apply for DKC.

Representative Gara asked which women would not be covered.

Commissioner Streur stated that exceptions existed, but he believed that most women in the mentioned parameters were covered.

Representative Gara asked if all pregnant women seeking family planning services were covered under the women's health program.

Commissioner Streur concurred.

Representative Gara understood that DKC covered approximately 65 percent of federal funding. He asked if the family planning services under the women's health program would be covered at 90 percent of federal funding.

Commissioner Streur replied yes.

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Representative Holmes asked about the regulations proposed that were similar to the legislation. She wondered about the different elements. She requested further explanation about the differences.

Commissioner Streur commented on the differences between the regulations and the bill. He assumed that the requested difference was related to the psychiatric disorder component. He stated that the decision to include the issue was difficult, but he wished to include a portion that would survive challenge for the continued movement toward a meaningful program. The language was related to a psychiatric disorder that placed a woman in imminent danger of medical impairment of major bodily function if abortion is not performed.

Representative Holmes noted earlier questions regarding the omission of mental health in the bill language.

Co-Chair Stoltze stated that Senator Coghill would share information received by the Alaska Mental Health Trust during recent discussions.

Representative Holmes wished to provide the commissioner the opportunity to address the issue.

Co-Chair Stoltze believed that the commissioner was present during the mentioned conversations.

Representative Holmes requested additional information related to a nonviable fetus and abortion.

Co-Chair Stoltze relayed that a fetus could be referred to as a baby.

Representative Holmes understood. She wished to understand the coverage available for women encountering this very difficult and rare situation.

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Commissioner Streur replied that that he believed that the procedure was covered in the unlikely event of a woman carrying a nonviable fetus.

Representative Holmes requested further confirmation from the department.

Representative Munoz asked about abortions that were not funded for reasons that were not deemed medically necessary.

Commissioner Streur expressed confidence that abortion procedures were delivered, but not paid for by insurance. He had no knowledge of the denial of abortion payments from Medicaid during the last calendar year.

Representative Munoz asked if all medically funded abortions were approved by Medicaid regardless of medical necessity.

Commissioner Streur disagreed. He stated that the form required for reimbursement required certification of medical necessity by the physician performing the procedure.

Representative Munoz asked if the commissioner was aware of any procedures rejected for Medicaid reimbursement.

Commissioner Streur replied that a request filed without the certification was denied, however, requests without certification were not received in the last year.

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Representative Edgmon discussed data related to pregnancies in Alaska. He read from literature provided by the Guttmacher Institute that approximately 50 percent of pregnancies were unwanted at a huge cost absorbed by state agencies. The majorities of unwanted pregnancies were unintended and could have been prevented with additional family planning services.

Commissioner Streur was familiar with the source. He stated that he read the article and noted that the assumptions made by the large research institute could not be corroborated or denied.

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Representative Edgmon wondered if more family planning services could reduce the number of unwanted pregnancies.

He wondered if increased family planning services might save the state money.

Co-Chair Stoltze asked about the parameters of family planning.

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SENATOR JOHN COGHILL stated that the Guttmacher Institute was credible and pro-abortion. He was unsure of related statistics in Alaska. He found it difficult to believe that 50 percent of pregnancies in Alaska were unintended and unwanted. He noted that the discussion of family planning begged the question "are our families deeply involved the way they should be." He wondered if Planned Parenthood was the optimal location for family planning resources, as their main goal was family planning for contraception and abortion, which he considered a method of population control rather than family planning.

Senator Coghill stated that Planned Parenthood was the aggressive litigant in every abortion case in Alaska proposing that abortion be performed with the lowest possible threshold to entrants. He understood that the goal of Planned Parenthood was to protect women's right to choose. He agreed that women deserved the right to choose, but that right was not a financial responsibility of government. He opined that the cost of an elective abortion was the responsibility of the woman. The state would provide funds for preventative services and education related to pregnancy. He agreed that unintended pregnancies should be prevented by wise choices

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REPRESENTATIVE GABRIELLE LEDOUX, explained that the bill's attempt was to define the term "medically necessary" as related to an abortion procedure. She argued that a discussion about family planning was better suited to a budget discussion for the Department of Health and Social Services. She stated that the proposed legislation was simple and ought not to be decorated with family planning amendments.

Representative Edgmon pointed out the economic perspective of his argument. He wondered if state savings could be realized with a reduction of unwanted pregnancies. He

believed that a correlation existed between state savings and family planning.

Commissioner Streur spoke to family planning aspect of the bill. He noted that his response to Representative Gara related to family planning was relevant to Medicaid and DKC. He stated that family planning services were offered in most public health centers. The services covered at 90 percent/10 percent were available to any woman presenting for diagnosis of general reproductive health conditions, diagnosis of sexually transmitted diseases and infections and for contraception. All other family planning services were covered at 50 percent. He stated that the public health center staff distributed contraception and had for many years at a cost of \$800 per participant.

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Representative Guttenberg asked if the commissioner participated in the creation of the list of acceptable reasons for an abortion.

Commissioner Streur responded in the negative.

Representative Guttenberg asked if there was another medical procedure that required a similar list of prerequisites.

Commissioner Streur answered that most medical procedures were approved with prior authorization or retrospective review utilizing specific criteria. He noted that the manner of publishing the requirements was different for the abortion procedure.

Representative Guttenberg asked if another procedure was described or delineated similarly in statute.

Commissioner Streur replied that there was limited scope in regulation, but he could not speak to statutorily requirements.

Senator Coghill surmised that since Row vs Wade there had not been another similarly litigated health topic. He noted that the definition of medically necessary emanated from a consent decree through a Supreme Court Case. He pointed out language protecting the doctor's opinion. The goal was to protect the life of the mother to the extent possible.

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Representative Guttenberg asked about Tay-Sachs disease.

Senator Coghill did not know about Tay-Sachs disease.

Representative Guttenberg read from a dictionary, that Tay-Sachs disease was a "hereditary disorder caused by the absence of an enzyme needed to break down fatty material leading to death in childhood." He wondered why the disease was not included in the list of approved medically necessary reasons for compensated abortion.

Representative Ledoux replied that the item related to the death of a child and not the mother. The list of medically necessary diseases included those related to the death of the mother, not the death of the child.

Representative Guttenberg asked how that was different from sickle cell.

Senator Coghill relayed that the sickle cell anemia listed was a concern to the mother.

Representative Holmes MOVED friendly AMENDMENT related to Senator Coghill's testimony. She corrected that he had meant the responsibility of the woman and man when he discussed payment for an elective abortion.

Senator Coghill appreciated the correction.

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Representative Wilson asked about the process between the patient, her doctor and the state.

Commissioner Streur replied that the procedure was first performed. The provider then submitted a form attesting to the medical necessity of the procedure. Without the form, the physician would not be paid for the procedure.

Representative Wilson expressed confusion about the process and how the bill would change it.

Commissioner Streur replied that the determination of medical necessity could be conducted at any time. He stated that the medical review of a chart could occur at any time.

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Representative Wilson opined that the bill addressed the medical necessity of one procedure alone. She wondered if a doctor would deny services to a woman if the procedure was not deemed medically necessary.

Commissioner Streur replied that the doctor would make the decision to either perform the procedure or submit the form certifying medical necessity or receive other means of payment. The choice would be left to the woman to go forward with the procedure or to remain pregnant.

Representative Wilson posed a scenario in which the abortion procedure requested was not medically necessary. She asked about additional means of payment for abortion services. She wondered what would happen to the woman who chose to have an abortion despite the doctor's denial of medical necessity.

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Commissioner Streur replied that other funding sources existed to help women in need. He could not speak about the safety of procedures offered at discount rates; he could only speak to Medicaid.

Representative Wilson commented that the Alaska Bureau of Vital Statistics provided a form related to abortion procedures. She wondered about the "other" category listed on the form in which 766 abortions were documented in 2012.

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Commissioner Streur offered to visit the Alaska Bureau of Vital Statistics to obtain and provide the requested information.

Representative Gara stressed the goal of limiting the number of unwanted pregnancies and abortions. He asked about the difference in coverage between DKC and the women's health program. He understood that DKC allowed coverage during pregnancy up to 175 percent of the poverty

level with the option for family planning services. He expressed interest in the family planning options available for women who were not pregnant and wished to avoid pregnancy. He noted that an adult woman was not eligible for DKC unless she was pregnant.

Commissioner Streur agreed.

Representative Gara pointed out that a non-pregnant adult without children was not eligible for family planning services under DKC.

Commissioner Streur concurred.

Representative Gara asked if the women's health program allowed a non-pregnant childless woman contraceptive and other family planning services.

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Commissioner Streur replied that a non-pregnant woman who was not receiving Medicaid could receive services through a public health center.

Representative Gara asked specifically about the women's health program.

Commissioner Streur stated that an expansion of the program was necessary for the inclusion of women who were not eligible for Medicaid; the expansion would be similar to that discussed for Medicaid.

Representative Gara asked if Alaska applied to the federal government for the amount eligible through the American Affordable Care Act, would a non-pregnant adult woman receive contraceptive services under the women's health program, but not under DKC.

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Representative Gara asked again if the state applied to obtain the women's health coverage program up to 175 percent of the poverty level as was allowed under the

American Affordable Care Act would family planning services including contraception be covered for non-pregnant women in the state.

Commissioner Streur replied yes.

Representative Gara asked if the option available under an expansion of the women's health program to non-pregnant adult women were unavailable in the state through DKC.

Commissioner Streur agreed.

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Representative Munoz asked about Medicaid and the 90/10 split available for three categories of service. She wondered if the population would be eligible for other services at the 50/50 split.

Commissioner Streur responded that the three categories for the 90/10 split included the diagnosis of general reproductive health conditions, the diagnosis of sexually transmitted infections and contraception. He noted that family planning related services such as the treatment of the diagnosed conditions were eligible for the normal federal participation rate of 50 percent.

Representative Munoz asked if the legislation's fiscal note included the 50/50 cost to the state.

Commissioner Streur stated that he was unsure, but would provide the answer to the committee.

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Senator Coghill appreciated the time spent on the issue. He appreciated the issue's complexity. He explained the state's agreement with the federal government to care for people under certain economic conditions. He noted that a process was defined regarding medical necessity. The narrow legislation was highly litigated and required fine attention to the definition of medical necessity. He added that peripheral issues of philosophy and practice added to the complexity. The goal of the sponsor was to allow for state funded abortions that benefited the health and life of the mother.

Representative Ledoux thanked the committee. She opined that the discussion assumed that care provided in a public health clinic was substandard. She stressed that the clinics provided family planning services and she herself had taken advantage of services from the Kodiak public health clinic.

Co-Chair Stoltze stated that he did not want to rush the committee through the process. He opined that proper public process would require additional debate and consideration of the legislation. He noted the submission of an amendment that would be discussed in a future meeting.

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Co-Chair Stoltze believed that the fiscal note was accurately expressed.

Co-Chair Stoltze discussed the next day's schedule.

SSSB 49 (FIN) was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[2:59:30 PM](#)

The meeting was adjourned at 2:59 p.m.