

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 29, 2013

1:09 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Gabrielle LeDoux  
Representative Lance Pruitt  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Charisse Millett

**OTHER LEGISLATORS PRESENT**

Representative Lora Reinbold

**COMMITTEE CALENDAR**

HOUSE BILL NO. 173

"An Act defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

- HEARD & HELD

HOUSE BILL NO. 102

"An Act relating to property exemptions for retirement plans, individual retirement accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to the rights of judgment creditors of members of limited liability companies and partners of limited liability partnerships; relating to the Uniform Probate Code, including pleadings, orders, liability, and notices under the Uniform Probate Code and the Alaska Principal and Income Act, the appointment of trust property, the Alaska Uniform Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to the tax on insurers for life insurance policies; relating to insurable interests for certain insurance policies; relating to restrictions on transfers of trust interests; relating to discretionary interests in irrevocable trusts;

relating to the community property of married persons; and amending Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of Evidence."

- BILL HEARING CANCELED

HOUSE BILL NO. 73

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

- BILL HEARING CANCELED

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 22(FIN)

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release in a prosecution for stalking or a crime involving domestic violence or for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of 'sex offense' regarding sex offender registration; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to forms for sexual assault, stalking, and domestic violence protective orders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a) and (b), Alaska Rules of Evidence; and providing for an effective date."

- BILL HEARING CANCELED

HOUSE BILL NO. 140

"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 173

SHORT TITLE: RESTRICT MEDICAID PAYMENT FOR ABORTIONS

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

03/15/13	(H)	READ THE FIRST TIME - REFERRALS
03/15/13	(H)	JUD, FIN
03/29/13	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

HARMONY SHIELDS, Staff  
Representative LeDoux  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 173, on behalf of the sponsor, Representative LeDoux.

SUSAN RUTHERFORD, M.D.  
Redmond, Washington

**POSITION STATEMENT:** During hearing of HB 173, provided suggestions.

CHAD HUTCHISON, Staff  
Senator John Coghill  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Spoke on behalf of Senator Coghill, sponsor of SB 49, companion to HB 173.

KEVIN G. CLARKSON, Attorney  
Brena, Bell & Clarkson, P.C.  
Anchorage, Alaska

**POSITION STATEMENT:** During hearing of HB 173, answered questions.

NANCY BIENVENUE, Registered Nurse (RN)  
Fairbanks, Alaska

**POSITION STATEMENT:** During hearing of HB 173, testified that the definition of "medically necessary" is long overdue.

## **ACTION NARRATIVE**

[1:09:06 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Keller, Lynn, Foster, and LeDoux were present at the call to order; Representatives Pruitt and Gruenberg arrived as the meeting was in progress; and Representative Millett was excused. Representative Reinbold was also in attendance.

### **HB 173-RESTRICT MEDICAID PAYMENT FOR ABORTIONS**

[1:11:02 PM](#)

[Contains discussion of SB 49]

CHAIR KELLER announced that the only order of business would be HOUSE BILL NO. 173, "An Act defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

[1:12:17 PM](#)

REPRESENTATIVE LEDOUX, speaking as the sponsor of HB 173 which is identical to SB 49, explained that she introduced HB 173 because she believes there should be a definition of a "medically necessary abortion." She characterized HB 173 as a fiscal bill not one of pro-life or pro-choice. She questioned why state dollars should be spent on a procedure that isn't health or life threatening. The bill, she opined, would bring clarity to a previously [undefined] term.

[1:14:41 PM](#)

HARMONY SHIELDS, Staff, Representative LeDoux, Alaska State Legislature, speaking on behalf of the sponsor, presented HB 173 as follows:

HB 173 has really been years in the making and comes to us today after thorough, specific clinical review from legal and medical experts. It is important to note that we are not restricting women from having abortions, we are simply defining what a medically necessary abortion is. HB 173 is about bringing order

to disorder. We acknowledge that Alaska has a constitutional guarantee to provide medically necessary care to all qualified people of limited means, including women requesting medically necessary abortions. HB 173 will amend Alaska Statute 47.07 to add a new section outlining a medical definition for abortions under payment of Medicaid. As Representative LeDoux had mentioned, why should our tax dollars be spent on a medical procedure that is not life threatening? If I wanted to go in and have a cosmetic change done to my body, I'd have to pay for it myself because it would not be considered medically necessary. A few years ago I had injured my back and having severe back pain that was so bad I could hardly walk, I finally went in to the doctor. The doctor told me that I needed an MRI [magnetic resonance imaging], but because it wasn't deemed medically necessary for this MRI ... I had to pay for the MRI and through the results of the MRI it showed that I had three fractures on my spine and then it was deemed medically necessary and the treatment from then on out was then covered under Medicaid. So, clearly for other procedures out there we do have a definition that is outlined, but for abortions we don't. And with this bill we're not restricting women from having abortions but rather we're putting a definition out that what is deemed medically necessary for Medicaid paid abortions.

Chairman and committee members I respectfully ask that you support the bill.

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REPRESENTATIVE GRUENBERG, drawing from Ms. Shields back example, related his understanding that the definition of "medically necessary" controls access to the procedure.

MS. SHIELDS replied yes.

CHAIR KELLER then offered his understanding that the bill specifies the definition of an elective abortion, but whether or not that definition controls the situation isn't addressed by the bill. By defining the term "elective" confusion is removed, he said.

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REPRESENTATIVE LEDOUX emphasized that there are already definitions for other procedures, as illustrated by Ms. Shields example. Not everything is medically necessary as not everything is life threatening or health threatening, she stressed.

CHAIR KELLER again opined that defining the term doesn't control whether or not someone is able to obtain the treatment rather this is an issue regarding who pays the bills.

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REPRESENTATIVE GRUENBERG noted that for some people who can't pay for the treatment, the only way to obtain the treatment is by having Medicaid cover it. Therefore, by controlling whether Medicaid covers the treatment controls whether those people obtain the treatment.

The committee took a brief at-ease.

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SUSAN RUTHERFORD, M.D., relayed that she is board certified in both [obstetrics and gynecology] OB/GYN and maternal fetal medicine. She further relayed that her almost 35-year career since medical school has included 12 years of active duty in the U.S. Navy during which she practiced OB/GYN and maternal fetal medicine; private practice; and has been a hospital medical director of women's and children's services. In her almost 35 years of experience in almost exclusively high risk pregnancy management, Dr. Rutherford said she only had one patient, at 16 weeks gestation, who she felt would have died if the pregnancy wasn't ended. The case occurred when she worked for the U.S. Navy and the U.S. Navy paid for the procedure, which she felt was appropriate. Dr. Rutherford then pointed out that almost all of the medical problems outlined in the bill wouldn't require termination of pregnancy. Therefore, this list, she opined, shouldn't be used to establish an expectation that compels abortion. However, most of the specified medical issues are associated with challenges requiring much careful management, patient compliance, work, and potential risks to mother and baby.

DR. RUTHERFORD stated her belief that although HB 173 accomplishes what is intended, she would change the medical list slightly as follows. First, she suggested grouping the

diagnostic list in a medically logical manner such that similar organ systems or disorders are listed together. Second, she suggested deleting kidney infection from the list for which she could find no justification in the medical literature or support from colleagues in the profession. In fact, kidney infections are the most common non-obstetric reason for hospitalization during pregnancy. Third, she suggested adding a maternal history of myocardial infarction, gestational trophoblastic disease, and chorioamnionitis.

DR. RUTHERFORD then turned to Ms. Shields' back example and pointed out that [an MRI] is a diagnostic test for which there is time. Furthermore, there could be an appeal process. In contrast, decisions about ending a pregnancy must occur in a fairly short timeframe. Therefore, the last portion of the bill specifying other physical disorders would need to establish a fairly expeditious review process that would probably be performed by maternal field experts of which there are several in Anchorage. Dr. Rutherford then questioned whether the state already has a law that specifies it will only pay for medically necessary [abortions] or is the question before the committee whether to establish such a law.

[1:26:34 PM](#)

CHAD HUTCHISON, Staff, Senator John Coghill, Alaska State Legislature, speaking on behalf of Senator Coghill, sponsor of SB 49, companion to HB 173, explained that Alaska does have a broad and vague definition of "medically necessary" that the sponsor believes is so broad that elective procedures are being included under that definition. Therefore, the bill intends to narrow the focus, specifically to limit it to physical conditions pursuant to the recommended language by the Hyde Amendment and the 2001 Planned Parenthood of Alaska case.

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DR. RUTHERFORD related her understanding that in the back example the state has some medically necessary rules. Therefore, if the desire is for all elective abortions to be paid for to improve access, then that law should be changed. Since there is a medically necessary law in Alaska, it's a matter of developing a fair definition, she opined. From her medical standpoint, she said she offered suggestions to make the list one that is generally accepted in the medical community as a reason to consider abortion, although most of the situations are not life threatening.

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REPRESENTATIVE GRUENBERG noted the list seems to include strictly physical ailments while any medical condition that could potentially, because of depression, be life threatening is absent. He then inquired as to Dr. Rutherford's opinion on adding something concerning the mental health of the mother, particularly if it can be shown there is a high likelihood that death could result if the pregnancy weren't terminated.

DR. RUTHERFORD informed the committee that for the treatment of depression during pregnancy, antidepressants are used as the risk to the fetus is miniscule. She highlighted that untreated depression can be dangerous whether the woman is pregnant or not because the pregnancy specifically is not the reason for a clinical depression requiring medication. She recalled a Senate hearing on the companion bill during which Dr. Coleman presented her research conclusions, which are the same as other researchers around the world, that termination of a pregnancy actually worsens the mental health status of the mother. Although she acknowledged that one could find folks arguing the other side, the evidence seems to be leaning toward [the finding] that abortion will only worsen the situation. Dr. Rutherford highlighted that the list in HB 173 includes an "other" category. She then suggested that having the opinion of an expert who treats high risk pregnancies prior to the approval [of an abortion] would be a reasonable approach. In further response to Representative Gruenberg, Dr. Rutherford confirmed that she is suggesting that if there is evidence [of mental illness, an abortion] should be determined on a case-by-case basis through expert examination and testimony.

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MR. HUTCHISON explained that that there has been a definition of "medically necessary," although no one has actually clarified what it means. The 2001 Planned Parenthood of Alaska decision didn't provide a clear answer either. He noted that he would ensure that committee members' had the packet Senate members' had to provide context for the bill. The statutory foundation of HB 173 is taken from the federal Hyde Amendment, which is a rider on the federal appropriations bill regarding the limitation of federal funds for abortions. The most recent executive order addressing the Hyde Amendment was attached to the Patient Protection and Affordable Care Act in 2010. According to President Obama, "It is necessary to establish an

adequate enforcement mechanism to ensure that federal funds are not used for abortion services, except in cases of rape or incest or when life of a woman will be endangered consistent with the longstanding federal statutory restriction that is commonly known as the Hyde Amendment." Therefore, any bill proposed has to include the aforementioned foundational standards such that exceptions for situations of rape, incest, and when the pregnancy threatens the life of the mother.

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MR. HUTCHISON, in response to Chair Keller, informed the committee that all states except for South Dakota are in compliance with [the standards mentioned in the Patient Protection and Affordable Care Act]. Alaska, he stated, needs to base its law on the federal Hyde Amendment and the 2001 Planned Parenthood of Alaska decision as that's the legal box within which it will operate. Furthermore, the Alaska State Constitution provides added protection, according to the 2001 Planned Parenthood of Alaska case, which is incorporated in HB 173 through the language referring to the physical health of the mother. Many of the provisions were taken directly from Alaska Supreme Court Justice Fabe's opinion, which is why they are categorized the manner in which they are in the bill. As long as the conditions are based on neutral criteria, directly related to the healthcare program, the [bill] is safe in terms of equal protection. Again, the bill only addresses medically necessary abortions for which payment is received by Medicaid. The [goal] is to determine the difference between elective abortions and medically necessary abortions as the sponsor has reasonable belief that both are now being [processed and paid for by Medicaid] under the current definition of medically necessary. However, elective procedures aren't supposed to be covered by Medicaid. [Senator Coghill], he related, further believes that a large portion of abortions are purely elective. Mr. Hutchison clarified that Medicaid doesn't cover elective procedures, including elective abortions. Medicaid, however, is required to fund medically necessary procedures including medically necessary abortions. The problem, he stressed, is the lack of knowledge/understanding as to what's a truly medically necessary abortion under the existing legal standards.

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MR. HUTCHISON said he would provide studies from the Guttmacher Institute, which outlines the standards various states follow. Currently, 32 states plus the District of Columbia follow only

the federal standard, which is essentially the Hyde Amendment. Therefore, they allow funding of abortions in the event of life endangerment, rape, and incest. Another 17 states, including Alaska under the 2001 Planned Parenthood of Alaska case, fund all or most medically necessary abortions. He then highlighted the language on page 16 of the aforementioned case, as follows: "The state having undertaken to provide healthcare for poor Alaskans must adhere to neutral criteria in distributing the care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public healthcare program." The aforementioned, he opined, is all that's trying to be accomplished with HB 173 that is to have neutral criteria based on recommendations by doctors as to whether the application [of an abortion] is medically necessary.

MR. HUTCHISON explained that the sponsor believes elective abortions are being covered under the existing definition of medically necessary as supported by statistics from the Alaska Bureau of Vital Statistics. He referred to a document from the Alaska Bureau of Vital Statistics entitled "Induced Termination of Pregnancy Statistics," which provides the number of induced termination of pregnancy statistics for 2011. In 2011 there were a total of 1,627 induced terminations of which 623 were paid for by Medicaid, which equates to about 38.3 percent were paid under Medicaid. In theory, those induced termination of pregnancies should've only been cases in which the pregnancy was the result of rape or incest or threatened the life of the mother, otherwise known as medically necessary abortions.

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MR. HUTCHISON then referred to "TABLE 3. Percentage distribution of women having an abortion, by their most important reason for having the abortion, 2004 and 1987" of the Guttmacher Institute's article entitled "Reasons Why U.S. Women Have Abortions: Quantitative and Qualitative Perspectives." He highlighted that the table relates that in 2004 4 percent of the women stated a physical problem with health as the most important reason for having an abortion. Those respondents who cited being a victim of rape or incest as the most important reason for having an abortion was less than 0.5 percent. Therefore, according the Guttmacher Institute study the primary reasons of rape, incest, or physical health only amounted to 4.5 percent of the abortions. In comparison, 38.3 percent of [abortions in Alaska are funded by Medicaid, which should only cover cases in which the pregnancy was the result of rape or incest or threatened the life of the mother]. Mr. Hutchinson

said the aforementioned data illustrates a huge gap and that of the 38.3 percent a lot of elective procedures are being covered. This must be rectified, he emphasized, adding that is why the bill is before the committee. The bill makes clear distinctions between elective procedures and truly medically necessary procedures, which is why the bill specifies the conditions. Mr. Hutchison said, "And we can do it as long as it's based on neutral criteria directly related to the health care industry and that's what we anticipate we're going to do."

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REPRESENTATIVE LEDOUX recalled that there has been testimony from Planned Parenthood representatives saying that anything a woman wants is deemed medically necessary.

MR. HUTCHISON replied yes, adding that Planned Parenthood representatives were unable to provide a clear answer as to the definition of an elective procedure or an elective abortion, which he opined was telling.

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REPRESENTATIVE PRUITT asked who currently determines what is medically necessary and what guidelines are used.

MR. HUTCHISON answered that the determination is made with the doctor and that will continue to be the case under the proposed bill. With regard to the guidelines used, he deferred to the department or physicians.

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KEVIN G. CLARKSON, Attorney, Brena, Bell & Clarkson, P.C., in response to Representative Pruitt, concurred that the determination of medically necessary is made by the doctor only. However, there is no definition that the doctor uses other than his/her own medical knowledge. The problem, he ventured, is that one of the most prominent abortion providers in Alaska, Dr. Whitefield, has testified under oath in three different abortion-related cases in which he has said he defines medical necessity to include any situation in which he determines the woman's pregnancy is "an affront to her." Mr. Clarkson said to Dr. Whitefield "an affront" to the pregnant woman means the woman simply doesn't want to be pregnant as the pregnancy might interfere with the woman's education plans, work plans, or future independence. He opined that such abortions are elective

abortions and that Dr. Whitefield has expanded the definition of medically necessary to such a broad extent that he certifies an abortion as a medical necessity for any woman who comes to him without private funding to pay for the abortion. In fact, in a 2002 deposition Dr. Whitefield could only think of about 10 times since 1985 in which he had failed to certify medical necessity for a woman who came to him without private funding to pay for the abortion so as to trigger Medicaid funding. The aforementioned, he said, is why the definition of medically necessary is needed.

MR. CLARKSON reminded the committee that Medicaid is a cooperative program between the federal and state governments and the Hyde Amendment limits how federal funding can be used to pay for abortions. Medicaid only pays for medically necessary care, and thus limiting Medicaid funding to medically necessary care isn't a new or unique concept. In fact, the state's regulations, 7 AAC 105.100, are consistent with the federal program such that it specifies that the department will pay for a service only if it's medically necessary. He offered his understanding that the definition of medically necessary for an abortion is being developed now because the practice of the providers in which everything is being deemed medically necessary. He highlighted that the definition must be within the context of what the Alaska Supreme Court has said is required under the Alaska State Constitution. With regard to the 2001 Planned Parenthood of Alaska case, the Alaska Supreme Court said that the Alaska State Constitution requires that a pregnant woman seeking medical care be treated similarly [to others seeking medical care] if they are similarly situated. Therefore, a pregnant woman carrying her pregnancy to term needs medically necessary care for her pregnancy and the birth of her baby. However, he opined, a pregnant woman who desires to have an abortion isn't necessarily in need of medically necessary care unless the woman has a medical condition or the [type of] pregnancy makes the abortion medically necessary.

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MR. CLARKSON specified that the issue in the 2001 Planned Parenthood of Alaska case was that a regulation forbidding the state to pay, through Medicaid, for any abortions was adopted. The problem with that regulation, he explained, was that it eliminated all abortion funding through the Medicaid program, including those abortions that were medically necessary. The Alaska Supreme Court heard much expert medical testimony to establish that there are some medical conditions that make

abortion medically necessary. Since the state Medicaid program provides funding to those pregnant women who want to carry their pregnancy to term, the program must also provide funding to pregnant women who have a medical need for an abortion. The court has not, however, defined medical necessity for an abortion because defining it isn't a constitutional issue but rather a medical issue. The court, in the 2001 Planned Parenthood of Alaska case, instead simply summarized all of the medical testimony it received regarding the various medical conditions that would make an abortion medically necessary to say that there are abortions that are medically necessary. The question then becomes what is the state or the legislature entitled to do with respect to defining medical necessity for an abortion. According to the Alaska Supreme Court's decision, the state has the ability to define medical necessity for abortion as long as it includes neutral criteria, which the courts have said medically necessary is a neutral criterion. To define medical necessity in a neutral manner, one must use standard and neutral medical terms and concepts, which is why the committee is obtaining the medical testimony it is. This isn't a definition of medical necessity from a group of politicians, but rather the politicians are drawing upon medical expertise to define the term. The aforementioned is acceptable from a constitutional standpoint because the definition is related to the purpose of a Medicaid program the purpose of which is to provide medically necessary care. In conclusion, Mr. Clarkson said that there is no constitutional impediment to the legislature defining medical necessity for abortions that will be paid for through the Medicaid program as long as the legislature draws upon standard accepted medical knowledge in doing so, which he opined the committee is doing.

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CHAIR KELLER related his understanding that Medicaid has an interest in states only paying for procedures that are legal under federal law. Therefore, he questioned why the federal government wouldn't respond to [the situation in Alaska]. He asked if the federal government would respond if a state were to use Medicaid funding to pay for facelifts, sex change operations, or other procedures that are clearly elective.

MR. CLARKSON, noting that he can't predict the federal reaction, ventured that the Medicaid program is a cooperative program that includes federal funds and matching state funds. Therefore, the state has the ability to control how the state's money is used within the Medicaid program and within certain parameters. Once

a state elects to participate in Medicaid, then it must comply with Title 19 of the federal law. Under the federal law, there are certain things for which the state has to pay including pregnancy- and childbirth-related care. The Alaska Supreme Court's ruling in 2001, he pointed out, was with regard to how state monies in the Medicaid program will be used. The ruling stated that because the state is required to pay for pregnancy- and childbirth-related care using the federal monies, the state monies have to be used for medically necessary abortion care. "There is no way to reasonably read the Alaska Supreme Court's 2001 decision to require anything other than the payment for medically necessary abortions. The court used the phrase 'medically necessary' 34 different times in its opinion. And the court specifically said this case does not relate to elective or non-medically necessary abortions," he stated.

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REPRESENTATIVE LEDOUX questioned why, after the 2001 Supreme Court decision, the department administering Medicaid didn't develop regulations similar to HB 173.

MR. CLARKSON related his understanding that although there were some efforts to draft a regulatory definition of medically necessary similar to what's proposed in HB 173 and SB 49, those efforts didn't come to fruition for some reason. In further response to Representative LeDoux, he said that in his opinion there was no legal impediment to the department [drafting a regulatory definition of medically necessary].

[2:00:22 PM](#)

NANCY BIENVENUE, Registered Nurse (RN), began by informing the committee that she is the former chief executive officer of the CareNet Pregnancy Center of the Tanana Valley, which is a faith-based nonprofit that offers life affirming assistance to women facing unplanned pregnancy. She further informed the committee that since 1977 she has worked in women's health, including labor and delivery and obstetrics. She then related personal testimony that in 1975 she chose abortion for her first child while in nursing school in Texas. Although she was prepared and expected to pay for the abortion, she was told that the state would pay for it. Ms. Bienvenue emphasized that elective means elective and reminded the committee of the statistics Mr. Hutchison provided earlier. The notion that a physician would say that medically necessary is anything that's an affront to a woman's life or health makes a mockery of the legal system and

sadly it has been happening since Roe v. Wade and Doe v. Bolton. She opined that this definition of medically necessary is long overdue as it should've been addressed at the inception of a woman's right to an abortion. She related her experience with women at the CareNet Pregnancy Center who chose an abortion and receive Denali KidCare, although the women didn't make any references to financial need.

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REPRESENTATIVE LEDOUX asked whether Dr. Rutherford can state clearly a medically necessary abortion versus a non medically necessary abortion.

DR. RUTHERFORD answered yes, there is that distinction. She pointed out that a diagnosis code has to be attached to the medical billing, which would reveal whether the abortion was medical or elective. If there weren't medical records to support a medically necessary abortion and it was being billed under an erroneous diagnosis code, then the [physician] could be prosecuted for fraud.

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CHAIR KELLER asked whether a woman could have an extreme psychological condition for which a doctor could prescribe an abortion. He further asked what conditions a doctor could use in legal language to justify an abortion if the doctor determines the psychological element is sufficient enough to endanger the life of the woman.

MR. HUTCHISON offered his and Senator Coghill's belief that mental and psychological conditions shouldn't be included in the definition of medically necessary. The aforementioned is based on testimony in the Senate from expert witnesses who have stated that mental and psychological issues shouldn't be included in the definition for a medically necessary abortion.

REPRESENTATIVE LEDOUX recalled that Dr. Rutherford's testimony stated that there is research with respect to depression that an abortion would exacerbate the [depression].

MR. HUTCHISON concurred and added that the Senate heard testimony from Dr. Coleman regarding her studies on that issue.

[HB 173 was held over.]

2:09:16 PM

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:09 p.m.