

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 13, 2013

2:02 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Lesil McGuire, Vice Chair  
Senator Fred Dyson  
Senator Donald Olson  
Senator Bill Wielechowski

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARINGS

**Board of Governors of the Alaska Bar**

William Gordon

- CONFIRMATION ADVANCED

**Commission on Judicial Conduct**

Robert Groseclose

- CONFIRMATION ADVANCED

SENATE BILL NO. 49

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

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 49

SHORT TITLE: MEDICAID PAYMENT FOR ABORTIONS; TERMS

SPONSOR(s): SENATOR(s) COGHILL

02/11/13	(S)	READ THE FIRST TIME - REFERRALS
02/11/13	(S)	JUD, FIN
02/15/13	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/15/13	(S)	JUD, FIN
02/27/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/27/13	(S)	Heard & Held
02/27/13	(S)	MINUTE(JUD)
03/04/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/04/13	(S)	Heard & Held
03/04/13	(S)	MINUTE(JUD)
03/05/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/05/13	(S)	Heard & Held
03/05/13	(S)	MINUTE(JUD)
03/11/13	(S)	JUD AT 5:00 PM BELTZ 105 (TSBldg)
03/11/13	(S)	Heard & Held
03/11/13	(S)	MINUTE(JUD)

#### **WITNESS REGISTER**

WILLIAM GORDON, Appointee  
Board of Governors of the Alaska Bar  
Salcha, Alaska

**POSITION STATEMENT:** Answered questions as appointee to the Board of Governors of the Alaska Bar

ROBERT B. GROSECLOSE, Esq., Appointee  
Commission on Judicial Conduct  
Fairbanks, Alaska

**POSITION STATEMENT:** Answered questions as appointee to the Commission on Judicial Conduct.

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

**POSITION STATEMENT:** Provided answers to the questions committee members asked during the previous discussions of SB 49.

#### **ACTION NARRATIVE**

2:02:44 PM

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 2:02 p.m. Present at the call to order were Senators Dyson, Wielechowski, McGuire, and Chair Coghill.

CHAIR COGHILL stated that it was not his intention to hear SJR 9 today.

**CONFIRMATION HEARINGS**  
**Board of Governors of the Alaska Bar**

[2:04:02 PM](#)

CHAIR COGHILL announced the first order of business would be confirmation hearings. He asked Mr. Gordon to introduce himself and tell the committee why he wanted to serve on the Board of Governors of the Alaska Bar.

[2:04:38 PM](#)

WILLIAM GORDON, Appointee, Board of Governors of the Alaska Bar, explained that he developed an interest in the affairs of the Alaska Bar primarily through the knowledge he gained as a member of the Alaska Judicial Council. During that time he had the opportunity to interview top attorneys in the state and he learned a great deal about the profession, the rules they live by, and some of the frustrations of the job. This experience hopefully will help him be a successful and effective member of the board.

MR. GORDON relayed that he is a lifelong Alaskan who has a good knowledge of the state, its people, and some of their concerns, which he will bring to the board's attention should the need arise. He noted that his full resume should be included in the members' packets. He said he has attended two meetings thus far and found them very interesting.

CHAIR COGHILL thanked Mr. Gordon for being willing to serve.

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SENATOR OLSON joined the committee.

MR. GORDON continued to say that he's quite conservative compared to many members of the bar, but he's found they are generally very open minded and represent the state's best interest, particularly with regard to judicial appointments.

[2:09:16 PM](#)

SENATOR WIELECHOWSKI disclosed that he was a member of the Alaska Bar. He thanked Mr. Gordon for putting his name forward, and asked his philosophy about the changes he thinks need to be made within the bar association.

MR. GORDON responded he didn't have a position but he found it curious that in each of the past four years the bar association has had to go to the expense of preparing for a sunset review. This is a statutorily created licensing agency that operates outside the Executive Budget Act, and while it's appropriate that the legislature would want to speak to the bar association it could probably be done less often and with less expense for both the Legislative Affairs Agency and the bar itself.

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CHAIR COGHILL found no objection and informed Mr. Gordon that the committee would forward his name to the full body for consideration.

### Commission on Judicial Conduct

CHAIR COGHILL asked Mr. Groseclose to introduce himself and tell the committee why he wanted to serve on the Commission on Judicial Conduct.

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ROBERT "Bob" GROSECLOSE, Appointee, Commission on Judicial Conduct, said he was born and raised in Fairbanks. He returned after university graduation and has worked in private practice since May of 1976. He is a partner in the firm Cook, Schumann & Groseclose, Inc. He relayed that he served in various capacities with the bar association and between 2000 and 2006 he worked as an attorney member of the Alaska Judicial Council. He looked forward to serving on the Commission on Judicial Conduct. The first meeting he would attend was April 26.

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CHAIR COGHILL asked about the process for watching a judge who may have exercised questionable conduct.

MR. GROSECLOSE said the process starts with a complaint, which is then investigated according to statute and court rules. The judge is able to respond through a due process mechanism and the matter is either resolved or it goes to a hearing by the commission. The commissioners can either serve as the arbitration panel or a master is appointed, and the final decision is subject to Alaska Supreme Court oversight. The nature of the outcome is typical of any occupational setting where a claim of deficiency in office is explored and resolved. There have been very few disciplinary resolutions, which speaks to the quality of the judicial selection process in this state.

CHAIR COGHILL asked if the commission had oversight of magistrates through Supreme Court judges.

MR. GROSECLOSE said his understanding is that it is strictly judges.

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SENATOR MCGUIRE moved to forward with individual recommendations the name Robert Groseclose as a member of the Commission on Judicial Conduct to the full body for consideration.

CHAIR COGHILL announced that without objection the name Robert Groseclose would be forwarded to the full body for consideration.

CHAIR COGHILL restated that it was not his intention to hear SJR 9 today.

**SB 49-MEDICAID PAYMENT FOR ABORTIONS; TERMS**

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CHAIR COGHILL announced the consideration of SB 49.

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WILLIAM STREUR, Commissioner, Department of Health and Social Services (DHSS), provided answers to questions the committee raised during previous discussions of SB 49.

1. How are adoptions playing out, what does it look like for the future, and are the numbers going up, down, or remaining flat?

COMMISSIONER STREUER said that according to the Office of Children's Services (OCS), there were 329 adoptions in 2011 and 316 adoptions in 2012. Those numbers are indicative of year-to-year swings. Adoption numbers fall as reunification numbers rise, and OCS works toward reunification for all the children in custody. He asked the committee's indulgence to continue to research the total number of adoptions in the state, which would involve contacting the five adoption agencies that operate in Alaska.

SENATOR MCGUIRE clarified that she was looking for information on children who were put up for adoption at birth as opposed to those who were removed from their home because of neglect or

abuse. She said she looked forward to getting that data and the information from the five adoption agencies in the state.

COMMISSIONER STREUR committed to provide the follow up.

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SENATOR WIELECHOWSKI requested follow up information on the number of children adopted from within the state versus the number that are adopted from out-of-state. He also asked how Alaska is impacted by the bill that passed in Russia barring adoptions to the U.S.

COMMISSIONER STREUR agreed to attempt to get that information.

2. What are the avenues for a woman who carries a baby to term and after birth decides to place the child for adoption.

He explained that Catholic Social Services, Fairbanks Resource Agency, Fairbanks Counseling and Adoption, LDS Family Services, and the World Association for Parents and Children are the agencies that work on adoptions in Alaska that are outside the OCS system. In addition, many of the tribes assist with adoptions for tribal members.

3. What is the status of the intermission nursery?

He relayed that the intermission crisis nursery was closed in 2003. The placements came almost exclusively from OCS with some self-referrals. The facility was closed because of misuse. If it was restarted it would have to be a different model.

SENATOR WIELECHOWSKI asked for information on the legislation that passed several years ago allowing women to surrender their babies.

COMMISSIONER STREUR said he would follow up with the numbers, but in his tenure just three babies have been surrendered to an emergency room.

CHAIR COGHILL noted that the safe haven was for 21 days.

SENATOR DYSON asked for an explanation of the Indian Child Welfare Act (ICWA) in this context.

COMMISSIONER STREUR said that all cases determined to qualify, which is most Alaska Native families, are treated specially. He continued:

The state has a higher level of standard to meet and must provide active versus reasonable services along the entire continuum of child welfare. OCS is required under ICWA to notify the child's tribe and tribes may choose to intervene as a legal party to the case or they may assert their jurisdiction over the proceedings. ICWA requires that for Native children eligible for enrollment as a tribal member, the tribe must be notified of a pending adoption. This is true for adoptions processed through the Office of Children's Services or through private adoptions. Tribal courts in Alaska may facilitate customary or cultural adoptions. These do not require legal relinquishment of parental rights under legalese similar to a legal guardianship. This could be viewed as special treatment for Native adoptions. The cultural adoption in essence means the state provides the consent to the tribal court who finalizes the process and in these cases the termination of parental legal rights is not terminated.

If a Native mother chooses to give up her infant for adoption, [she] must wait 10 days after signing over the power of attorney for the baby physically giving the baby up before they can sign the legal relinquishment paperwork. They must sign the paperwork in front of a judge. This is different from non-Native mothers who do not have to sign in front of a judge, and can sign the relinquishment paperwork immediately after the birth, and they don't have to wait 10 days after giving the baby up.

Once the relinquishment paperwork is signed, there is another 10-day waiting period before the judge can finalize the relinquishment. This is true for both Native and non-Native mothers. Native mothers must sign a tribal notification waiver if they do not want their tribe to be notified of the adoption. If the mother's tribe is noticed on the adoption, the tribe may intervene and take over jurisdiction of the adoption.

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SENATOR DYSON asked what happens when it isn't obvious that the adoptive child falls under ICWA jurisdiction and the tribe decides to intervene and claim the child.

COMMISSIONER STREUR said he would have to do follow up research based on legal counsel.

SENATOR DYSON asked if a tribe can reach past a completed adoption and lay claim to a child based on ICWA requirements.

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COMMISSIONER STREUR said he would have to investigate the question legally.

SENATOR DYSON asked if ICWA says that the adoptive parent has to be a member of the same tribe as the child or classified as Indian.

COMMISSIONER STREUR said that the tribe has first priority for adoptions followed by Native and finally non-Native.

SENATOR DYSON asked for follow up information on a case he became involved in.

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SENATOR MCGUIRE asked for follow up information on the South Dakota model which is designed to increase adoptions in the state, including those under ICWA.

COMMISSIONER STREUR agreed to investigate the model.

4. What are the qualifications for Head Start?

COMMISSIONER STRUER clarified that the Department of Education and Early Development (DEED), not DHSS, administers the Head Start program. However, the basic requirements are that the children are at least three years old and come from low income families. Ten percent may be from families that exceed the financial guidelines but meet other program criteria. Most of the children in remote Alaska are eligible due to the poverty of access amendment to the Economic Opportunity Act. Children identified for Early Head Start range in age from birth to age three.

5. What are the safety nets available for women that keep their children?

COMMISSIONER STRUER identified the following programs:

- The Women, Infants, and Children (WIC) Program provides nutrition services and other assistance to women who are pregnant, nursing, or have children under age five. Other family members and legal guardians can also qualify for help for children under age five. He offered to provide more informative literature.
- Child Care Assistance provides referrals and subsidies for mothers receiving assistance, families transitioning off welfare, and low-income working families to assist in mainstreaming back into a productive work environment.
- The Alaska Temporary Assistance Program provides cash assistance and work support for families with children under age 18.
- The Commodity Supplemental Food Program is for pregnant, breastfeeding, and postpartum women with infants and children up to age six. This program cannot be accessed concurrent with WIC.

SENATOR WIELECHOWSKI asked if he had looked at the programs available through Medicaid for family planning where Medicaid pays 90 percent and the state pays 10 percent.

COMMISSIONER STREUR replied that he tried to get that information today, but was unsuccessful. He added that family planning assistance was available through the [Division] of Public Health, and a wide variety of programs were available through Medicaid for both pregnant and postpartum women.

SENATOR WIELECHOWSKI asked if DHSS had or intended to look into the Medicaid family planning program for birth control. It was his understanding that the state has the option of taking this program which is administered through Denali Kid Care.

CHAIR COGHILL recalled that the family planning Medicaid rules fall under Social Security Title X, but can be administered under Denali Kid Care.

SENATOR WIELECHOWSKI asked Commissioner Struer if he had or planned to look into that program.

COMMISSIONER STREUR responded, "We've been looking at every single option we can for young families in terms of family planning." He reiterated that extensive services were available through the Division of Public Health, and added that he would be surprised if the department didn't already cover most of the services offered through Medicaid and Denali Kid Care. However, he would do further research.

CHAIR COGHILL described a mingling of monies flowing into Denali Kid Care and Public Health based on programmatic approaches.

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SENATOR MCGUIRE asked Commissioner Struer to consider providing a single, accessible access point for poor women to get a list of the resources and services he described today.

COMMISSIONER STREUR responded that the Division of Public Assistance is already a one-stop-shop where an individual can access the continuum of services. He discussed the work DHSS had done to break down the silos within the department to connect the services and acknowledged there was more work to do to better serve the whole person.

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SENATOR WIELECHOWSKI asked Commissioner Struer to describe the process DHSS went through to develop the new regulations and what they were.

COMMISSIONER STREUR explained that a new section was added to DHSS's regulations governing abortion payment conditions. This was prompted by "losing a half a million dollars every year out of my budget because of what I pay for abortions," he said. More importantly, it was to make sure that the abortions that the state pays for meet the intent of the Supreme Court decision of 2002. For a physician or provider in Alaska to be paid for performing an abortion under Medicaid, they are required to certify either that it meets the conditions of the Hyde Amendment or that it doesn't meet the conditions of the Hyde Amendment but that the abortion procedure is medically necessary. Only the physician can signify that the abortion was medically necessary. There is no definition of medical necessity, but DHSS is allowed to track the required Hyde procedures, which are reimbursable under federal guidelines or non-Hyde, which are reimbursable under the 2002 decision. He offered to provide a copy of the form.

SENATOR WIELECHOWSKI asked him to discuss the public comment on the new regulations.

COMMISSIONER STREUR confirmed that DHSS did receive a lot of public comment. Many of the comments were not particularly constructive, but they were regarding access, denial of access, or increasing access. Planned Parenthood contributed in multiple

lively discussions and ultimately accepted that the form met the letter of the law in the Supreme Court decision.

SENATOR WIELECHOWSKI asked if the new regulation permits doctors to perform elective abortions.

COMMISSIONER STREUR responded that the certificate does not address physician limits of practice. It speaks to reimbursement for an elective abortion versus a medically necessary abortion through Medicaid.

SENATOR WIELECHOWSKI inquired if a doctor would have to verify medical necessity in order to receive payment.

COMMISSIONER STREUR answered yes. The attending physician has to certify to one of the two conditions listed below to obtain reimbursement. The first option addresses the Hyde Amendment and the second option addresses the Supreme Court decision.

- I certify based upon all the information available to me that before performing the abortion procedure on the above patient her pregnancy was the result of an act of rape or incest, or the abortion procedure on the above patient was performed due to physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion was performed.
- I certify based upon all the information available to me that the above does not apply, but the abortion procedure was medically necessary.

SENATOR WIELECHOWSKI asked if physicians have been submitting the certificate and if DHSS has been accepting them and making reimbursement.

COMMISSIONER STREUR explained that the requirement is effective April 1, 2013, but some certifications have already come in

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SENATOR WIELECHOWSKI noted the exception in the bill for abortion services in cases of rape or incest, and asked if he had given any thought to how that determination would be made.

COMMISSIONER STREUR said he had given it thought but hadn't come to a conclusion. He added that he didn't intend to form a conclusion until he had to deal with it in some form or manner.

SENATOR WIELECHOWSKI said he thought it was important to have some discussion about who would make the determination before the bill comes to a vote. He asked Commissioner Struer if he would be able to come to some conclusion about how the provision would be enacted either before the bill moved from committee or before it came to a vote on the floor. "As a Senator who is going to be voting on this, I would want to know what the policy is," he said.

COMMISSIONER STREUR responded that he couldn't provide an answer, but he thought that a lot would depend on Legislative Legal Services, the legal counsel for DHSS, and probably the courts should it go forward.

CHAIR COGHILL offered his perspective that the allegation of rape would be indicated on the doctor's certification, nothing more.

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SENATOR MCGUIRE stated that she would hope that state resources would not be expended to investigate women in what would amount to a witch hunt. If a woman tells her doctor she has been raped or a victim of incest, she should be believed.

COMMISSIONER STREUR related that the only investigation that DHSS is doing is requiring the certification.

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SENATOR DYSON expressed hope for universal honesty and acknowledged reality.

CHAIR COGHILL said the discussion about not getting between a woman and her doctor has been legitimate. It's also a legitimate discussion that some abortions are elective and, to date, those haven't been defined.

SENATOR WIELECHOWSKI asked if the intention is to require a doctor or DHSS to report a rape or incest to the authorities for investigation.

COMMISSIONER STREUR said he couldn't speak to the requirements for a physician, but he didn't believe it was the department's responsibility to report what is on the certification form.

CHAIR COGHILL asked if there weren't already mandatory reporting statutes.

COMMISSIONER STREUR answered yes.

CHAIR COGHILL said he believes that mandatory reporting is important, particularly when it protects the young and innocent.

COMMISSIONER STREUR said he didn't disagree but by the time Medicaid is informed, it's beyond third hand. He deferred to legal counsel to further articulate DHSS responsibility.

CHAIR COGHILL opined that policy makers would look at that within the mandatory reporting requirements.

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SENATOR WIELECHOWSKI asked Commissioner Struer if he envisioned creating a new form to address rape and incest.

COMMISSIONER STREUR responded that DHSS bases payment for abortion on the Hyde Amendment and the Supreme Court decision. If SB 49 is signed into law, the form will be amended to accommodate what's in the bill.

SENATOR WIELECHOWSKI asked if DHSS received legal advice not to define medical necessity in the regulation.

COMMISSIONER STREUR said the department had legal counsel through the entire process, but he didn't recall getting that advice. The Supreme Court didn't provide a definition and the regulation followed that decision for basing payment.

CHAIR COGHILL said he believes the bill refines what the court said.

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SENATOR WIELECHOWSKI asked Commissioner Struer to follow up with what the Planned Parenthood litigation cost the state.

CHAIR COGHILL suggested he get the information from the Department of Law (DOL).

CHAIR COGHILL stated that he would hold SB 49 in committee and bring it up again on Friday along with any amendments that might be offered.

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There being no further business to come before the committee, Chair Coghill adjourned the meeting at 3:03 p.m.