

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 268
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KOPONEN, Boyer, Ellis, Finkelstein, Lincoln, C.Davis, Donley, Moyer, Navarre, Ulmer, Gruenberg, Brown, Bruckman

Introduced: 1/29/92

Referred: Health, Education & Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for a woman's right to choose abortion without undue governmental
2 interference; protecting the right to use birth control; relating to medical services provided
3 to minors; relating to payment for abortions under Medicaid and general relief medical
4 assistance; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** INTENT. The intent of AS 47.07.067 and AS 47.25.197, enacted by secs. 5 and 6 of
7 this Act, is to confirm that statutes in effect on the day before enactment of this Act require payment
8 for abortion services under AS 47.07 (Medicaid program) and AS 47.25.120 - 47.25.300 (general relief
9 medical assistance). AS 47.07.067 and AS 47.25.197 are intended to continue the already required
10 practice of paying for abortions to the extent that they were paid for under AS 47.07, AS 47.25.120 -
11 47.25.300, 7 AAC 43.140, 7 AAC 43.825, 7 AAC 43.835, 7 AAC 47.210(7), 7 AAC 47.200(4)(E),
12 7 AAC 47.290(3) and (5), and related regulations, as they were in effect on April 10, 1991.

13 * **Sec. 2.** AS 18.16 is amended by adding new sections to read:

14 Sec. 18.16.020. **DECLARATION OF PUBLIC POLICY.** The legislature finds and

1 declares that an individual decision to commence, prevent, continue, or terminate a pregnancy
2 is a matter of profound personal choice. It is the public policy of the state to prevent
3 governmental interference with the rights of all individuals to use birth control and the rights of
4 all women to choose childbirth or to obtain a safe and legal abortion, as described in this chapter.

5 Sec. 18.16.030. PROTECTION OF REPRODUCTIVE CHOICE. (a) Except as provided
6 in AS 18.16.040 and 18.16.050, the state, an instrumentality of the state, or a political subdivision
7 of the state may not interfere with a woman's personal choice to commence, prevent, continue,
8 or terminate a pregnancy.

9 (b) The state, an instrumentality of the state, or a political subdivision of the state may
10 not interfere with the use of medically appropriate methods of contraception or abortion or the
11 manner in which medically appropriate methods of contraception or abortion are provided.

12 Sec. 18.16.040. REGULATIONS. (a) The Department of Health and Social Services
13 and the State Medical Board may adopt regulations relating to abortions performed before the
14 point of fetal viability but only if the regulations

- 15 (1) protect the life or health of a woman undergoing an abortion;
16 (2) constitute the least restrictive means of furthering the state's interest in the
17 woman's life or health;
18 (3) are not inconsistent with established medical practice; and
19 (4) do not delay, increase the cost of, or significantly limit the availability of an
20 abortion.

21 (b) The Department of Health and Social Services and the State Medical Board may
22 adopt regulations relating to abortions performed after the point of fetal viability, but only if the
23 regulations

- 24 (1) leave the determination of viability completely within the professional
25 judgment of the woman's physician and do not interfere with the exercise of that judgment;
26 (2) protect the health of the fetus without impairing or risking the impairment of
27 the life or health of the woman undergoing the abortion;
28 (3) constitute the least restrictive means of furthering the state's interest in the
29 health of the woman and the fetus;
30 (4) are not inconsistent with established medical practice; and
31 (5) do not prohibit, delay, or significantly limit the availability of abortion.

1 Sec. 18.16.050. PHYSICIAN REQUIREMENT. (a) A person may not perform an
2 abortion in this state unless the person is licensed as a physician under AS 08.64.200.

3 (b) Violation of this section is a class C felony.

4 (c) This section does not apply to the woman upon whom the abortion is performed.

5 Sec. 18.16.060. REFUSAL TO PERFORM ABORTION; REFERRAL. (a)
6 Notwithstanding other provisions of this chapter, a physician, nurse, or other individual may
7 refuse to participate in the performance of an abortion if the refusal is based on conscientious or
8 religious beliefs.

9 (b) A physician who refuses to perform an abortion for a woman who has consulted the
10 physician about having an abortion shall refer the woman to another health care provider in
11 accordance with professional standards.

12 Sec. 18.16.070. APPLICABILITY OF OTHER LAWS. (a) This chapter constitutes the
13 only authority under which the state, an instrumentality of the state, or a political subdivision of
14 the state may regulate abortions. To the extent that other laws of this state authorize regulations
15 that may affect abortions, those laws shall be construed to be limited by this chapter.

16 (b) This chapter may not be construed to authorize the unlicensed practice of medicine.

17 Sec. 18.16.090. DEFINITIONS. In this chapter,

18 (1) "interfere with" includes restrict, infringe, prevent, impede, prohibit, limit,
19 penalize, burden, or engage in an activity, whether intentional or unintentional, that creates a
20 disparate treatment or adverse effect;

21 (2) "medically appropriate" means generally recognized as medically safe and
22 effective or recommended by a physician in the good faith exercise of the physician's best
23 professional judgment, as regulated by generally accepted standards, licensing requirements for
24 medical facilities, or laws governing the prescription of drugs or medical devices;

25 (3) "pregnancy" means the reproductive process beginning with the implantation
26 of a fertilized ovum in the uterus;

27 (4) "viability" means the point at which, in the professional judgment of the
28 woman's physician, based upon the particular facts of the case, there is a reasonable likelihood
29 of sustained survival of the fetus outside the woman's uterus, with or without artificial aid.

30 Sec. 18.16.100. SHORT TITLE. This chapter may be cited as The Reproductive Privacy
31 Act.

1 * Sec. 3. AS 08.64.326(a) is amended to read:

2 (a) The board may impose a sanction if the board finds after a hearing that a licensee

3 (1) secured a license through deceit, fraud, or intentional misrepresentation;

4 (2) engaged in deceit, fraud, or intentional misrepresentation while providing
5 professional services or engaging in professional activities;

6 (3) advertised professional services in a false or misleading manner;

7 (4) has been convicted, including conviction based on a guilty plea or plea of nolo
8 contendere, of

9 (A) a felony or other crime if the felony or other crime is substantially
10 related to the qualifications, functions, or duties of the licensee; or

11 (B) a crime involving the unlawful procurement, sale, prescription, or
12 dispensing of drugs;

13 (5) has procured, sold, prescribed, or dispensed drugs in violation of a law,
14 regardless of whether there has been a criminal action;

15 (6) intentionally or negligently permitted the performance of patient care by
16 persons under the licensee's supervision that does not conform to minimum professional
17 standards even if the patient was not injured;

18 (7) failed to comply with this chapter, a regulation adopted under this chapter, or
19 an order of the board;

20 (8) has demonstrated

21 (A) professional incompetence, gross negligence, or repeated negligent
22 conduct; the board may not base a finding of professional incompetence solely on the
23 basis that a licensee's practice is unconventional or experimental in the absence of
24 demonstrable physical harm to a patient;

25 (B) addiction to, severe dependency on, or habitual overuse of alcohol or
26 other drugs that impairs the licensee's ability to practice safely;

27 (C) unfitness because of physical or mental disability;

28 (9) engaged in unprofessional conduct or in lewd or immoral conduct in
29 connection with the delivery of professional services to patients;

30 (10) has violated AS 18.16.060(b) or a regulation adopted under AS 18.16.040
31 [AS 18.16.010];

- 1 (11) has violated any code of ethics adopted by regulation by the board;
2 (12) has denied care or treatment to a patient or person seeking assistance from
3 the physician if the only reason for the denial is the failure or refusal of the patient to agree to
4 arbitrate as provided in AS 09.55.535(a); or
5 (13) has had a license or certificate to practice medicine in another state or
6 territory of the United States, or a province or territory of Canada suspended or revoked unless
7 the suspension or revocation was caused by the failure of the licensee to pay fees to that state,
8 territory, or province.

9 * Sec. 4. AS 09.65.100(a) is amended to read:

10 (a) Medical and dental services for minors are governed by the following provisions:
11 [EXCEPT AS PROHIBITED UNDER AS 18.16.010(a)(3),]

12 (1) a minor who is living apart from the minor's parents or legal guardian and
13 who is managing the minor's own financial affairs, regardless of the source or extent of income,
14 may give consent for medical and dental services for the minor;

15 (2) a minor may give consent for medical and dental services if the parent or legal
16 guardian of the minor cannot be contacted or, if contacted, is unwilling either to grant or
17 withhold consent; however, where the parent or legal guardian cannot be contacted or, if
18 contacted, is unwilling either to grant or to withhold consent, the provider of medical or dental
19 services shall counsel the minor keeping in mind not only the valid interests of the minor but also
20 the valid interests of the parent or guardian and the family unit as best the provider presumes
21 them;

22 (3) a minor who is the parent of a child may give consent to medical and dental
23 services for the minor or the child;

24 (4) notwithstanding (2) of this subsection, a minor may give consent for
25 diagnosis, prevention, termination, or treatment of pregnancy, and for diagnosis and treatment
26 of venereal disease; a person who provides services to a minor under this subsection or who
27 is employed or otherwise associated with a person who provides services to a minor under
28 this subsection may not notify the minor's parent or guardian about the provision of
29 services unless the minor gives written consent to the notification; the minor's physician-
30 patient relationship and the minor's records shall be accorded the confidentiality, privileged
31 status, and privacy protection afforded to other physician-patient relationships and records;

1 (5) the parent or guardian of the minor is relieved of all financial obligation to
2 the provider of the service under this section.

3 * Sec. 5. AS 47.07 is amended by adding a new section to read:

4 Sec. 47.07.067. PAYMENT FOR ABORTIONS. (a) The department shall pay for
5 abortion procedures under this chapter to the extent permitted under federal law.

6 (b) An abortion procedure not covered by federal law for a person otherwise eligible for
7 assistance under this chapter shall be covered under AS 47.25.120 - 47.25.300.

8 * Sec. 6. AS 47.25 is amended by adding a new section to read:

9 Sec. 47.25.197. PAYMENT FOR ABORTIONS. Notwithstanding AS 47.25.200 or any
10 other provision of law, the department shall provide medical assistance payments under
11 AS 47.25.120 - 47.25.300 for the cost of services reasonably necessary for a therapeutic or
12 elective abortion performed by a physician for a person who is eligible for assistance under
13 AS 47.07 or AS 47.25.120 - 47.25.300.

14 * Sec. 7. AS 08.64.105 and AS 18.16.010 are repealed.

15 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).