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Alaska State Legislature

Senator Steve Rieger, Chair
Senator Bert Sharp, Vice Chair
Senator Loren Lemman
Senator Mike Miller
Senator Jim Duncan
Senator Johnny Ellis
Senator Judith Salo



State Capitol
Room 516
Juneau, Alaska 99801
(907) 465-3762

Senate Committee on Health, Education and Social Services

1/22/93

Sponsor Statement on:

SB 53 "An act annulling changes made by certain regulations adopted by the Department of Health and Social Services relating to funding of abortion services under the general relief medical program; and providing for an effective date."

Senate Bill 53 annuls the changes made by the Department of Health and Social Services to the General Relief Medical regulations related to funding for abortions. The regulations would read as they did in December 1992.

Medicaid funds, by federal law, are used only to abort pregnancies which threaten the life of the mother if the pregnancy were carried to term. Senate Bill 53 would allow the state to continue to pay for abortions through the General Relief Medical program for all other qualifying low-income pregnant women.

Enclosed are the affected regulations; Fiscal Notes and a position paper from the Department of Health and Social Services; a memorandum from Terri Lauterbach, Division of Legal Services dated 7/22/92; and a packet of information that was distributed by the Department of Law regarding the regulations.

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Senate Committee on Health, Education and Social Services

The following changes would occur with the passage of SB 53:

7 AAC 47.170(b) An applicant under 18 years of age may apply on his or her own behalf if the applicant is living apart from parents or guardian and is managing his or her own personal financial affairs. [A female] An applicant under 18 years of age living at home with her parents or guardian may apply without regard to her parents' or guardian's income if she is a female seeking a [therapeutic abortion] pregnancy-related service.

7 AAC 47.200 GENERAL RELIEF MEDICAL COVERAGE. The General Relief Medical program provides payment on behalf of needy persons who are eligible under the provisions of this chapter for any of the following services:

(4) physician services if

(A) related to major medical care provided in a hospital on an inpatient basis;

(B) provided in a hospital emergency room the same day on which the recipient is admitted for major medical care;

(C) provided to a recipient residing in a nursing home;

(D) provided in either an outpatient or an inpatient setting to a recipient with a diagnosis described in 7 AAC 47.271(b); or

(E) [provided in determining eligibility for a therapeutic abortion; or] provided for pregnancy-related services;

[(F) provided for a therapeutic abortion;]

(5) outpatient laboratory and x-ray services provided in conjunction with [a therapeutic abortion] pregnancy-related services or nursing home care;

(6) medical transportation related to major medical care, nursing home care, or [a therapeutic abortion] pregnancy-related services;

(7) outpatient surgical center services provided in conjunction with [a therapeutic abortion] pregnancy-related services or nursing home care;

7 AAC 47.210. EXCLUSIONS FROM GENERAL RELIEF MEDICAL PROGRAM.

Notwithstanding any other provisions contained in this chapter or 7 AAC 43, a payment may not be made under the General Relief Medical program for any expense

(7) for an elective procedure [,including an elective abortion] other than a pregnancy-related service as defined in 7 AAC 47.290;

7 AAC 47.290. DEFINITIONS. In 7 AAC 47.010 -- 7 AAC 47.290

(3) "elective procedure" means a procedure that is subject to the choice or decision of the patient or physician regarding medical services that are advantageous to the patient but not necessary to prevent the death or disability of the patient; [,and includes an elective abortion;]

(5) [is repealed:] "pregnancy-related service" or "pregnancy-related services" means a service or services reasonably necessary for an abortion;

7 AAC 47.290(7) and (8) are added definitions which would be annulled.

POSITION PAPER

STATE OF ALASKA ★ DEPARTMENT OF HEALTH & SOCIAL SERVICES

Position Paper SB NO. 53

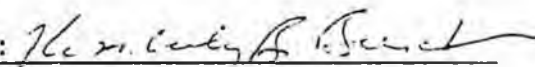
SB 53 would annul changes in regulations intended to limit use of government funding to pay for abortions that are not therapeutic. Specifically, the bill annuls changes in the regulations that specify that General Relief Medical is only available to women seeking "therapeutic abortions" and related services, annuls references to "elective abortions" under 7 AAC 47.210 and 7 AAC 47.290 including subsections defining "elective abortions" and "therapeutic abortions".

The bill does not bar the administration from readopting the same regulations. Similarly, the bill's intent language is not binding. The statement of intent calls for abortions to be eligible for funding under regulations in force in December of 1992.

Position:

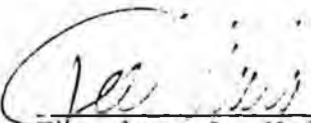
The Department of Health and Social Services opposes SB 53. The bill is a needless action which, if adopted, would place abortions in a special, single service category paid for without a determination as to medical necessity. The present regulations reflect extensive hearing testimony reviewed at all levels of government and with considerable public involvement. Existing regulations make Alaska's policy on abortion consistent with the majority of other states.

Recommended by:


Kimberly B. Busch
Director
Div. of Medical Assistance

Date: _____

Approved by:


Theodore A. Mala, MD, MPH
Commissioner

Date: Jan 27, 1993

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regu- BRU: Assistance Payments
lations...relating to funding of abortion services... Component: AFDC
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00220

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(297.3)	(321.5)	(347.7)	(376.1)	(406.7)	(439.9)
MISCELLANEOUS						
TOTAL OPERATING	(297.3)	(321.5)	(347.7)	(376.1)	(406.7)	(439.9)

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	(148.7)	(160.8)	(173.9)	(188.0)	(203.4)	(219.9)
1003 GF Match	(148.6)	(160.7)	(173.8)	(188.1)	(203.3)	(220.0)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(297.3)	(321.5)	(347.7)	(376.1)	(406.7)	(439.9)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "savings" to the AFDC program resulting from abortions paid for by the General Relief Medical program. Additional information is attached.

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that budget components may be decreased if the legislation passes. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: Jan Hansen
 Division: Jan Hansen, Director, Division of Public Assistance

Phone: 465-3347

Date: 1/27/93

Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services

Date: 1/27/93

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ANALYSIS (Cont.)

Aid to Families with Dependent Children

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs.

Of the 181 eligible for public assistance, it is assumed that 60%, or 109 would receive Aid to Families with Dependent Children (AFDC) for an average of 6 months during a year; 65 of these children would be new additions to existing cases, at a cost of \$118 per month, and 44 would be first children that bring their parent into AFDC as new assistance cases with an average cost of \$952 per case per month. The FY 94 costs associated with these children are as follows:

65 children X \$118 per month X 6 months =	\$ 46,020
44 children X \$952 per month X 6 months =	\$251,328
Total AFDC costs:	\$297,348

Revenue sources:

50% GF Match:	\$148,674
50% Federal Receipts:	\$148,674

For subsequent years it is assumed that the average annual increase in AFDC caseload will be 5% per year and that there will be an adjustment each year of 3% for increases in the cost of living.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regu- BRU: Medical Assistance
lations...relating to funding of abortion services... Component: Medicaid Facilities
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00230

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(454.0)	(526.7)	(610.9)	(708.7)	(822.1)	(953.6)
MISCELLANEOUS						
TOTAL OPERATING	(454.0)	(526.7)	(610.9)	(708.7)	(822.1)	(953.6)

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	(227.0)	(263.3)	(305.5)	(354.3)	(411.0)	(476.8)
1003 GF Match	(227.0)	(263.3)	(305.4)	(354.4)	(411.1)	(476.8)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(454.0)	(526.7)	(610.9)	(708.7)	(822.1)	(953.6)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "savings" to the Medicaid Facilities component resulting from abortions paid for by the General Relief Medical program. Additional information is attached.

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: *Kennedy, B. Birch*
 Division: Medical Assistance, DHSS
 Approved by Commissioner: (R) Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services

Phone: 465-3355
 Date: 1-20-93
 Date: 1/27/93

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ANALYSIS (Cont.)
Medical Assistance
Medicaid Facility Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the affected women would otherwise continue full-term pregnancies and would be eligible for certain state funded public assistance services as a result. Consequently, this fiscal note relates to the number of women who would not continue their pregnancies and the resultant reduction in utilization of certain state funded services those women would likely have used. It is assumed that the effect of this bill would be to reduce the number of pregnant women who would otherwise be eligible for medical assistance in proportion to the number of abortions performed.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 women would have been eligible for medical assistance programs for the pregnancy.

The cost of providing birthing and related services on an inpatient basis to pregnant women are estimated at \$2,508 per pregnancy. For the estimated 181 eligible births these costs total \$454,000 in FY 94.

For subsequent years utilization is anticipated to grow at 11% and inflation is calculated as 5%.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Annulling changes made by certain regu- BRU: Medical Assistance
lations...relating to funding of abortion services... Component: Medical Non-Facility
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00229

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(694.4)	(805.5)	(934.4)	(1,083.9)	(1,257.3)	(1,458.5)
MISCELLANEOUS						
TOTAL OPERATING	(694.4)	(805.5)	(934.4)	(1,083.9)	(1,257.3)	(1,458.5)

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	(347.2)	(402.8)	(467.2)	(541.9)	(628.7)	(729.2)
1003 GF Match	(347.2)	(402.7)	(467.2)	(542.0)	(628.6)	(729.3)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(694.4)	(805.5)	(934.4)	(1,083.9)	(1,257.3)	(1,458.5)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "savings" to the Medicaid Non-Facilities component resulting from abortions paid for by the General Relief Medical program. Additional information is attached.

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: *Kenneth A. Brown*
 Division: Medical Assistance, DHSS

Phone: 465-3355
 Date: 1-26-93

Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services

Date: 1/27/93

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ANALYSIS (Cont.)

Medical Assistance Administration, BRU
Medicaid Non-Facility Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs after childbirth as would the pregnant mothers previous to childbirth.

The cost of providing prenatal, postpartum, and other medical services to pregnant women and newborns and their parent are estimated at \$3,836 per pregnancy. For the estimated 181 eligible births these costs total \$694,400 in FY 94.

For subsequent years there is an assumed 11% utilization increase and a 5% inflation cost.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Annulling changes made by certain regu- BRU: Medical Assistance
lations...relating to funding of abortion services... Component: General Relief Medical
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00232

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	288.7	334.9	388.5	450.6	522.7	606.3
MISCELLANEOUS						
TOTAL OPERATING	288.7	334.9	388.5	450.6	522.7	606.3

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	288.7	334.9	388.5	450.6	522.7	606.3
1005 GF/Program Receipts						
100C GF/MHTIA						
Other						
TOTAL	288.7	334.9	388.5	450.6	522.7	606.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based upon the "costs" to the General Relief Medical program resulting from abortions paid for through GRM. Additional information is attached.

This fiscal note is provided to show the estimated cost increase associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost increases. No assumption should be made that any actual "new costs" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no c

Prepared by: *Kimberly B. Benson*
 Division: Medical Assistance, DHSS

Phone: 465-3355
 Date: 1-26-93

Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services

Date: 1/27/93

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ANALYSIS (Cont.)

Medical Assistance Administration, BRU
General Relief Medical, Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs.

The associated costs with each abortion are estimated to be \$880. For the estimated 329 abortions the total cost is estimated to be \$288,700.

For subsequent years there is an assumed 11% utilization increase and a 5% inflation cost.

H:\POLICY\HSS\PLAN3\GRM.FN

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 53

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regu- BRU: Medical Assistance Administration
lations...relating to funding of abortion services... Component: Claims Processing
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00243

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	(74.2)	(86.1)	(99.8)	(115.8)	(134.3)	(155.8)
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(74.2)	(86.1)	(99.8)	(115.8)	(134.3)	(155.8)

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts	(55.6)	(64.6)	(74.8)	(86.8)	(100.7)	(116.8)
1003 GF Match	(18.6)	(21.5)	(25.0)	(29.0)	(33.6)	(39.0)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(74.2)	(86.1)	(99.8)	(115.8)	(134.3)	(155.8)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

The fiscal analysis above is based on avoidance of the projected costs for processing new claims for newborns and mothers who will utilize the Medicaid program should this bill pass. Additional information is attached.

This fiscal note is provided to show the estimated cost reductions associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation. The FY 93 impact is shown as 0.0 because there was no consideration of the cost of the regulations addressed by the bill within the FY 93 budget.

Prepared by: *K. A. ...*
 Division: Medical Assistance, DHSS

Phone: 465-3355
 Date: 1-26-93

Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services

Date: 1/27/93

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ANALYSIS (Cont.)

Medical Assistance Administration, BRU
Claims Processing, Component

This bill will annul regulations intended to reduce the number of pregnancies that would be aborted because of the availability of payment for that procedure under the General Relief Medical program (GRM). Many of the children who would otherwise be born would be eligible for certain state funded public assistance services. Consequently, this fiscal note relates to the number of children that would not be born and the resultant reduction in utilization of certain state funded services those children would likely have used.

It is assumed that 329 births would be avoided as a result of this bill. That number is based on 40% of the total number of abortions performed with medical assistance funding during FY 91. Of the 329, it is assumed that 55%, or 181 would have been eligible for public assistance programs.

The processing costs associated with each claim are estimated to be \$6.23. For the 181 births it is assumed that there will be approximately 65 claims per birth for prenatal care, childbirth, and postpartum care.

For subsequent years there is an assumed 11% utilization increase and a 5% inflation cost.

Released 7/24/92

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

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Juneau, Alaska 99801-2105

MEMORANDUM

July 22, 1992

SUBJECT: DHSS Abortion Funding Regulations (Work Order No. 8-LS0049)

TO: Senator Arliss Sturgulewski

FROM: Terri Lauterbach
Legislative Counsel

You have asked us to review the legality of the Medicaid and General Relief Medical (GRM) abortion funding regulations proposed by the Department of Health and Social Services on July 8, 1992.

There are a number of areas where the proposed regulations are not clear. However, in our opinion, a court probably would find that the proposed changes to the Medicaid regulations are legally valid and consistent with legislative intent because they reflect federal Medicaid requirements, a result intended by the legislature. But, a court is less likely to find the proposed changes to the GRM regulations to be consistent with legislative intent because the court may view them as arbitrary changes and because they probably result in unconstitutional administration of the state's medical assistance programs.

A finding of arbitrariness could be made because the proposed regulations change a longstanding DHSS interpretation of the GRM statutes without any intervening legislative directive to do so and without any demonstrable change in the medical needs of Alaskan women. A finding of unconstitutionality could be made because the proposed regulations infringe privacy rights and the right to equal protection of the laws by treating indigent pregnant women who choose to continue their pregnancies differently from indigent pregnant women who choose not to.

In order to answer your question, this memorandum will discuss the following topics:

- (1) Content of the proposed regulations.
- (2) Effect of the proposed regulations.
- (3) Consistency of the proposed regulations with legislative intent.
- (4) Constitutionality of the proposed regulations - privacy.
- (5) Constitutionality of the proposed regulations - equal protection.

A "Conclusion" section appears after the following "Discussion" section.

DISCUSSION

(1) Content of the proposed regulations.

The proposed regulations make changes in two different DHSS programs that provide medical care for indigent women: Medicaid and General Relief Medical (GRM).

The proposed changes in the Medicaid regulations provide that payment for an abortion will "in the department's discretion" be covered if the billing invoice is accompanied by certification that "the life of the mother would be endangered if the pregnancy were carried to term."^{1/} See proposed 7 AAC 43.140(a).

The proposed changes in the GRM regulations would restrict funding to "therapeutic abortions" and eliminate funding for "elective abortions." See proposed 7 AAC 47.200 and 7 AAC 47.210.

"Therapeutic abortion" is defined in the proposed GRM regulations to include three types of pregnancy terminations^{2/}: (1) where the pregnancy resulted from "actions that would constitute a crime of" sexual assault, sexual abuse of a minor, or incest;^{3/}

^{1/} It is not clear what the proposed regulations mean by "in the department's discretion." Will the DHSS second-guess the physician's certification?

According to the Anchorage Daily News, the commissioner intends to leave "the final call" to "doctors, not bureaucrats." However, that comment was, according to the ADN, made in reference to the definitions of "elective" and "therapeutic" in the GRM regulations, not the use of "in the department's discretion" in the Medicaid regulations. See ADN, Thursday, July 9, 1992, at Page A10, Col. 5.

The proposed Medicaid regulations should be clarified in regard to this language about DHSS's "discretion."

^{2/} In using the phrase "termination of pregnancy," the regulations make no attempt to distinguish procedures like induced labor or Caesarian sections. Most likely, these would be covered under Medicaid as childbirth procedures, so they need not be covered under the GRM regulations.

^{3/} The regulations do not state who will determine whether actions leading to the pregnancy "would constitute" the specified crimes. Short of a conviction (which would usually take so long as to moot the question of abortion), who is in a position of determining that any of the specified crimes has occurred?

In cases alleging sexual assault, for instance, the lack of consent of the victim is often at issue. Will DHSS personnel, after questioning a pregnant woman, determine whether or not there was consent?

(2) where termination of a pregnancy is certified by a physician as medically necessary "to prevent the death or disability of the woman"; and (3) where termination of a pregnancy is certified by a physician as medically necessary "to ameliorate a condition harmful to the woman's physical or psychological health." See proposed 7 AAC 47.290(8).^{4/}

"Elective abortion" is defined to mean a procedure, other than a therapeutic abortion, to terminate a pregnancy.^{5/} See proposed 7 AAC 47.290(7).

(2) Effect of the proposed regulations.

The effect of the proposed changes in the Medicaid regulations would be to bring the state program into compliance with current federal abortion funding restrictions.^{6/}

^{3/}(...continued)

In cases alleging incest or sexual abuse of a minor, will DHSS simply accept the pregnant woman's statement of the occurrence, or will DHSS somehow investigate or require corroboration of the age and identity of the alleged perpetrator?

7 AAC 47.290(8)(B) should be clarified on this point. In its present form, it invites arbitrary action and leaves open the possibility of extreme invasion of privacy.

^{4/} 7 AAC 47.290(8) does not distinguish between previability and postviability abortions.

^{5/} "Elective procedure" is also defined in the proposed regulations as

a procedure that is subject to the choice or decision of the patient or physician regarding medical services that are advantageous to the patient but **not necessary to prevent the death or disability of the patient, and includes an elective abortion.** (See 7 AAC 47.290(3).) (Underlined language is proposed as new language in the regulation. Bold face indicates emphasis added for the purposes of this memo.)

As with 7 AAC 140(a) and 7 AAC 47.290(8)(B), discussed in preceding footnotes, this proposed regulation needs clarifying.

It is obvious from the definition of "therapeutic abortion" and "elective abortion" that GPM funding will be provided for an abortion that is "not necessary to prevent the death or disability of the patient." Therefore, the definition of "elective procedure" should be rewritten to be consistent with the definition of "elective abortion." One way to achieve consistency would be to move the new language currently proposed to be appended at the end of 7 AAC 47.290(3) to the beginning of that definition instead so that it would read as follows:

"Elective procedure" means (A) an elective abortion or (B) a procedure that is subject to the choice of the patient...but not necessary to prevent the death or disability of the patient.

^{6/} Medicaid is a joint federal-state program. The state cannot use Medicaid money for a purpose prohibited by federal law or regulation.

Although federal restrictions have varied from time to time, current federal restrictions prohibit Medicaid payments for an abortion unless the life of the pregnant woman would be endangered by a completed pregnancy.

Because of the proposed definitions of "therapeutic abortion" and "elective abortion," the effect of the proposed changes in the GRM regulations is less clear. How many abortions will be considered "elective," if any, and therefore not be funded? And what kind of physician statement will be considered sufficient by DHSS to satisfy the requirement that a physician certify the abortion as medically necessary?^{7/}

It is possible that the definitions, by including situations involving the woman's "physical or psychological health," would permit any abortion to be funded as long as the woman could find a physician willing to provide the appropriate certification.^{8/} After an initial dip in abortion funding caused by confusion on the part of both patients and their physicians about coverage, the department could well discover that the requirement of physician certification will become a pro forma bit of paperwork with no actual effect of restricting funding.

However, for the sake of analyzing the regulations from the perspective of whether they are consistent with legislative intent, this memorandum will assume that the fiscal note accompanying the proposed regulations is basically accurate. The fiscal note predicts increased costs to the state and federal government of over \$1,000,000 in fiscal year 1993 and almost \$2,000,000 by fiscal year 1997.^{9/} According to DHSS spokesperson Ed Wicher, the prediction of increased costs is based on an anticipated decrease in abortions and a concomitant increase in live births of indigent children

^{7/} These questions are crucial not just as matters of clarity but as matters of constitutionality. If, in practice, all types of abortions will wind up being funded without significant procedural obstacles for different types, the proposed regulations would probably not be construed to violate either privacy rights or the right to equal protection of the law.

^{8/} See, for instance, the statement attributed to Thomas Moffatt, executive director of Alaska Right to Life Inc., in the Anchorage Daily News, July 9, 1992, page A1, Col. 5:

[The definition of "therapeutic abortion"] opens the barn door. In my opinion that definition would permit any abortion. I would imagine any one of a dozen abortionists could certify anyone who walked through their doors.

Whether one ascribes good faith to "abortionists" or not, we agree with Mr. Moffatt that the definition of "therapeutic abortion" could encompass all abortions since an unwanted pregnancy probably always has, at a minimum, adverse psychological effects on a woman.

^{9/} See page 2 of the "NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES" that accompanied the actual language changes proposed for 7 AAC 43 and 7 AAC 47, issued 7/8/92.

who, with their indigent mothers, will be eligible for public medical and financial benefits.^{10/}

(3) Consistency of the proposed regulations with legislative intent.

Given the content and the assumed effect^{11/} of the proposed regulations, one aspect of our analysis is whether DHSS's decision to distinguish among types of abortions, funding some and not others, is consistent with legislative intent.

According to Alaska case law, the intention of the legislature must be determined from the words used in the statute being implemented by the agency, construed with reference to the purpose of the program of which the statute is a part.^{12/} If an administrative regulation is consistent with a statute's purposes and reasonably necessary to carry them out, the Alaska Supreme Court will not overturn it, provided it is reasonable and not arbitrary.^{13/} Since a regulation is presumptively valid, the burden of proving the invalidity of a regulation is on the party challenging it.^{14/} Furthermore, since these proposed regulations involve policy-making and the particularized expertise and experience of administrative personnel, a court will be inclined to defer to the administrative decision expressed in the regulation, and will inquire only whether it has a reasonable basis.^{15/}

In light of these standards that the court has developed for its review of administrative regulations, it is clear that the proposed changes to the Medicaid regulations would be upheld if challenged. It is much less clear whether the proposed changes to the GRM regulations would be upheld.

^{10/} It is not clear exactly what percentage of abortions currently funded will be considered "elective" (and unfunded) under the new regulations. However, the fiscal note is substantial, indicating that DHSS believes a significant percentage of abortions will no longer qualify for public funding and will not be covered by nonpublic funds either. An "educated guess," based on the fiscal note, would be that 35 - 40 percent of abortions currently funded under Medicaid and GRM will no longer be funded under those programs nor by private means.

^{11/} For a discussion of the "assumed effect" see the preceding three paragraphs of this memorandum.

^{12/} State v. City of Anchorage, 513 P.2d 1104 (Alaska 1973).

^{13/} Kalniakoff v. State, Commercial Fisheries Entry Com'n, 693 P.2d 844 (Alaska 1985).

^{14/} State v. Alutka Pipeline Service Co., 723 P.2d 76 (Alaska 1986).

^{15/} Hood v. State, 574 P.2d 811 (Alaska 1978). However, this deference may be more applicable to new regulations than to changes in old regulations.

With respect to the proposed Medicaid regulations, the court would no doubt look at the legislative intent expressed in AS 47.07.040, where the legislature gave DHSS the authority to

make those arrangements or regulatory changes, not inconsistent with law, as may be required under federal law to obtain and retain approval of the United States Department of Health and Human Services to secure for the state the optimum federal payment under the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act, Medical Assistance). (Emphasis added.)

In order to retain the approval of the federal government for the state's Medicaid program, the state must not use Medicaid money for an abortion unless the pregnant woman's life would be endangered by carrying the pregnancy to term. DHSS's proposed changes in the Medicaid regulations would simply insert that federal restriction into the state's program.^{16/} Therefore, we have no doubt that a court would uphold the new state Medicaid restriction as consistent with legislative intent because it is necessary to keep the state program in compliance with federal requirements, a result clearly intended by the legislature.

We have more doubt about whether the GRM restrictions would be upheld. Most of our doubt stems from issues that the proposed regulations raise under the state constitution.^{17/} However, there is also some room for doubt about the validity of the proposed regulations because of issues raised about their consistency with the legislative intent involving the GRM statutes.

To determine legislative intent under the GRM program, a court would look at AS 47.25.120 and 47.25.130 and the definition of "assistance" in AS 47.25.300. These statutes indicate that the legislature intended to leave implementation of the GRM program largely within the discretion of DHSS. The three statutes read as follows:

Sec. 47.25.120. ELIGIBILITY FOR ASSISTANCE. Financial assistance may be given under AS 47.25.120 - 47.25.300, so far as practicable under the conditions in this state, to a needy person **who is eligible under the regulations of the department.** (Emphasis added.)

^{16/} It would also make the regulations match reality. It is my understanding from DHSS that the federal Medicaid restriction (life endangerment) already has been implemented on the state level for over a decade, even though 7 AAC 43.140(a) has continued to list two other situations (health effects, and rape/incest) as being covered by Medicaid during that time. These other two situations have been covered under GRM, instead of Medicaid, during the last decade.

^{17/} See the next two sections of this memo.

Sec. 47.25.130. AMOUNT AND TYPE OF ASSISTANCE. (a) The amount of assistance for a needy person shall be **determined by the department with regard to the resources and needs of the person and the conditions existing in each case.** Where possible, assistance shall be sufficient to provide the applicant with reasonable subsistence **according to standards of assistance established by the department.** However, the amount of assistance for subsistence needs may not exceed \$120 a person a calendar month. (Emphasis added.)

Sec. 47.25.300. DEFINITIONS. In AS 47.25.120 - 47.25.300

(1) "assistance" means financial assistance to or on behalf of a needy person, including subsistence (food, shelter, fuel, clothing, and utilities) and transportation, **medical needs (including, but not limited to, hospitalization, nursing, and convalescent care),** burial, and other determined needs;

These statutes give broad discretion to DHSS. After a person is determined to be "eligible under regulations of the department," the amount of assistance must be "determined by the department" with regard to the "needs" of the person and "the conditions existing in each case." Assistance must be reasonable "according to standards of assistance established by the department." While assistance is supposed to include "medical needs," the legislature has not defined that term except to say that it includes a minimum of "hospitalization, nursing, and convalescent care." In essence, the proposed regulations are an exercise of DHSS's authority to interpret the term "medical needs."

As a general matter, we think that the GRM statutes give very wide discretion to DHSS to interpret the term "medical needs." "Need" is an ambiguous term according to the dictionary, meaning both "necessary or required" and "useful or desired."^{18/} Considering the legislature's limitation of general relief financial assistance to \$120 a month, we doubt that a court would have considered it unreasonable for DHSS to limit general relief medical assistance to procedures necessary to prevent the death or disability of the patient when initially implementing the GRM program. This would have restricted the medical aspect of the program to a very basic level of assistance like the legislature restricted the financial aspect of the program.

However, the proposed regulations are not the initial regulations to implement the GRM program. Rather, the proposed regulations would change implementation of a program that is almost 40 years old^{19/} and that has probably covered all abor-

^{18/} Webster's New World Dictionary.

^{19/} The general relief program was enacted by ch. 110, SLA 1953.

tions not covered under Medicaid for most, if not all, of those 40 years.^{20/} When determining whether the proposed GRM regulations are reasonable, a court might evaluate whether there is a reasonable basis for the change, not whether the regulations would have been reasonable initially.

When evaluating the reasonableness of the changes made by the regulations, a court might note, first of all, that there have been no legislative changes in the definition of "assistance" or "medical needs" since 1953. Furthermore, the court would probably note that DHSS itself has had a longstanding interpretation that GRM "medical needs" include all types of abortions.^{21/} And, the court would probably note that, despite the longstanding DHSS policy of covering abortions under GRM, there has never been a legislative change indicating disapproval of that policy.^{22/} Finally, the agency will probably be unable to demonstrate to the court that the medical needs of Alaskan women have changed with respect to pregnancy options. Therefore, DHSS probably cannot point to any legislative or medical reason for interpreting "medical needs" differently now than they have been determined over the past few decades. Thus a court could, in our opinion, find the proposed GRM changes to be arbitrary, with no reasonable basis.

We are not alone in this opinion. The question of whether the GRM regulations could be changed to prohibit funding for "elective" abortions was put to Attorney General Wilson Condon in 1981 by then Governor Jay Hammond.

Condon acknowledged that a "strong argument" could be made that DHSS has absolute discretion to change its definition of "medical needs" in the GRM regulations, but explained at length that there definitely would be "legal difficulties" with this approach. He wrote

AS 47.25 gives the agency broad discretion to determine whether there is a need for specific types of medical treatment [for persons who are eligible for general relief]. . . By [previously] adopting regulations

^{20/} We base this latter conclusion on written evidence from the mid-1970's and oral anecdotal evidence dating back to the 1960's.

^{21/} We do not know if the court will grant "deference" to DHSS's longstanding interpretation or to DHSS's current desire to change the interpretation.

^{22/} Abortions were singled out by DHSS for continued coverage under GRM regulations in the summer of 1986 when the legislature cut the GRM appropriation by 50 percent for fiscal year 1987. Before that time, they had been covered along with other "physician services." Contemporaneously with the GRM funding cut, the legislature enacted a priority system for eliminating GRM services when appropriations were insufficient to cover them all. Thus, there has been fairly recent legislation about services under GRM, but no indication that different types of abortions should be treated differently.

providing for the coverage of abortion expenses the agency implicitly made a finding that there is a general need for that type of medical treatment, i.e., that abortions are "medical needs" under the terms of the statute. It could be argued that before the regulations could be amended to exclude elective abortions, there would have to be a finding that conditions within Alaska had changed to such an extent that there is no longer a need for that type of medical treatment. Without such a finding, the change [in the regulations] might be considered an arbitrary agency action. It should also be noted that the legislature has not taken action to change the original agency determination.

Such a finding would be most difficult to make in this case. Neither the Hyde Amendment nor the United States Supreme Court decision in Harris alter[s] "medical needs." Nor has any other event occurred in the state which suggests a change in medical needs. Absent changed circumstances, we believe a court might not permit the deletion of elective abortions from the list of medical needs covered by the General Relief Medical Assistance program.^{23/}

We agree with Attorney General Condon's opinion that changes in the GRM regulations without a change in either the underlying statute or in the medical circumstances of indigent women in the state would likely be viewed as unlawful arbitrary action by the agency. Such arbitrariness would be inconsistent with legislative intent. In addition, the regulations would be inconsistent with legislative intent if they resulted in unconstitutional administration of the state's medical assistance programs. This memo will now discuss the constitutional issues raised by the proposed regulations.

(4) Constitutionality of the proposed regulations - privacy.

Given the content and the assumed effect^{24/} of the proposed regulations, it is clear that the privacy clause of the state's constitution^{25/} could be the basis of a challenge to the constitutionality of the regulations.^{26/}

^{23/} Op. Att'y Gen., January 12, 1981, File No. J-80-413-81, at pages 5 - 6.

^{24/} For a discussion of the "assumed effect" see footnotes 6 - 10 and accompanying text.

^{25/} Article 1, sec. 22, Constitution of the State of Alaska.

^{26/} It cannot reasonably be argued that a woman's decision about whether to continue a pregnancy fails to involve a privacy right.

Under the state constitution, a regulation impinging on the right to privacy may be upheld only if it is necessary to further a compelling state interest.^{27/}

A challenge based on the state's privacy clause would contend that the proposed regulations interfere with an indigent woman's right to privately determine whether to continue her pregnancy. Challengers would probably say that the regulations force a state-sponsored inquiry into the woman's reasons for her choice (if the choice is abortion) and place a substantial obstacle (by denying funding) in the way of implementing the woman's choice (if the choice is abortion and for a reason not supported by the state).

Defenders of the proposed regulations would probably use arguments like those made in federal decisions that have upheld Medicaid abortion funding restrictions. They would argue that it will be a woman's poverty, not the state, that will stand in the way of an "elective" abortion under the proposed regulations. They would also point out that the right to privacy is not absolute^{28/} and can be outweighed by the state's "important and legitimate interest in potential life."^{29/} Defenders would probably claim that by not funding "elective" abortions, the state would simply be expressing its legitimate preference to financially support childbirth. The woman's right of privacy would not be violated because, according to the regulations' defenders, she can still get an abortion, just not at state expense.

In rebuttal, the regulations' challengers would probably note that the state itself has acknowledged that lack of state funding will be more than an obstacle in the path of many indigent pregnant women; it will be an absolute bar. DHSS's own fiscal note projects that a significant number of indigent women who cannot get publicly-funded

^{26/}(...continued)

As long ago as 1942 and as recently as June 1992, federal decisions have recognized that the federal "[c]onstitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood," including "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear...a child." See, Casey v. Planned Parenthood of Southeastern Pennsylvania, ___ U.S. ___ (1992), 1992 WestLaw 142546, page 11, which cites a string of cases extending back to 1942.

And, while the contours of Alaska's right to privacy are not yet firmly established, it is clear that the right to privacy guaranteed to Alaskans is broader in scope than that guaranteed in the federal constitution. State v. Glass, 538 P.2d 872 (Alaska 1978).

^{27/} Grav v. State, 525 P.2d 524 (Alaska 1974).

^{28/} Grav v. State, supra; Ravin v. State, 537 P.2d 494 (Alaska 1975); and State v. Erickson, 574 P.2d 1 (1978).

^{29/} Casey, supra, at page 24.

abortions under the new restrictions will, in effect, be forced to carry their pregnancies to term. Challengers would probably contend that this is not only the effect, but also the purpose of the new regulations. The challengers can point to the governor's own press release that says the purpose of the new restrictions is "to save lives." They would probably say that the intent of the restrictions clearly goes beyond promoting childbirth, which could be achieved by less intrusive means like educational outreach, and, instead, strikes at the heart of the right to privacy itself, by using the power of the state to impose an "undue burden" on the right of an indigent woman to freely decide how to manage her pregnancy.^{30/}

The Alaska Supreme Court's resolution of these arguments is as likely to be affected by its view of reality as by case law, and it may well be determined by the strength of the record before it at the time it makes its decision.^{31/} If the court views the Medicaid and GRM changes separately, from the point of view of the programs themselves, the court could uphold the Medicaid regulations as requirements of federal law and uphold the GRM changes as treating all "elective" procedures the same.^{32/} However, if the court views the programs from the point of view of an indigent pregnant woman, the court could find that the two programs, in the way that they operate together to support a pregnant woman's choice to give birth but not, in all cases, her choice to have an abortion, impermissibly interfere with her fundamental right of reproductive choice. While acknowledging that protection of potential life

^{30/} "Undue burden" appears to be the test developing under the federal constitution for testing the validity of a state's abortion restrictions. While the test under the state constitution will probably be even more stringent, requiring a compelling state interest, it is instructive to note the following language from the most recent abortion decision based on the federal constitution:

A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it. And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of the woman's choice cannot be considered a permissible means of serving its legitimate ends. (Casev, *supra*, at page 27) (Emphasis added.)

^{31/} See, *Casev, supra*, where the U.S. Supreme Court acknowledges that the strength of the record before the court on spousal and child abuse convinced it to strike down the "husband-notice" provision of Pennsylvania's abortion restrictions.

^{32/} Of course, to do this, the court would have to overlook the fact that "therapeutic abortion" includes an abortion that would be an "elective procedure" if it were not an abortion. That is, a "therapeutic abortion" includes abortions that are not necessary to prevent the death or disability of the patient, which is the determining factor for other "elective" procedures. So, actually, the regulations do not treat all "elective" procedures the same.

is a legitimate governmental goal, the court could point out that it is not a compelling interest until viability. And, since a compelling interest is needed to override a fundamental privacy right, the court could strike down the regulations with respect to abortions performed before viability.

We believe it is more likely that the Alaska Supreme Court will adopt the challengers' view of reality and the applicable law rather than the defenders' view. We doubt that the court will find the regulations to be neutral, in reality, on the issue of reproductive choice when it is faced with the fiscal note and the acknowledged antipathy of the Administration toward abortion, as exemplified in the Governor's press release. More likely, the court will see a reality where an indigent woman has no real choice concerning her pregnancy if her eligibility for medical care is conditioned on the result desired by the state - childbirth.^{33/} As to the applicable case law to form the legal underpinnings of its decision, the Alaska court need only point to the explicit (and stronger) privacy right granted under the state constitution and the lack of a compelling governmental interest to override that right before viability.

(5) Constitutionality of the proposed regulations - equal protection.

The proposed regulations also implicate the equal protection clause of the state constitution^{34/} because the regulations treat some indigent pregnant women differently from other indigent pregnant women. Otherwise eligible pregnant women who choose childbirth will receive state assistance with medical procedures while some otherwise eligible pregnant women who choose abortion will not.

Whether the different treatment of pregnant women under the regulations is constitutional under the state's equal protection clause will be determined by the following test: the court will assess the legitimacy of the state purpose purportedly furthered by the different treatment and the extent to which the relationship between the asserted purpose and the different treatment is fair and substantial; then the court will determine the nature and the extent of the infringement of individual rights allegedly caused by the disparate treatment.^{35/} Depending on the importance of

^{33/} The court will probably make clear that its decision would be the same if the state were seeking to encourage population control by funding abortions and not childbirth. The constitutional question before the court will not involve the weighing of the value of abortion as against childbirth, but instead will concern the protection of either procreative choice from discriminatory governmental treatment. See, Doe v. Director of the Michigan Dept. of Social Services, 468 N.W.2d 862 (Ct.App. Mich. 1991), appeal granted at 472 N.W.2d 638 (MI 1991).

^{34/} Article I, sec. 1, Constitution of the State of Alaska.

^{35/} Williams v. Zobel, 619 P.2d 448 (Alaska 1980), rev'd on other grounds, 457 U.S. 55 (1982).

the individual interest involved, a greater or lesser burden will be placed on the state to show this fair and substantial relationship.^{36/}

In light of this equal protection test, challengers of the regulations would probably contend, first of all, that the individual interest being affected by the disparate treatment is a fundamental interest, the right of reproductive choice.^{37/} Secondly, given the importance of the individual right affected, the challengers would probably contend that the state's purpose in treating the classes of pregnant women differently (based on whether they choose childbirth or abortion) needs to be not only legitimate but must approach being a compelling interest that is virtually unachievable by means that would have less impact on the affected right. The challengers would no doubt point out that the state's interest in potential life is not compelling until viability, and argue that the effect of the regulations on reproductive choice before viability cannot be justified.

Defenders of the regulations would probably counter that the regulations will result not in disparate treatment, but in equal treatment. Instead of funding some "elective" procedures (i.e., "elective" abortions) under the GRM program and not other elective procedures, as was the past practice, the state will be treating all "elective" procedures the same. Alternatively, the regulations' defenders may argue that equal protection analysis should not apply because women who need a "therapeutic abortion" are not similarly situated to those who merely want an "elective abortion." Therefore, the regulations can validly treat them differently. Defenders would probably also contend that the right to reproductive choice remains with the woman because she can seek an abortion without state funds. Therefore, according to potential defenders, since there is no fundamental right being affected, the government's purpose in treating the women differently need only be legitimate, not compelling. And that legitimate right is the right to protect potential life.

As with the arguments based on the state constitution's privacy clause, a state court's resolution of the differing arguments about equal protection will depend as much on the strength of the record before it and the court's view of reality as on case law. The court could uphold the GRM regulations as validly treating "elective abortions" differently from "therapeutic abortions." Alternatively, the court could strike down the GRM regulations because they work in conjunction with the Medicaid regulations to treat pregnant women differently based on whether they choose to exercise their

^{36/} Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983).

^{37/} Since the fundamental nature of the interest rests, at least in part, on the state constitution's privacy clause, the privacy right arguments described in the previous section of this memo and the equal protection arguments described in this section stem from some of the same reasoning. However, the legal analysis is a bit different, and either or both could be used by an Alaska court to strike down the regulations, so this memo treats them separately.

fundamental right of reproductive choice. The court could find that the women affected by the regulations are similarly situated because they are pregnant and that the state may not interfere with a woman's choice on how to treat that pregnancy by reserving to itself the power to define that some abortions are "elective" while childbirth is not. The court could find the protection of potential life to be a legitimate state interest, but not compelling enough before fetal viability to override a woman's right of reproductive choice. As a legal underpinning for resolving the equal protection arguments differently from similar cases decided under the federal constitution, an Alaska court would point to the more stringent standard developed under the state constitution for testing the constitutionality of classifications made by government actions.

CONCLUSION

The regulations making changes in the Medicaid program clearly comply with the legislative intent that Alaska participate in the federal Medicaid program. However, the regulations that propose restrictions on funding "elective" abortions under the GRM program may be viewed by a court as unlawful arbitrary changes because they change a long history of contrary agency interpretation without apparent statutory or medical justification. The GRM regulations also raise substantial issues under the state constitution's privacy clause and equal protection clause.^{38/}

Whether a court would find the GRM changes to be arbitrary will probably depend on whether the court analyzes the new regulations apart from the history of the GRM program or as changes to a longstanding interpretation by the agency. Viewed in isolation, the proposed regulations appear to fall within the broad discretion granted to DHSS by the legislature. However, viewed as changes to a longstanding agency policy, the changes may be viewed as somewhat arbitrary.

How a state court would resolve the constitutional issues and whether the restrictions would be upheld under the constitution will depend not only on purely legal arguments but on the view of social and economic reality demonstrated in the record before the court and adopted by the court as the reality it is willing to recognize. To the extent that the court is convinced that an indigent pregnant woman's privacy right or right to equal protection is actually interfered with by the regulations (and not merely by her own poverty or by her election of a "nonmedically necessary" procedure), the court has legal precedents available to it to support a decision striking down the regulations. If the court is convinced, despite the Governor's press release and the DHSS fiscal note, that the regulations are neutral with regard to privacy rights and do not treat similar medical conditions differently, the court also has legal precedents available to it to support a decision upholding the regulations.

^{38/} They also raise issues involving clarity. See footnotes 1, 3, 5, and 7.

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In our opinion, the issue of the regulations' arbitrariness is a toss-up, but we think the Alaska Supreme Court is likely to be convinced that the regulations are not neutral with regard to privacy (in either their effect or purpose), do impermissibly treat the choice of childbearing differently from the choice of not bearing a child, and are not justified by a sufficient governmental interest with respect to previability abortions. Therefore, we think there is a substantial probability that the court will find the regulations to be unconstitutional with regard to previability abortions, but constitutional with regard to postviability abortions.^{39/}

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^{39/} We are not alone in our view that Alaska courts will probably take a different view than the federal courts have on the constitutionality of restricting public funding of abortions for indigent women. Opinions and memoranda from the Alaska Attorney General's Office under three different Administrations over the last 14 years have consistently indicated that the Alaska Supreme Court is likely to share the view of the dissenters in the federal cases that have upheld restrictions on public funding of abortions. See Op. Att'y Gen., March 31, 1978, Op. No. 15, pages 2 - 3; Op. Att'y Gen., Jan. 12, 1981, File No. J-66-413-81, pages 6 - 7; Op. Atty Gen., April 17, 1981, page 6; and Memorandum of Assistant Attorney General Elizabeth Shaw to Representative Mark Boyer, January 19, 1990, page 1.

Moreover, state courts in at least six other states have refused to follow federal precedent in this area and have struck down various abortion funding restrictions under their state constitutions, citing state privacy clauses, state due process clauses, or state equal protection clauses. See, Moe v. Secretary of Administration and Finance, 417 N.E.2d 387 (Mass. 1981); Committee to Defend Reproductive Rights v. Myers, 625 P.2d 779 (CA 1981); Right to Choose v. Byrne, 450 A.2d 925 (NJ 1982); Planned Parenthood Association v. Department of Human Resources of the State of Oregon, 663 P.2d 1247 (Or. App. 1983), affirmed at 687 P.2d 785 (OR 1984); Doe v. Maher, 515 A.2d 134 (Conn. Super. 1986); and Hope v. Perales, 571 N.Y.S.2d 972 (Sup. 1991).

For a more complete discussion of these A.G. opinions and other states' cases, refer to our memorandum to you dated July 7, 1992.



Official Business

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SENATE HESS

DATE: January 27, 1993

Subject of meeting:

SB 53 - ANNULING ABORTION FUNDING REGULATIONS

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✓ Ted Dants	Box 47 ... JUNEAU	462-2837		Yes
✓ Lona ...	4622 ... JUNEAU	789-7211	SELF	✓
✓ Phillip ...	44 ... JUNEAU	586-6813	myself	YES
✓ Robert Head	413 ... JUNEAU	787-3834	SELF	YES
✓ SID HEIDENSOFF	Box 020650, JUNEAU	789-9858	SELF	YES
✓ Cathy ...	3520 ... JUNEAU	212-280	SELF	
✓ Robert ...	P.O. Box 332 ... JUNEAU	789-2865	SELF	YES
✓ John Lundback	4467 Mountainside Dr. JUNEAU	780-6337	Juneau Coalition For Pro Choice	Yes

3



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PAT DENNY	526 SEWARD, JUNEAU	586-3925	just a citizen	yes
M J MIELKE	800 F STM-4 Juneau	586 9080	myself	no
A. Porter	1834 Stanford Anch, AK	272-1054	SELF	yes
BEVERLY FLECHER	P.O. BOX 21791 JUNEAU	586 4210	SELF	✓
Diana Rhoades	Box 104199 Anch. AK 99510	463-3659	AK Young Democrats	Yes
Merrill Lowden	736 W. 10 th Juneau 99801	463-1575	Myself	Testimony Writings yes
Deborah Luper	1217 Crescent Dr. Anchorage, AK 99508	563-10488	myself	yes testimony



Official Business

COMMITTEE:

DATE:

SIGN-IN

Subject of meeting:

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

✓ Joan Henderson	PO Box 020658 Juneau	789-8857	Self	yes
✓ Kathy Polk	PO Box 020176 Juneau AK 99802	789-0928	Self	yes
✓ Kathy Neanis	PO Box 533 Juneau, AK 99802	463-3546	Self	yes
✓ Carole M. Hoover	8922 TRIO Juneau, AK 99801	789-7656	Self	Yes
✓ John P. Mrazek	PO Box 210527 Aurora, AK 99821	789-5910	Self	yes
Not to testify John P. Mrazek	300 W 11 th 99801	465-7523	Self	No
✓ SHEERIE GOLL	P.O. BOX 210526 Juneau, AK 99802	463-6244	THE ALASKA WOMEN'S LEAGUE	YES
✓ JAY Livey Jay Livey	DHSS	465-3030	DHSS	

state funding for abortion

DHHS -

27 Jan. 1993

I would like to state my objections to the hour at which this hearing was held. All of those with jobs, find it very difficult to attend hearings in the middle of the day - especially women - who in fact, are the most affected by the bill you were discussing today.

Thanks for your consideration.

Pauline Ulter
Abortion Rights Project
PO Box 240667
Anchorage AK 99524



STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

DATE: January 27, 1993

Please accept the enclosed original(s) of written testimony
for the Senate Hess comm teleconference hearing that was
scheduled on 1-27-92.

A copy of this testimony was transmitted to your committee via
fax on 1-27-92.

Thank you,

Christi Shields
Box 110

I am Ruth Ewig, reading this for Director John Harbaugh, Assistant Director Jonathan Ewig, Treasurer David Stack, myself as Secretary of Citizens for Excellence in Education (NACE/CEE) and 1500 concerned citizens in the Tanana Valley which include Fairbanks, North Pole, Fox, Two Rivers, Salcha, Esther, and the rest of the valley. We are alarmed at the legislators who have acted to create SB53, SB55 and HB9 which further enlist the state of Alaska as an accomplice in the torture and killing of pre-born babies by abortion.

Statistically 97-98% of pre-born babies have been killed for reasons of birth control. By changing our education system to character development curriculum which is in use in different parts of the country and which has reduced teen pregnancies to zero in California you, as legislators, could serve this state well by using our limited financial resources most profitably and investing in true ABSTINENCE education with the advantages emphasized leading to responsible planning that does not butcher babies. Excellent abstinence programs through education are encouraging responsible living and ARE working to improve our nation.

The argument of "wantedness" is an unstable marker not to be trusted to decide whether we kill our babies or not, anymore than it should decide for our elderly. The Netherlands has now graduated from voluntary to involuntary disposal of preborn babies as well as elderly.

Cultural elitists such as doctors and lawyers having been seduced by a lifestyle are not taking a stand against the slaughter of our babies. Will you as legislators be trapped in the same way or be willing to restore our state to a standard to match that of our Founding Fathers?

Since the lie of *Roe v. Wade* 28,000,000 babies have been butchered. "The 1960s gave birth to a feminist movement that imbued women with new ideas of personal 'freedom' and 'power'. Abortion advocates found natural allies in the feminist camp, for they promised women sexual freedom through abortion and the power of 'self determination'. Little mention was made that women were also being given power over whether their own children would live or die." (FAMILY VOICE, Jan. 1993, pg. 5)

It is acknowledged that there are a few difficult situations that media hyp and popular culture enlarge on, but pulling a baby apart does not justify crime and leads to twice the trauma.

The question really is life vs. lifestyle. Once the baby is born no woman can be, has been or will ever be compelled to raise a child she brings to full term. We identify two sets of rights: 1) the rights of the preborn babies and they ARE alive, or 2) the rights of the woman in a crisis pregnancy, to tear apart the baby relieving the burden, that is, destroying a life, saving a lifestyle.

Education is the key. News media and entertainment media have educated by creating an imaginary aura around abortion. An educational film shown to students shows how an abortion is done over a lunch hour in a record 1 minute, 50 seconds with the lady having a friendly chat with another. The baby is demolished into the consistency of tomato sauce by suctioning her out of her mother and spreading her around on a counter to show the camera audience that there really is no baby there... Because of our marvelous photography and technology we now can see that there is a complete baby living

inside even earlier than six weeks old. There is not one of us who would have even considered abortion as a possibility if we had any idea or had access to this information about our preborn babies as living, heartbeating, breathing, "wailing little precious, delicate children-to-be.

What the movie that is shown to students does not admit is that the instruction text for abortion doctors cautions them to be sure that a heart monitor is put on the preborn baby being careful not to show the mother a beating heart that then stops. This measurement is solely for the abortionist to insure that the baby is killed before being pulled out. Also, the abortion doctor is told not to let the mother watch a visual, TV-type screen during the pulling out of the lifeless body.

Other lies not revealed in this so-called "educational" film are lies behind the original case of Roe vs. Wade, behind the bogus statistics used to manipulate the people of this state and this country, the concealment of the frequency of botched legal abortions, the fact that the abortion procedure itself is more scary and complicated, the withholding of cases of hemorrhaging in women from abortions, withholding the frequency of breast cancer resulting from abortions, withholding the cases of increased child abuse in our country while the very meaning of life is threatened, "at-risk", and the lack of acknowledgement and education about the long-term suffering of emotional pain for those who are accomplices to and affected by the holocaust of abortion including roughly 7,200,000 women in America afflicted with post-abortion syndrome (PAS).

In conclusion, I quote from Congressman Pat Swindal:

"The integrity of our constitutional republic rests ultimately on how we resolve the life-and-death issues of abortion...If we are unable to preserve the most fundamental rights of which our Constitution speaks, life and liberty, our government has failed to satisfy its most basic responsibility. Such a government not only forfeits the respect of the people, but eventually its right and ability to govern as well." (A HOUSE DIVIDED, pg. 61)

Will you and your vote stand for the life, liberty and pursuit of happiness of these unborn children?



Alaska State Legislature

Please enter into the record my testimony to the Senate Health, Education & Social Services committee name
Committee
 committee on SB 53 , dated 1-27-93
 bill/subject

Signed: [Signature]
 Testifier
NACE/LEE
 Representing (Optional)
2325 35th Ave. Fairbanks, AK 99701
 Address
452-5538
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53 , dated 1/27/93
bill/subject

I support SB 53, but I think it does not go far enough to protect the current rights of all women to choose regardless of their income. To only annul Governor Hickel's regulations is to invite the administration to try again to submit other regulations to limit state funding for abortions.

Women who qualify for Medicaid are those without the financial resources to pay for a medically safe abortion and are therefore more likely to seek unsafe means to end their pregnancies.

Signed: Mim Dixon (Mim Dixon)
Testifier

Representing (Optional)

PO Box 81585, Fairbanks, AK 99706

Address

479-3459

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on SB53, dated 4/29/93
 bill/subject

I Support SB53.

I BELIEVE ALL REPRODUCTIVE CHOICES SHOULD BE VIEWED AS THE HEALTH ISSUE THAT THEY ARE, AND SHOULD BE AVAILABLE TO ALL WOMEN IN THE STATE.

I THINK IT'S TIME TO STOP USING REGULATIONS OR LEGISLATION TO DISCRIMINATE.

IT IS TIME TO RECOGNIZE WOMENS' FULL PERSONHOOD, RIGHTS AND VALUE AS EQUAL ^{THAT OF} TO MEN, AND NOT LESS THAN THE UNBORN.

Signed: EVELYN R. FRISK Evelyn R. Frisk
 Testifier

Representing (Optional)

P.O. BOX 10465, FBK5 AK 99710

Address

907-457-2552

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on HB-53, dated 1/27/93
 bill/subject

I STRONGLY SUPPORT THIS BILL - IT IS CRITICAL THAT THE REGULATIONS, RESTRICTING FUNDING FOR ABORTIONS FOR POORER WOMEN, BE REPEALED. WITHOUT ACCESS TO THIS IMPORTANT HEALTH CARE, A POOR WOMAN IS FACED WITH THE APPALLING "CHOICE" OF SEEKING AN UNSAFE + ILLEGAL ABORTION, OR FACING A CRISIS PREGNANCY, WHICH COULD HAVE SERIOUS HEALTH CONSEQUENCES AND EFFECTIVELY ELIMINATE HER ABILITY TO HAVE CONTROL OVER HER LIFE. WOMEN'S LIVES ARE AT STAKE, AND ITS VITAL THAT THEY HAVE THIS OPTION, REGARDLESS OF SOCIAL STATUS, OR WEALTH. PLEASE PASS HB-53 AND CONTINUE TO FUND ABORTIONS AND PROTECT WOMEN'S RIGHT TO PRIVACY.

Signed: LISA DUMAS Lisa M. Dumas
 Testifier

Representing (Optional)
P.O. Box 60652, Fairbanks, AK 99706-0652

Address
(907) 457-1458

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on HB-53 , dated JAN, 27 1993
bill/subject

I strongly support this bill. Any woman who wants an abortion - for whatever reason - should be able to obtain one. You may take my tax dollars now, rather than many thousands of my tax dollars later to provide services for unwanted, mistreated or pre-natally neglected children. Do people honestly believe that because a poor woman is denied an abortion that she will ~~have~~ treat her unborn child as if she truly wanted it? I speak as a 5-months pregnant mother of one.

Signed: Kathleen Hudson
Testifier

Representing (Optional)
850 Balsam Dr. FBKS, AK 99712

Address
457-1614

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53, dated 1-27-93
bill/subject

Back-up to verbal testimony:

I am a nurse practitioner for 27 years -
20 in women's health and public health.
I present options to women who have certainly
prognosis. I have seen abortion, I accept
the safety of a fetus when chosen by the mother.
I know the realities of terminating a pregnancy
and the realities of lives of children born into
condemning homes. All options must be available
to all women regardless of income. Keep state
funding available to indigent women for
abortion. Allow time for busy-body
people to stay out of the lives of other religions.

Signed: Anne Harrison Prognosis decisions are
Testifier private

self
Representing (Optional)

3020 Denia Blvd So Ft. Val. 73919
Address

1777-3991
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on SB 53, dated 1-27-93
 bill/subject

I am opposed to SB 53. I concur with most pro-life statements that have already been entered into record; and further believe that the monies which would "normally" be used for the elective, non-therapeutic, or any type abortion would be better used in education of women & men in abstinence and contraceptives; in general the responsibility of not choosing to use a contraceptive. How about providing tube ties (which can be reversed with less problems than an abortion) or other reversible contraceptive action. Abortion is not reversible. If any physical, mental or emotional problems happen from an abortion, it is too late. It is non-reversible. Thank you to those legislators who are putting value on ALL human life.

Signed: Frances Hallgren
 Testifier

Representing (Optional)
Box 1203 Sitka AK 99835
 Address
747-6909 or 747-5076
 Phone No.

have obligation to practice birth control, no abortion.

P.S. I am very much in favor of providing easier adoption. and I think if women want to be "in charge" of their bodies, then they



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB53, dated January 27, 1993
bill/subject

I oppose SB 53. I am opposed to the killing of unborn babies. I especially do not want to pay for these killings.

Signed: *A. Vivian Mackin*
Testifier

Representing (Optional)
2910 Sawmill Creek Hwy Sitka, AK 99855
Address
747-3694
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Health Service Committee
committee name

committee on SB 53, dated 1/27/93
bill/subject

I want to go on record as saying that I am opposed to allowing my tax dollars to pay for the murder of innocent children. I believe this is morally wrong. I believe the government has a responsibility to protect lives, including the lives of unborn children. I also highly recommend all committee members to view the video HARD TRUTH. I am strongly opposed to SB 53.

Thank you
Stephanie Vieira

Signed: Stephanie A Vieira
Testifier

Representing (Optional)
611 Burke St

Address
747.3698

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senat. Health Service
 committee name
 committee on SB 53, dated 1-27-93
 bill/subject

I am opposed to HB 53!
 I do not believe tax money
 should be used to paying
 for the fitting of babies. I
 also think you should view
 the 7 min film that was
 suggested from Juneau.

Signed: Shan R. Stewart
 Testifier

Representing (Optional)
PO Box 2002, Delta, AK 99825

Address
(907) 747-6727
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Health & Social Service Committee
committee name

committee on SB 53, dated 1/27/93
bill/subject

I Am opposed to SB 53 And to Any Public
funding of abortion.

Signed: [Signature] William J. Donnelly
Testifier

Representing (Optional)
405 VERSTOVIA SITKA, AK 99835

Address
(907) 747-3127
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Health Social Services
committee name

committee on SB 53, dated _____
bill/subject

*I am against Bill SB 53, and don't want
my tax dollars being spent on this.
Abortion is wrong, Hol says so.*

Signed: *Edward Matthews*
Testifier

Representing (Optional)

3208 Nabbed Pt Rd. Sp. 15, Sitka Alaska 99835

Address

(907) 747-6996

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Social Serv. Health Serv. Services
committee name

committee on SB 53, dated 1-27-93
bill/subject

I oppose this Bill SB 53.

I am a 65 yr. old Grand-mother, and
am against abortion, of any kind, except to
save the life of the mother.

All teens over 16 should have to see the
abortion films "Hood Truck", and be counseled
on leaving their betters and that abortion
is morally wrong.

I commend Governor Waskieleski on his stand
on abortion.

Most Sincerely

Signed: Louise E. Matthews

Testifier

Sitka for Life and Pro-Life

Representing (Optional)

3208 Hatcher Pl. Rd. Apt. 15 Sitka, Alaska

Address

(907) 747-6996

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on SB 53, dated 1/27/93
 bill/subject

I'd like to share with you my first thought on awakening this morning: when I was in kindergarden, I learned it was wrong to kill people....

Let me close with a quote by Henry David Thoreau. "Things don't change. We do." I oppose SB 53 (do not) because it is wrong to kill people. Thank-you.

Signed: Mary S Sottis
 Testifier

Representing (Optional)
1015 DeGroff Sitka AK

Address
747-5624

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on SB-53, dated 01-27-93
 bill/subject

I STRONGLY OPPOSE THE FUNDING OF ABORTION WITH GOVERNMENT MONEY. BECAUSE ABORTION ON DEMAND SEEMS TO BE THE POPULAR TREND, IT BY ALL MEANS DOES ~~NOT~~ NOT MAKE IT RIGHT! IN ALL RESPECT, MR. CHAIRMAN, THE ABORTION INDUSTRY IS A GREAT FINANCIAL SUCCESS THROUGH THE CRUSHING AND DISMEMBERING OF OUR MOST SILENT AND INNOCENT LITTLE ONES. . . THE PRE-BORN - WITH 2nd AND 3rd TRIMESTER ABORTIONS BRINGING IN A HIGHER FEE. ~~THESE~~ THERE IS A FAIRLY NEW PROCEDURE BEING OPENLY PRACTICED IN THE LOWER 48, IN (5) STATES, TO ABORT 2nd/3rd TRIMESTER BABIES. (BECAUSE BABIES HAVE DEVELOPED SO FAR AT THIS AGE, IT IS DIFFICULT TO CRUSH AND DISMEMBER, AND CHEMICALLY INDUCED ABORTIONS POSE RISKS TO MOTHERS, LET ALONE BABIES BEING BORN ALIVE.) THE NEW PROCEDURE D+X (DILATION AND EXTRACTION) USES FORCEPS TO GRASP THE BABY'S LEG AND PULLS THE BABY OUT LEAVING THE HEAD IN BIRTH CANAL. BLUNT SCISSORS ARE THEN USED TO PUNCTURE A HOLE IN THE BASE OF THE ~~SKULL~~ SKULL. A SUCTION CATHETER IS THEN APPLIED TO THE WOUND AND THE CHILD'S BRAINS ARE REMOVED. THIS IS THE FACE OF CHOICE. FOR YOU WHO ARE PARENTS, DO YOU RECALL WHEN YOUR WIFE (OR YOURSELF) WAS PREGNANT WITH YOUR CHILDREN? DO YOU REMEMBER THE LITTLE ELBOW, OR LITTLE FOOT PRESSING ON THE STOMACH? DO YOU REMEMBER FEELING THE BABY MOVE AND TURN? THESE BABIES ARE THE FACE OF ABORTION.

OUR STATE PLACES GREAT VALUE ON ENVIRONMENT AND WILDLIFE. PLEASE LET ALASKA SET THE STANDARDS TO RESPECT AND VALUE HUMAN LIFE & IN OUR NATION.

MR. CHAIRMAN AND COMMITTEE MEMBERS I CHALLENGE YOU TO VIEW ^{THE FILM} "HARD TRUTH". IT'S 7 MIN. THAT WILL CHANGE YOUR LIFE.

VOTE NO ON SB-53 FOR THE BABIES.

Thank you.

Signed: Veri Jundy
 Testifier
Defender of the Pre Born
 Representing (Optional)
P.O. Box 2975
 Address
Sitka AK 99835 747-8138
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53, dated 1/23/93
bill/subject

Dear Mr. Senator Rieger -

Please know that the Sitka League of Women Voters strongly supports senate bill #53. which amends changes made in abortion funding regulations that were filed with the Lt. gov. in January 1993.

We feel that poor women too should have the right to choose safe abortions.

Signed: Clothilde Bahovec
Testifier

Sitka League of Women Voters
Representing (Optional)

627 De Groot St.
Address

Sitka
Phone No. 747-8185



Alaska State Legislature

Senate Health, Education and
Social Services Committee

Please enter into the record my testimony to the _____

committee name

committee on Senate Bill No. 53 , dated 1/22/93

bill/subject

Good afternoon. My name is Charles Dean, and I am here to speak on behalf of the unborn children of Alaska. As an unwillingly aborted father, I am opposed to the passage of Senate Bill No. 53.

The prohibition recently enacted which disallows the use of Alaska funds for the use of elective, nontherapeutic abortion under the extant general relief medical assistance program will withstand legal challenge under both the United States and State of Alaska constitutions. Further, the right to privacy is not inherently linked to a requirement for state funding of elective, nontherapeutic abortion under the general relief medical program. The existence of this prohibition in no way violates the state equal protection guarantees, since no other elective medical procedures for otherwise healthy persons are currently funded under the general relief medical program.

As a long-time Alaskan, I have had to peacefully coexist with abortion on demand in this state for twenty years. It is to this state's great disgrace that it has permitted this holocaust against its

very heritage to exist at all. But to pay for it with ^{Accession} public dollars!? The status quo makes all Alaskans something like accessories-before-the-fact for murder...repeal of this prohibition will bloody our hands.

Signed: Charles B. Dean *HC B1*
Testifier

Representing (Optional)
P.O. Box 2282 Sitka, AK 99835

Address
907-747-1072

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Health, Education and Social Services
committee name

committee on Senate Bill No. 53, dated 1/22/93
bill/subject

I support Senate Bill 53 which would annul changes made in abortion funding regulations so that abortions are eligible for funding under the regulations of the Department of Health and Social Services as they existed in December of 1992.

I am prochoice and believe that all women have the right to have an abortion, even women who are poor.

Signed: Jennifer A. Mason

Testifier

SELF

Representing (Optional)

907 Halibut Point Rd. #47 Sitka, AK 99835

Address

(907) 347-4897

Phone No.

27 January 1993

To: Senate Health Education and Social Services Committee

Re: Senate Bill 53

My name is Natasha Calvin, and I am representing the Sitka Coalition for Women's Rights. We want to thank the HESS Committee for sponsoring this bill.

The Sitka Coalition for Women's Rights supports the passage of Senate Bill 53, to continue state support for abortion services for poor women who are unable to pay. The Governor's office has admitted that there is no financial justification for stopping payment for abortions. Clearly this is a religious agenda of the Catholic Church. There is no place in our health services for a religious agenda. Mr. Hickel's regulations, which are designed to force poor women to carry unwanted pregnancies to term and to have babies they do not want and/or cannot financially afford to care for is regressive in the extreme.

The Health, Education and Social Services Committee should be researching ways to provide universal medical coverage, for all Alaskans. A good place to start is to continue funding all health services for the disadvantaged, especially abortions for poor women who cannot afford to pay for them.

Thank you for allowing us to testify.

Natasha Calvin for
Sitka Coalition for Women's Rights
Box 2966
Sitka Alaska 99835
747-8950



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on SB53, dated 1/27/93
 bill/subject

I SUPPORT SB53.

I BELIEVE ALL REPRODUCTIVE CHOICES SHOULD BE VIEWED AS THE HEALTH ISSUE THAT THEY ARE, AND SHOULD BE AVAILABLE TO ALL WOMEN IN THE STATE.

I THINK IT'S TIME TO STOP USING REGULATIONS OR LEGISLATION TO DISCRIMINATE.

IT IS TIME TO RECOGNIZE WOMENS' FULL PERSONHOOD, RIGHTS AND VALUE AS EQUAL TO ^{THAT OF} MEN, AND NOT LESS THAN THE UNBORN.

Signed: EVELYN R. FRISK Evelyn R. Frisk
 Testifier

Representing (Optional)
P.O. BOX 10465, FBKS AK 99710
 Address
907-457-2552
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Hess
 committee name
 committee on HB-53, dated 1/27/93
 bill/subject

I STRONGLY SUPPORT THIS BILL - IT IS CRITICAL THAT THE REGULATIONS, RESTRICTING FUNDING FOR ABORTIONS FOR POORER WOMEN, BE REPEALED. WITHOUT ACCESS TO THIS IMPORTANT HEALTH CARE, A POOR WOMAN IS FACED WITH THE APPALLING "CHOICE" OF SEEKING ^{AN} UNSAFE + ILLEGAL ABORTION, OR FACING A CRISIS PREGNANCY, WHICH COULD HAVE SERIOUS HEALTH CONSEQUENCES AND EFFECTIVELY ELIMINATE HER ABILITY TO HAVE CONTROL OVER HER LIFE. WOMEN'S LIVES ARE AT STAKE, AND ITS VITAL THAT THEY HAVE THIS OPTION, REGARDLESS OF SOCIAL STATUS, OR WEALTH. PLEASE PASS HB-53 AND CONTINUE TO FUND ABORTIONS AND PROTECT WOMEN'S RIGHT TO PRIVACY.

Signed: Lisa Dumas Lisa M. Dumas
 Testifier

Representing (Optional)
P.O. Box 60652, Fbks, AK 99706-0652
 Address
(907) 457-1458
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on HB-53, dated JAN, 27 1993
 bill/subject

I strongly support this bill. Any woman who wants an abortion - for whatever reason - should be able to obtain one. You may take my tax dollars now, rather than many thousands of my tax dollars later to provide services for unwanted, mistreated or pre-natally neglected children. Do people honestly believe that because a poor woman is denied an abortion that she will ~~then~~ treat her unborn child as if she truly wanted it? I speak as a 5-months pregnant mother of one.

Signed: Kathleen Hudson
 Testifier

Representing (Optional)
850 Balsam Dr. FBKS, AK 99712

Address
457-1614

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name

committee on SB 53, dated 1-27-93
bill/subject

Back-up to verbal testimony:

I am a nurse practicing for 27 years -
 20 in women's health care and public health.
 I present options to women who have continuing
 pregnancies. I have seen abortions, I accept
 the death of a fetus when chosen by the mother.
 I know the realities of terminating a pregnancy
 and the realities of lives of children born into
 unloving homes. All options must be available
 to all regardless of income. Keep state
 funding available to eligible women for
 abortions. It is time for busy-body
 people to stay out of the lives of other citizens.

Signed: Anne Harrison *pregnancy decisions are private*

Testifier

Representing (Optional)

Address

Phone No.

3370 Denic Court Rd, Fairbanks, 99709

479-3594



Alaska State Legislature

Please enter into the record my testimony to the HESS
 committee name
 committee on SB 53 , dated 1/27/93
 bill/subject

I support SB 53, but I think it does not go far enough to protect the current rights of all women to choose regardless of their ~~to~~ income. The only annul Governor Hickel's regulations is to invite the administration to try again to submit other regulations to limit state funding for abortions.

Women who qualify for Medicaid are those without the financial resources to pay for a medically safe abortion and are therefore more likely to seek unsafe means to end their pregnancies.

Signed: Mim Dixon (Mim Dixon)
 Testifier

Representing (Optional)
PO Box 31585, Fairbanks, AK 99708
 Address
479-3459
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the DHHS
 committee name
 committee on funding for abortion dated 27 Jun. 1993
 bill/subject

The Abortion Rights Project, with over 20,000 registered Anchorage pro-choice voters, is committed to ensuring that abortion remains safe & legal for all women.

We urge you to pass a bill this session which will help keep the option open for all women. Let's make certain that every child is a wanted child.

We support the statement made by John Lindback of the Forum Coalition for Pro Choice. Thank you

Signed: Michael Miller
 Testifier

Abortion Rights Project
 Representing (Optional)

PO Box 940667, Anchorage AK 99524
 Address

345-7980
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Hess
 committee name
 committee on SB 53, dated 1/27/93
 bill/subject

I support SB 53. please keep
 abortions safe for all women

Signed: Kate Metcalfe, Kathleen Metcalfe
 Testifier

Representing (Optional)
6624 Imlach Way, Anch 99502
 Address

248-4650
 Phone No.



Alaskans for Life, Inc.

... Our First Inalienable Right

P.O. Box 32186

Juneau, AK 99803-2186

January 26, 1993

TESTIMONY PRESENTED TO SENATE HESS COMMITTEE, JANUARY 27, 1993
REGARDING SENATE BILL NO. 53, AN ACT ANNULING DH&SS REGULATIONS
RELATING TO FUNDING OF ABORTION SERVICES

Alaskans For Life is a non-sectarian organization with the primary goal of promoting respect for human life. Our organization supports the concept that innocent human life must be protected by government. As such, Alaskans For Life recommends that you support the administration's regulations which limit abortion funding to therapeutic abortions only.

It is our view that the regulations which were adopted by the Department of Health and Social Services cover every possible reason for justifying abortion based on health concerns. The regulations give the broadest possible definition for therapeutic abortion which includes mental, physical and psychological considerations. Furthermore, the regulations do not even require that the abortion be performed by someone other than the physician certifying that the appropriate health reasons are met for State payment. This is a clear conflict of interest. Left uncovered by the general relief medical program are only those abortions which are clearly elective in nature.

It is not appropriate for the GR Med program to be covering voluntary, elective medical procedures. Normal pregnancy is not a disease and it is wrong to treat it as such. Poor women need help, but convincing them to destroy their children is not

compassion. Also, the wealthy can afford many harmful practices but it does not mean that the State must then pay for the same practices for the poor.

Since the regulations allow payment for all therapeutic abortions only elective abortions are left. Therefore, annulment of these regulations would indicate a clear disregard on the part of the Alaskan legislature for the dignity and respect due to the child in the womb. Not only does it say that the life of the child may be ended without reason but the State would pay for it as well.

We ask that some semblance of civility be restored to our State policy on abortion funding. Therefore, we object to the annulment of the subject regulations. Doing so returns the State to the previous policy which promotes abortion on demand. We think State policy should support life not death.

January 27, 1992

Dear Governor Hickle, and Senate HESS Committee

As a responsible mother and concerned citizen, I beseech you to allow the poor the same opportunities in controlling their life as those with abundant resources. Please do not restrict abortions for the poor.

Sincerely,

Carole Hamik

Address: 4002 Kachemak Wy
Homer, AK 99603
907 235-2564

I am Ruth Ewig, reading this for Director John Harbaugh, Assistant Director Jonathan Ewig, Treasurer David Stach, myself as Secretary of Citizens for Excellence in Education (NACE/CEE) and 1500 concerned citizens in the Tanana Valley which include Fairbanks, North Pole, Fox, Two Rivers, Salcha, Esther, and the rest of the valley. We are alarmed at the legislators who have acted to create SB53, SB55 and HB9 which further enlist the state of Alaska as an accomplice in the torture and killing of pre-born babies by abortion.

Statistically 97-98% of pre-born babies have been killed for reasons of birth control. By changing our education system to character development curriculum which is in use in different parts of the country and which has reduced teen pregnancies to zero in California you, as legislators, could serve this state well by using our limited financial resources most profitably and investing in true ABSTINENCE education with the advantages emphasized leading to responsible planning that does not butcher babies. Excellent abstinence programs through education are encouraging responsible living and ARE working to improve our nation.

The argument of "wantedness" is an unstable marker not to be trusted to decide whether we kill our babies or not, anymore than it should decide for our elderly. The Netherlands has now graduated from voluntary to involuntary disposal of preborn babies as well as elderly.

Cultural elitists such as doctors and lawyers having been seduced by a lifestyle are not taking a stand against the slaughter of our babies. Will you as legislators be trapped in the same way or be willing to restore our state to a standard to match that of our Founding Fathers?

Since the lie of *Roe v. Wade* 28,000,000 babies have been butchered. "The 1960s gave birth to a feminist movement that imbued women with new ideas of personal 'freedom' and 'power'. Abortion advocates found natural allies in the feminist camp, for they promised women sexual freedom through abortion and the power of 'self determination'. Little mention was made that women were also being given power over whether their own children would live or die." (FAMILY VOICE, Jan. 1993, pg. 5)

It is acknowledged that there are a few difficult situations that media hyp and popular culture enlarge on, but pulling a baby apart does not justify crime and leads to twice the trauma.

The question really is life vs. lifestyle. Once the baby is born no woman can be, has been or will ever be compelled to raise a child she brings to full term. We identify two sets of rights: 1) the rights of the preborn babies and they ARE alive, or 2) the rights of the woman in a crisis pregnancy, to tear apart the baby relieving the burden, that is, destroying a life, saving a lifestyle.

Education is the key. News media and entertainment media have educated by creating an imaginary aura around abortion. An educational film shown to students shows how an abortion is done over a lunch hour in a record 1 minute, 50 seconds with the lady having a friendly chat with another. The baby is demolished into the consistency of tomato sauce by suctioning her out of her mother and spreading her around on a counter to show the camera audience that there really is no baby there... Because of our marvelous photography and technology we now can see that there is a complete baby living

inside even earlier than six weeks old. There is not one of us who would have even considered abortion as a possibility if we had any idea or had access to this information about our unborn babies as living, heartbeating, breathing, feeling little precious, delicate children-to-be.

What the movie that is shown to students does not admit is that the instruction text for abortion doctors cautions them to be sure that a heart monitor is put on the unborn baby being careful not to show the mother a beating heart that then stops. This measurement is solely for the abortionist to insure that the baby is killed before being pulled out. Also, the abortion doctor is told not to let the mother watch a visual, TV-type screen during the pulling out of the lifeless body.

Other lies not revealed in this so-called "educational" film are lies behind the original case of Roe vs. Wade, behind the bogus statistics used to manipulate the people of this state and this country, the concealment of the frequency of botched legal abortions, the fact that the abortion procedure itself is more scary and complicated, the withholding of cases of hemorrhaging in women from abortions, withholding the frequency of breast cancer resulting from abortions, withholding the cases of increased child abuse in our country while the very meaning of life is threatened, "at-risk", and the lack of acknowledgement and education about the long-term suffering of emotional pain for those who are accomplices to and affected by the holocaust of abortion including roughly 7,200,000 women in America afflicted with post-abortion syndrome (PAS).

In conclusion, I quote from Congressman Pat Swindal:

"The integrity of our constitutional republic rests ultimately on how we resolve the life-and-death issues of abortion... If we are unable to preserve the most fundamental rights of which our Constitution speaks, life and liberty, our government has failed to satisfy its most basic responsibility. Such a government not only forfeits the respect of the people, but eventually its right and ability to govern as well." (A HOUSE DIVIDED, pg. 61)

Will you and your vote stand for the life, liberty and pursuit of happiness of these unborn children?

TO: HESS COMM.

1/27/93

I support SB53. Poor women deserve access to rights, as well as those who are not poor. Abortion is an intensely personal decision & one's right to privacy should not be limited to those financially able. It is time to put this issue into statute and ensure that poor women, rural & urban, have their rights protected as well. Thanks for introducing this important legislation.

Beverly Fletcher

BEVERLY FLETCHER

P.O. BOX 21791

JUNEAU AK 99802

January 27, 1993

L. Merrill Lowden
736 W. 12th Street
Juneau, Alaska 99801

Steve Rieger, Chair
Senate Health, Education and Social Services committee
State Capital - Room 516
Juneau, Alaska 99801-1182

Re: SB 53 - Repeal of Regulations

Dear Senator Rieger:

I write to express my strong support for passage of SB 53 which would repeal the Governor's regulations to halt state funding of abortions for poor women. The regulations obviously discriminate against poor women, and will inevitably condemn many (with their offspring) to a life of poverty. The regulations violate the right to privacy, a right so highly regarded by Alaskans that it is expressly protected by our constitution. Moreover they reflect the current administration's hostility to the civil rights, equality and well-being of women in general.

The administration has stated that the regulations were proposed for moral, rather than budgetary, reasons. This is a strange morality, in light of the exceptions nevertheless provided for women who were the victims of rape or incest. If abortion is murder, then abortion of a fetus from rape or incest is murder. I am convinced that the hypocrisy of ~~these~~ exceptions evidences a broader purpose behind promulgation of the regulations. ~~The~~ regulations are a preliminary step towards achieving an outright ban on abortion, but ~~the~~ motivation is not pro-life.

The imposition of compulsory motherhood is a political goal to keep the nation's largest underclass group in their traditional "place," hindered from realizing true political and economic equality because they are denied the autonomy of their own bodies. The policy makers who title themselves "pro-life" have often displayed an icy indifference to the "right to life" of the afterborn. They are not equally motivated to advocate on behalf of the homeless, the undernourished, or our citizens too poor to afford basic health care.

Steve Rieger, Chairman
HESS Committee
Page 2

The majority of women in this state, and the country, realize that to secure the promise of liberty in the 14th Amendment, to be free to run their own lives, they must have reproductive choice. The terribly difficult choice between terminating or continuing a pregnancy must remain with the woman in private consultation with her physician, with no undue influence from the state.

There is not much difference between a government which dictates motherhood without consent and one which, like China, can dictate an abortion without consent.

SB 53 must be passed and these regulations discarded.

Sincerely,



L. Merrill Lowden



Alaska State Legislature

Please enter into the record my testimony to the Senate Health, Education & Social Serv. Comm.
 committee name

committee on SB 53 - Annulment, dated 1-27-93
 bill/subject Charly's

Women are too often victims in our society.
 It is critical that we allow all women, regardless
 of economic position, the opportunity to make
 a choice.

I support SB 53.

Signed: Sham Finnen
 Testifier

Representing (Optional)
35985 Pioneer Dr. Soldotna, AK 99669
 Address

(907) 262-9833
 Phone No.

3



Alaska State Legislature

Please enter into the record my testimony to the Hess Committee
committee name

committee on SBS3, dated 1/27/93
bill/subject

My name is Ann Dooley. I am the mother of two. I am a registered voter and I am in favor of SBS3. I believe that the choice of whether to have an abortion is a deeply personal and private issue. Roe vs. Wade is still in existence and makes the choice available to all. Governor Hickel's Executive Order denies & affects poor and disadvantaged women, while wealthier women still have the option available to them. Our society is based on equality—that includes access to services. The current regulations create an inequality & "broadens the gap between the "haves" & "have-nots".

Allowing these current regulations do 2 things: they create an unseen "unseen financial burden" on society as these individuals (newborns) are added to the welfare system. Secondly, it gives the poor women few options, and consequently places her in a dangerous & life threatening situation, as they resort to unsafe and/or illegal options. Thank you for your time. Please approve & move this Bill out of your committee.

Signed: Ann E. Dooley

Testifier

self

Representing (Optional)

PO Box 7431 NIKISKI AV 99685

Address

(907) 776-8113

Phone No.

2



Alaska State Legislature

Please enter into the record my testimony to the Senate Health, Education & Social Serv. Comm.
committee name

committee on SB 53 - Annuity, dated 1-27-93
bill/subject Charity's

Women are too often victims in our society. It is critical that we allow all women, regardless of economic position, the opportunity to make a choice.

I support SB 53.

Signed: Sham Finnen
Testifier

Representing (Optional)

35985 Pioneer Dr. Soldotna, AK 99669

Address

(907) 262-9833

Phone No.

3



Alaska State Legislature

Please enter into the record my testimony to the HESS
committee name
 committee on SB 53, dated Jan 27, 93
bill/subject

I support state funding for abortions and SB 53. Women have the right, including disadvantaged women, to choose abortion. The U.S. Supreme Court's decision to grant women the right to receive an abortion should not apply to women who can afford it. I believe that ending state funding for abortions is just the beginning of the erosion of women's rights in general. The pro-life constituency is loud, but it is not the majority. Please listen to the women of Alaska. I am a registered voter, and I vote pro-choice

Signed: Ann Feuce
Testifier

Representing (Optional)
PO Box 43 Kasilof, AK 99610
Address
262-2751
Phone No.

4



Alaska State Legislature

Please enter into the record my testimony to the HFSS committee
committee name

committee on SB53, dated 1/27/93
bill/subject

My name is Ann Dooley. I am the mother of two. I am a registered voter and I am in favor of SB53. I believe that the choice of whether to have an abortion is a deeply personal and private issue. Roe vs. Wade is still in existence and makes the choice available to all. Governor Hickel's Executive Order denies it affects poor and disadvantaged women, while wealthier women still have the options available to them. Our society is based on equality—that includes access to services. The current regulations create an inequality that broadens the gap between the "haves" & "have-nots". Allowing these current regulations do 2 things: they create an unseen "unpaid financial burden" on society as these individuals (newborns) are added to the welfare system. Secondly, it gives the poor women few options, and consequently places her in a dangerous & life threatening situation as they resort to unsafe and/or illegal options. Thank you for your time. Please approve & pass this Bill out of your committee.

Signed: Ann E. Dooley

Testifier

self

Representing (Optional)

PO Box 7431 NIKISKI AK 99685

Address

(907) 776-813

Phone No.

2



To	Wesley LIO	From	Vesta
CC	Please deliver to Sen. HESS	Col.	Sen. HESS
Dept.		Phone #	
Fax #	Thanks	Fax #	

ture

Please enter into the record my testimony to the Senate Hess
committee name

committee on SB 53, dated 1/27/93
bill/subject

I am president of Kenai-Soldotna Right to Life. It is the consensus of all of the Alaska Right to Life chapters that no public funding of any kind for abortions should be allowed. The governor's regulations are totally spineless in that they still allow funding for abortions for rape, incest, physical and psychological reasons. The loophole for funding is so large that we recognize that elective, non-therapeutic abortions can still be funded. Of the 38 states with holding public funds for abortions, no loopholes, that is, exceptions, of the nature we have with Gov. Hickel's regulations, exist. Whether these regulations stand or fall will be of little consequence as far as preventing the use of public funds for abortions. Please, Gov. Hickel, legislators, give us regulations that do stop public funds from being used!

Signed:

Rebecca L. Perry

Testifier

Kenai-Soldotna Right to Life

Representing (Optional)

H.C. 2 Box 561, Kaslof, AK 99610

Address

262-9004

Phone No.

(1)

Box 1622

Homer, AK 99603

1-27-93

Please consider this letter in support of SB 53 which is seeking to overthrow the imposed restrictions on the use of Medicaid for abortions.

I am in support of all women regardless of their economic situation, being able to exercise their constitutional right of choice. The ban on Medicaid funds for abortion is blatant discrimination against poor women.

SB 53 will give all Alaskan women access to their constitutional right. I urge all our legislators to uphold the Supreme Court ruling and work for passage of a bill that allows all women equality in their decision making.

Sincerely,
Karen Mierdock

January 27, 1992

To: Governor Hickle and Senate HESS Committee

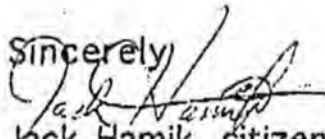
Re: Restricting abortions for the poor.

Dear Governor Hickle,

If there's something I think a government should do, it's to guarantee to its citizens the right of equal access to legal procedures. Restricting funding for abortions affects only the poor. Forcing only the poor to raise unwanted children is counter productive to the general quality of life of a community, state, or nation. Reducing our welfare rolls is, and will be, a high priority in government's ability to maintain itself in times of reduced revenues. A poor mother with unwanted children is one of any societies most costly problems. The jails are already overcrowded with unwanted children and welfare costs are at the breaking point for government agencies.

In fairness to all and in justice under the Constitution of the United States, I request you make legal medical procedures available to all who seek them.

Sincerely,


Jack Hamik, citizen

Address: 4002 Kachemak Wy
Homer, AK 99603
907 235-2564

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Post Office Box 110001
Juneau, Alaska 99811-0001

WALTER J. HICKEL
Governor

JOSEF P. HOLBERT
Director of Communications



JOHN MANLY
Press Secretary

JOHN HENDRICKSON
Deputy Press Secretary
Anchorage Office: 561-4228

BRIAN HART
Assistant Press Secretary

907-465-3500
FAX: 907-586-8369

FOR RELEASE: January 20, 1993

No. 93-014

A.G. GIVES ABORTION REGULATIONS LEGAL CLEARANCE

JUNEAU--Attorney General Charles Cole today gave legal approval to regulation changes that will cease state payment for elective, nontherapeutic abortions under Alaska's general relief medical assistance program. Women eligible for the general relief medical program may still obtain state payment for a therapeutic abortion after the regulations are effective.

The regulations were submitted to Lt. Governor Jack Coghill for filing. Coghill signed them this morning.

Cole believes that the regulations would withstand legal challenge under the constitutions of both the United States and the State of Alaska.

"The validity of the regulations under the federal constitution is clear," Cole said. "The United States Supreme Court has repeatedly held that states are not required by the federal constitution to expend public funds for abortions.

"We also believe that the Alaska Supreme Court should conclude that when balancing the conflicting rights and interests, the right of privacy does not require state payment for an elective, nontherapeutic abortion under the general relief medical program."

Cole said he is confident that the regulations would withstand a challenge based on state equal protection guarantees, especially when the state pays for no other elective medical procedures for otherwise healthy persons under the general relief medical program.

- more -

2-2-2-2

93-014

Jan. 20, 1993

The regulations also contain a technical provision conforming the state Medicaid program to federal Medicaid regulations as required in order to receive federal funding.

The regulations become effective 30 days after filing by the Office of the Lieutenant Governor.

####

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Theodore Mala
Commissioner
Health and Social Services

DATE: January 20, 1993

FILE: 993-93-0040

TEL. NO: 465-3600

SUBJECT: DHSS regulations re
abortion payments under
Medicaid and General
Relief Medical Programs
(7 AAC 43; 47)

CEC by BWA
FROM: Charles E. Cole
Attorney General

As required by AS 44.62.060, we have reviewed your department's adoption and amendment of regulations that preclude state payment for elective abortions under Alaska's general relief medical assistance program. The regulations also contain a technical provision conforming the state Medicaid program to federal Medicaid regulations as required in order to continue to receive federal participation. The regulations should withstand legal attack under the constitutions of both the United States and the State of Alaska. We approve the changes for filing by the lieutenant governor. A duplicate of this memorandum is being furnished the lieutenant governor, along with the regulations and related documents. In accordance with AS 44.62.125(b)(6), some corrections have been made in the regulations, as shown on the attached copy.

The validity of the regulations under the federal constitution is clear. The United States Supreme Court has repeatedly held that states are not required by the federal constitution to expend public funds for abortions as part of their state medical assistance programs. Harris v. McRae, 448 U.S. 297 (1980); Beal v. Doe, 432 U.S. 438 (1977); Maher v. Roe, 432 U.S. 464 (1977).

The result is less clear under the state constitution as to general relief medical amendments, primarily owing to the state constitution's explicit recognition of the right of privacy. However, the Alaska Supreme Court has held that the right of privacy is not absolute. Falcon v. Alaska Pub. Offices Comm'n, 570 P.2d 469, 476 (Alaska 1977). In addressing a challenge to regulations based in that constitutional guarantee, the Alaska Supreme Court balances the conflicting rights and interests of the individual and the state. More specifically, the nature and extent of the privacy invasion is balanced against the importance of the state interest. State v. Kirkpatrick, 718 P.2d 962, 969 (Alaska 1968). The more fundamental the privacy right, the greater the state's burden to sustain the state action in light of the right

involved. State v. Erickson, 574 P.2d 1 (Alaska 1978), 22 n.144; Ravin v. State, 537 P.2d 494, 515 (Boochever, J., concurring).

We believe that the Alaska Supreme Court should conclude that when balancing the conflicting rights and interests, the right of privacy does not require state payment for an elective abortion under the general relief medical program. Presently, the majority of states with an expressed state constitutional right of privacy do not pay for elective abortions. Even in those states where the right of privacy is an implied right, more restrictive statutes have been upheld against state constitutional challenges. See Fischer v. Dept. of Pub. Welfare, 502 A.2d 114 (Pa. 1985). While we recognize that the Supreme Court of California has reached a contrary result under its express state constitutional right of privacy, we do not find that court's reasoning as persuasive. See Committee to Defend Reproductive Rights v. Myers, 625 P.2d 779 (Cal. 1981). It does not seem reasonable or intended by Alaska's constitution for the right of privacy to require payment for purely elective abortions under the general relief medical program just because this state chooses to cover pregnancy services for poor women, as the California case appears to reason.

We believe that the regulations should also withstand a challenge based on state equal protection guarantees. The Alaska Supreme Court applies a sliding scale analysis to equal protection challenges using a three-step approach. Erickson, 574 P.2d at 12. First, the court determines the importance of the individual interest impaired by the challenged statute or regulation. See State v. Ensearch Alaska Construction, Inc., 787 P.2d 624, 631 (Alaska 1989). Second, the court examines the importance of the state interest. In this case, the court would review the purpose of the law. Depending on the importance of the individual interest, the state's interest must fall somewhere on a continuum from mere legitimacy to a compelling interest. Id. Finally, the court examines the nexus between the state interest and the state's means of furthering that interest. Id. With respect to the chosen means, the equal protection clause requires that the nexus fall somewhere on a continuum from substantial relationship to least restrictive means, depending on the importance of the individual interest. Id.; see also Sonneman v. Knight, 790 P.2d 702, 704 (Alaska 1990).

At least one state court, when faced with a state equal protection analysis, has found that the state may have a legitimate state interest in refusing to fund elective, nontherapeutic abortions that are not performed to protect the life or health of

the mother. Right to Choose v. Bvrne, 450 A.2d 925, 937 (N.J. 1982).¹

We believe that our court should find, as well, that nonpayment for elective abortions under the general relief medical program does not violate equal protection guarantees, especially when the state pays for no other elective procedures for otherwise healthy persons under the general relief medical program. The importance of the state's express, legitimate interests, including an interest in uniform program administration, outweighs the individual's interest in payment for an elective abortion under the entirely state financed general relief medical program.

The regulations should also survive attack under state guarantees of substantive due process. The Alaska Supreme Court has held that a regulation violates substantive due process when it "has no reasonable relationship to a legitimate governmental purpose." Sonneman v. Knight, 790 P.2d at 706, quoting Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 373, 351 (Alaska 1988). The new regulations will allow equal treatment of elective procedures and are necessary for consistent management of the general relief medical program. Since the regulations are reasonably related to a legitimate purpose, the regulations should meet substantive due process guarantees.

The new regulations are consistent with the enabling statutes and are reasonably necessary to administer the general relief medical program. Prior attorney general opinions do not restrict your department's ability to adopt these regulations. At the time those opinions were written, the body of state court decisions was limited. Since those opinions were issued, many of the leading state cases on these issues have been decided. In addition, it appears that those prior attorney general opinions were addressing potential payment limitations substantially different from and more restrictive than those adopted by your department. Therefore, the conclusions reached in those opinions do not affect the validity of these regulations.

The new regulations are also substantially different from the funding restrictions that were placed before the Alaska voters in a 1982 ballot initiative. Therefore, the initiative's defeat does not affect your department's authority to adopt these regulations.

¹ The Supreme Court of New Jersey ultimately struck down the New Jersey statute because it prohibited state payment of all abortions "except where it is medically indicated to be necessary to preserve the woman's life" and did not provide abortion services where the health of the mother was at risk. Right to Choose, 450 A.2d at 927. The New Jersey court would have sanctioned the approach taken by your department's regulations.

Hon. Theodore Mala, Comm'r, DHSS
Our file: 993-93-0040

January 20, 1993
Page 4

In the final analysis, the regulations that your department has adopted provide abortion funding where it is medically necessary to preserve the woman's life and health (including certain psychological conditions) as well as in cases of rape or incest and, therefore, should withstand legal challenge. While few legal conclusions can be made with absolute certainty, we believe that, if the regulations are challenged, the court should find them as constitutional and lawful.²

CEC:pml

² We note that over 30 states do not pay for elective abortions under their state medical assistance programs. Alaska would be joining this majority trend when these regulations take effect.

7 AAC 43.140 is amended to read:

7 AAC 43.140. ABORTIONS. (a) Payment for an abortion[S] will, in the department's discretion, [MAY] be covered under medicaid if [WHEN] the physician services invoice is accompanied by certification that [ONE OF THE FOLLOWING CONDITIONS EXISTS:]

[(1)] the life of the mother would be endangered if the pregnancy were carried to term[;

(2) SEVERE AND LONG-LASTING PHYSICAL HEALTH DAMAGE TO THE MOTHER WOULD RESULT IF THE PREGNANCY WERE CARRIED TO TERM; OR

(3) PREGNANCY IS THE RESULT OF RAPE OR INCEST].

(b) A procedure [PROCEDURES] that is [WHICH ARE] not covered under this section will be covered under General Relief Medical[,] to the extent provided in 7 AAC 47. (Eff. 8/18/79, Register 71; am / / , Register)

Authority: AS 47.05.010 AS 47.07.040
AS 47.07.030 AS 47.07.050

7 AAC 43.825 is amended to read:

7 AAC 43.825. PROGRAM. Except as limited under 7 AAC 43.140, family [FAMILY] planning services will be covered by medicaid when provided by a family planning clinic of [CLINICS UNDER] the

^d/_^ [Division of ^p/_^ Public ^h/_^ Health, a local health department[S], a student health service[S], a private family planning clinic[S], or a private physician[S]. Except as limited under 7 AAC 43.140, drugs [DRUGS], supplies, devices, and medical procedures provided by a physician or under physician supervision will be covered under this chapter. (Eff. 8/18/79, Register 71; am / / , Register)

Authority: AS 47.05.010

AS 47.07.040

AS 47.07.050

7 AAC 43.835 is amended to read:

7 AAC 43.835. DEFINITION. In 7 AAC 43.825 ⁻/_^ 7 AAC 43.835, "family planning services" refers to those services and materials provided with the purpose of postponing, avoiding, or terminating pregnancy, including the dispensing of birth control drugs and devices for males and females, and the performance of vasectomies, sterilizations, and abortions for the purpose of avoiding or terminating pregnancy, except as limited under 7 AAC 43.140. (Eff. 8/18/79, Register 71; am / / , Register)

Authority: AS 47.05.010

AS 47.07.040

AS 47.07.050

7 AAC 47.170(b) is amended to read:

(b) An applicant under 18 years of age may apply on his or her own behalf if the applicant is living apart from parents or guardian and is managing his or her own personal financial affairs. A female [AN] applicant under 18 years of age living at home with her parents or guardian may apply without regard to her parents' or guardian's income if she is [A FEMALE] seeking a therapeutic abortion [PREGNANCY-RELATED SERVICE]. (Eff. 3/23/78, Register 65; am 8/1/86, Register 99; am 11/28/86, Register 100; am __/__/__, Register __)

Authority: AS 09.65.100 AS 47.25.130
 AS 47.05.010 AS 47.25.170
 AS 47.25.120

7 AAC 47.200 is amended to read:

7 AAC 47.200. GENERAL RELIEF MEDICAL COVERAGE. The General Relief Medical program provides payment on behalf of needy persons who are eligible under the provisions of this chapter for any of the following services:

- (1) major medical care as defined in 7 AAC 47.290;
- (2) skilled nursing home care;
- (3) intermediate nursing home care;
- (4) physician services if
 - (A) related to major medical care provided in a hospital on an inpatient basis;
 - (B) provided in a hospital emergency room the same day on which the recipient is admitted for major medical care;
 - (C) provided to a recipient residing in a nursing home;
 - (D) provided in either an outpatient or an inpatient setting to a recipient with a diagnosis described in 7 AAC 47.271(b); [or]
 - (E) provided in determining eligibility for a therapeutic abortion; ^{or} and physician services [provided for a ~~therapeutic abortion~~ {PREGNANCY-RELATED SERVICES}];
 - (F) provided for a therapeutic abortion;
- (5) outpatient laboratory and x-ray services provided in conjunction with a therapeutic abortion [PREGNANCY-RELATED SERVICES] or nursing home care;
- (6) medical transportation related to major medical care, nursing home care, or a therapeutic abortion [PREGNANCY-RELATED SERVICES];
- (7) outpatient surgical center services provided in conjunction with a therapeutic abortion [PREGNANCY-RELATED

100
 101
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1993

HEALTH AND SOCIAL SERVICES

SERVICES] or nursing home care;

(8) prescribed drugs and medical supplies for a recipient with a specific diagnosis as described in 7 AAC 47.271(b);

(9) repealed 7/1/87. (Eff. 3/23/78, Register 65; am 5/2/79, Register 70; am 5/17/82, Register 82; am 5/25/82, Register 82; am 9/23/84, Register 91; am 8/1/85, Register 95; am 8/1/86, Register 99; am 11/28/86, Register 100; am 7/1/87, Register 103; am / / , Register)

Authority:

AS 47.05.010
AS 47.25.120
AS 47.25.130

AS 47.25.170

AS 47.25.195

7 AAC 47.210(7) is amended to read:

7 AAC 47.210. EXCLUSIONS FROM GENERAL RELIEF MEDICAL PROGRAM. Notwithstanding any other provisions contained in this chapter or 7 AAC 43, a payment may not be made under the General Relief Medical program for any expense

- - -

(7) for an elective procedure, including an elective abortion [OTHER THAN A PREGNANCY-RELATED SERVICE AS DEFINED IN 7 AAC 47.290];

- - -

Register , 1993 HEALTH AND SOCIAL SERVICES

(Eff. 3/23/78, Register 65; am 5/2/79, Register 70; am 4/15/82, Register 82; am 5/25/82, Register 84; am 8/1/86, Register 99; am 11/28/86, Register 100; am 7/1/87, Register 103; am / / , Register)

Authority: AS 47.05.010 [AS 47.50.010]

AS 47.25.130

AS 47.25.130

AS 47.25.170

7 AAC 47.290(3) is amended to read:

(3) "elective procedure" means a procedure that is subject to the choice or decision of the patient or physician regarding medical services that are advantageous to the patient but not necessary to prevent the death or disability of the patient, and includes an elective abortion;

7 AAC 47.290(5) is repealed:

(5) repealed __/__/__;

7 AAC 47.290 is amended by adding new paragraphs to read:

