

**SB**

**364**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: May 9, 2002

FURTHER REFERRALS: Finance

Date of Committee Action: 5.10.02

The JUDICIARY Committee considered:

SB 364

SENATE BILL NO. 364

MEDICAID PAYMENTS FOR ABORTIONS

"An Act relating to medical services under the state Medicaid program."

Recommends it be replaced with CS ( ) [ ] Same Title [ ] New Title  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_

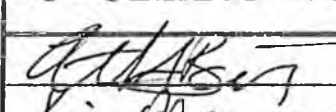
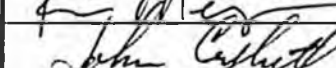
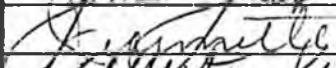
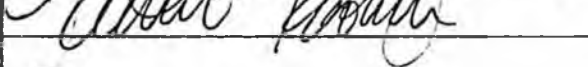

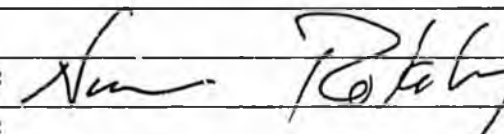
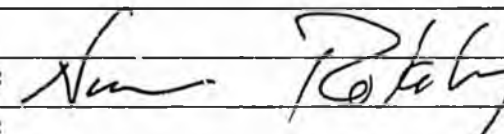
- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev. for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LAA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Berkowitz				
	Meyer	✓			
	Coyhit				
	JAMES	✓			
	Kookun			✓	
Chair: 	Rokeber				✓
Chair: 	Rokeber				✓

Moved by  
Rokeberg

FAILS

[REDACTED]

AMENDMENT #1

OFFERED IN THE HOUSE

TO: SB 364

[REDACTED]

Page 1, line 12, through page 2, line 8:

Delete all material and insert:

"physician that the abortion is medically necessary to

(1) treat a serious

(A) adverse physical condition of a pregnant woman that

(i) either is caused by the pregnancy or would be significantly aggravated by continuation of the pregnancy; and

(ii) would seriously endanger the physical health of the woman if the pregnancy were not terminated by an abortion; or

(B) psychological illness of a pregnant woman who requires medication for treatment of the illness if

(i) the medication required to treat the illness would be highly dangerous to the fetus; and

(ii) the health of the woman would be endangered if the medication was not taken during the pregnancy; or

(2) abort a fetus that would not survive until live birth."

Page 2, line 13, following "(3)":

Insert "'live birth' has the meaning given in AS 18.50.950;

(4)"

breathe or show evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles;

(9) "filing" means the presentation of a certificate, report, or other record provided for in this chapter, of a birth, death, fetal death, adoption, marriage, or divorce for registration by the bureau;

(10) "final disposition" means the burial, interment, cremation, or other disposition of a dead body or fetus;

(11) "institution" means a public or private establishment that provides in-patient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more unrelated individuals, or to which persons are committed by law;

(12) "live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, that, after expulsion or extraction, breathes or shows evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached;

(13) "medical history" includes information relating to a person's medical conditions and treatment, immunization records, and other medical information about the person that could be important to the health care of the adopted person;

(14) "physician" means a person authorized or licensed to practice medicine under the laws of the state;

(15) "registration" means the acceptance by the bureau and the incorporation in its official records of certificates, reports, or other records provided for in this chapter, of births, deaths, fetal deaths, adoptions, marriages, or divorces;

(16) "state registrar" means the state registrar of vital statistics;

(17) "system of vital statistics" includes the registration, collection, preservation, amendment, and certification of vital statistics records, and related activities including the tabulation, analysis, and publication of statistical data derived from them;

(18) "vital statistics" means records of birth, death, fetal death, marriage, divorce, adoption, and related data. (§ 1 ch 118 SLA 1960; am § 6 ch 104 SLA 1971; am § 3 ch 140 SLA 1986; am § 3 ch 124 SLA 1994)

**Revisor's notes.** — Formerly AS 18.50.370. Renumbered in 1986 and reorganized to alphabetize the defined terms.

**Effect of amendments.** — The 1994 amendment, effective January 1, 1996, made a section reference substitution in paragraph (4).

**Sec. 18.50.990. Short title.** This chapter may be cited as the Vital Statistics Act. (§ 33 ch 118 SLA 1960)

**Revisor's notes.** — Formerly AS 18.50.380. Renumbered in 1986.

## Chapter 54. Housing Development Revolving Loan Fund.

*[Repealed, § 72 ch 113 SLA 1982.]*

## Chapter 55. Housing, Public Buildings, Urban Renewal, and Regional Housing Authorities.

### Article

1. Housing Project and Public Building Assistance Act (§§ 18.55.010 — 18.55.290)
2. Moderate Cost and Rental Housing (§§ 18.55.300 — 18.55.470)
3. Slum Clearance and Redevelopment Act (§§ 18.55.480 — 18.55.960)
4. Regional Native Housing Authorities (§§ 18.55.995 — 18.55.998)

# Alaska State Legislature

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Senator Pete Kelly  
District P

## SB 364 Sponsor Statement

“An Act relating to medical services under the State Medicaid program”

A majority of Alaskans agree it is inappropriate to use state funds to provide elective abortions. Despite the many efforts of the legislature, however, we have been unable to implement the will of the people. All attempts to bring Alaskan Medicaid funding under standards, which prohibit funding abortions except for rape, incest and life of mother, have been thwarted by the Alaska Supreme Court.

The Alaska Administrative Code defines therapeutic abortion as, “the termination of a pregnancy; certified by a physician as *medically necessary* to prevent the death or disability of the woman, or to ameliorate a condition harmful to the woman’s physical or psychological health.” Currently, any form of emotional discomfort a woman may experience from pregnancy could warrant a “medically necessary” termination.

SB 364 defines *medically necessary* broadly enough to cover those situations where an abortion is medically necessary yet narrowly enough to prevent fraud or abuse. This definition ensures that funds appropriated to provide health care to indigent Alaskans are used for that purpose and not to fund abortions on demand.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 364  
 ( S ) Publish Date: 4/24/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Health & Social Services  
 Title: MEDICAL SERVICES UNDER THE STATE MEDICAID PROGRAM BRU: Medical Assistance  
 Component: Medicaid Services  
 Sponsor: SENATE (RLS) BY REQUEST  
 Requestor: SENATE (FIN) Component Number: 2077

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( 0 )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Othe (Specify Type--do not abbrevia						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2002) cost: \_\_\_\_\_

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The department cannot determine a fiscal impact related to this bill, as it is unclear how physicians will interpret the language in subsection (b), and how that interpretation may or may not differ from current practice in referring a woman for an abortion.

Prepared by: Nancy Weller Phone 465-3355  
 Division: Medical Assistance Date/Time 04/22/2002  
 Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 04/22/2002  
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

**7 AAC 47.296. DEFINITIONS**

In 7 AAC 47.010 - 7 AAC 47.290

(1) "prescribed drug" means a simple or compound substance, or mixtures of substances, prescribed for the cure, mitigation, or prevention of disease, or for health maintenance that is prescribed by a physician or other licensed practitioner of the healing arts within the scope of practice as defined and limited by federal and state law, and is dispensed by a licensed pharmacist on a valid prescription that is recorded and maintained in the pharmacist's records;

(2) "disabled" or "disability" means being unable to or the inability to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months;

(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;

(4) "major medical care" means non-elective inpatient hospital services that cannot be performed on an outpatient basis and that are certified as necessary by the professional review organization contracted by the division of medical assistance; "major medical care" does not include inpatient psychiatric hospital services;

(5) repealed 2/19/93;

(6) "recipient" means an individual who is financially eligible for General Relief Medical assistance and who may receive a covered medical service if determined to be eligible to receive the service;

(7) "elective abortion" means a procedure, other than a therapeutic abortion, to terminate a pregnancy;

(8) "therapeutic abortion" means the termination of a pregnancy;

(A) certified by a physician as medically necessary to prevent the death or disability of the woman, or to ameliorate a condition harmful to the woman's physical or psychological health; or

(B) that resulted from actions that would constitute a crime of sexual assault under AS 11.41.410 - 11.41.425, a crime of sexual abuse of a minor under AS 11.41.434 - 11.41.440, or the crime of incest under AS 11.41.450.

**History: Eff. 8/1/85, Register 95; am 12/4/85, Register 96; am 8/1/86, Register 99; am 11/26/86, Register 100; am 2/19/93, Register 125; am 8/8/97, Register 143**

**Authority:** AS 47.05.010

AS 47.25.120

AS 47.25.130

AS 47.25.170

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DOCUMENT(S)  
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POOR  
ORIGINAL  
COPIES

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAL ASSISTANCE

P.O. BOX 110660  
JUNEAU, ALASKA 99811-0660  
PHONE: (907) 465-3355  
FAX: (907) 465-2204

March 3, 1998

The Honorable Representative Terry Martin  
Alaska State Legislature  
State Capitol Room 427  
Juneau, Alaska 99801-1182

Dear Representative Martin:

You have raised several questions about some noted discrepancies regarding the data presented by the Division in it's FY97 Annual Report.

1. You have asked about the difference between the unduplicated eligibles for the State Only Programs on page 23 of the FY97 Annual Report as compared to the number of GRM eligibles shown on page 5 of the report. The State Only Programs data on page 23 include the General Relief Medical, Permanent Fund Dividend Hold Harmless and the Alaska Longevity Bonus Hold Harmless programs.
2. You also asked what is included in the 887.8 Abortion XIX expenditure listed as FY97 Actuals on page 35 of the Annual Report; for example, would that amount include all costs associated with the abortion? See the answer to question #3.
3. You have questioned the difference between the amount shown as abortion expenditures on page 35 of the Annual Report compared to the document we previously provided you entitled "Abortion Services by Category of Service FY97" which show a cost for abortions of 506.6.

There are several very important differences between the numbers presented in these two reports. The first difference revolves around the composition of the two numbers. The "Abortion Services by Category of Service FY97" report is limited to expenditures which carry a procedure or diagnosis code indicating abortion. Costs such as transportation, pharmacy, laboratory or accommodation do not carry either an abortion procedure or diagnosis code and are not included in the report. The expenditures in the Annual Report are from the state accounting system and includes a quarterly transfer of expenditures for the abortion client's costs within 2 weeks of the abortion procedure from the related medicaid category of service to the GRM Abortion XIX colocation code 956. These transfers were initiated a number of years ago as a result of federal reviews of abortion services to limit the expenditure of federal funds around this issue.

Attachment A-2

Representative Terry Martin  
March 10, 1998  
Page 2

The second difference is that the expenditure information presented in the Annual Report is based upon the date that claims were paid. Therefore, in the Annual Report, the expenditure information reflects all expenditures made during FY97 irrespective of when the medical service was provided. The expenditure information presented in the "Abortion Services by Category of Service FY97" report is based upon the date the services were provided irrespective of when the claims were actually paid. Across all medical assistance providers there is a lag on average of from 1 to 5 months from the date a service is provided until the claim is submitted by the provider and paid by the medical assistance program. Therefore, the transfers noted in the previous paragraph are based on date of service but made quarterly on the claims payment system. Which further distorts the difference between the numbers in the two reports.


Each report has been developed to serve specific purposes. As a result the information between the two is not very comparable. The Annual Report is designed to present information around what did the Medical Assistance program pay for during the fiscal year. The Medical Assistance program reports expenditures to the Alaska State Accounting System based upon the date that claims were paid. Therefore, all claims paid during FY97 are reported as expenditures of FY97. This allows for fast and timely comparison of a fiscal year's expenditures with the appropriation for the same period. This is the perspective of from which most policy makers and reviewers view the Medical Assistance program's activities.

The "Abortion Services by Category of Service FY97" report generated each year is designed to answer the question: during the fiscal year how many abortions were provided and at what cost? This report takes a snapshot in time well after the close of the fiscal year. Therefore, most of the expenditures reported were paid during FY97; but some of the expenditures were actually paid from FY98. Again this is because we are counting the number of times that procedure or diagnosis code occurred during a fiscal year.

4. What is the relationship of the number of 856 GRM eligibles listed on page 5 of the Annual Report and the 843 number of unduplicated recipients listed on the abortion report we previously provided you? The 856 GRM eligibles listed in the Annual Report does not include the 843 Medicaid clients receiving abortion services.

As a result of your questions the Division will be examining the transfer process and the criteria used for opportunities to increase federal participation in some of these costs.

Sincerely,

  
Bob Labbe  
Director

3/10/98

Medicaid and General Relief Medical Services in Alaska

FY	From 1992 Audit Abortions		Dental GPM	Dental %GPM	glasses hearing aids	physical/ occupational therapy	Prosthetic Medical	Prosthetic %GPM	Medicaid Eligibles	Total Medical
	'Elective'	'Non-elective'								
97			\$3,600	0.11%	0	0	\$20,800	0.61%	87,977	353,079,800
96			\$3,500	0.10%	0	0	\$19,200	0.57%	87,159	330,180,200
95			\$24,200	0.55%	0	0	\$23,600	0.54%	86,445	300,981,100
94			\$19,900	0.27%	0	0	\$14,100	0.19%	83,920	281,099,300
93			\$28,100	0.45%	0	0	\$25,500	0.41%	78,418	231,033,500
92			\$20,100	0.35%	0	0	\$22,400	0.38%	69,286	208,008,100
91	877	1,167	\$8,900	0.16%	0	0	\$12,500	0.22%	57,251	182,582,900
90	674	898	\$27,200	0.45%	0	0	\$27,300	0.45%	49,622	155,092,695
89	751	924							46,090	130,630,500
88									44,872	109,526,900
87									41,559	92,899,200
86										
85										
84										
83										
82										
81										
80										
79										
78										
77										22,351,696
76									22,952	
75										11,034,251
74										9,678,712
73										8,017,103
72										7,028,462
71										5,307,445
70										3,250,159
69										2,356,496

3/18/98

Medicaid and General Relief Medical Services in Alaska

FY	No. Recipients		From DHSS Annual Reports*				Abortion % GRM Total	Total Medicaid Costs	Category of Service Report DHSS**	
	GRM	Medicaid	Abortion Costs		Total GRM Costs	Number			Total Cost / FY	
			Title XIX	GRM						
97	856	71,179	\$887,800	\$4,400	\$3,412,864	26%	\$349,170,283	843	\$506,639	
96	760	69,804	\$654,800	\$4,800	\$3,361,700	20%	\$326,276,200	737	\$487,101	
95	646	69,739	\$631,500	\$4,400	\$4,389,400	14%	\$295,926,800	703	\$456,997	
94	680	69,631	\$592,800	\$1,500	\$7,466,400	8%	\$272,977,600	649	\$308,989	
93	603	63,663	\$351,200	\$2,000	\$6,188,500	6%	\$224,142,100	814	\$389,658	
92	862	57,251	\$359,700	\$4,800	\$5,820,600	6%	\$200,596,400	852	\$398,434	
91	733	47,802	\$309,100	\$7,800	\$5,592,200	6%	\$173,761,000	823	\$415,539	
90	507	40,447	\$314,400	\$7,800	\$6,067,238	5%	\$146,799,100	626	\$370,818	
89	582	37,460			\$7,706,600		\$121,021,600	729	\$423,187	
88		33,490			\$9,225,355			463	\$210,207	
87		29,319								
86		28,386								
85		19,946								
84										
83										
82										
81							\$39,218,437			
80							\$33,256,320			
79					\$6,769,100		\$38,811,695			
78					\$6,213,100		\$25,915,719			
77	2,631	11,815			\$3,743,128		\$18,608,568			
76					\$2,881,213		\$14,328,201			
75	3,300	9,770			\$2,358,080		\$9,320,753			
74	3,800	8,500			\$2,576,457		\$6,869,286			
73	5,000	7,000			\$3,675,277		\$4,447,219			
72					\$7,028,462		Medicaid Starts			
71					\$5,307,445					
70					\$3,250,159					
69					\$2,356,496					

\* Does not include transportation or other costs

\*\*Includes transportation and other costs

Acct	Category of Service	FY96 Actuals	FY97 Actuals
	<b>TOTAL ALL MEDICAID SERVICES</b>	<b>326,276.2</b>	<b>349,170.3</b>
<b>GENERAL RELIEF MEDICAL</b>			
	<b>GRM HOSPITAL</b>		
900	Inpatient Hospital	1,113.8	684.3
905	Outpatient Hospital	0.2	0.2
	<b>TOTAL GRM HOSPITAL</b>	<b>1,114.0</b>	<b>684.5</b>
930	<b>GRM PHYSICIANS SERVICES</b>	<b>1,080.4</b>	<b>1,148.6</b>
	<b>TOTAL GRM PHYSICIANS SERVICES</b>	<b>1,080.4</b>	<b>1,148.6</b>
	<b>GRM OTHER SERVICES</b>		
939	GRM Other Services	0.0	0.0
940	Pharmaceuticals XIX	0.0	0.0
941	Pharmaceuticals GRM	394.7	488.4
942	Transportation	91.7	118.7
943	Dental Care XIX	0.0	0.0
944	Dental Care GRM	3.5	3.6
947	Pro <sup>o</sup> Device-Medical Equipment	19.2	20.8
950	Independent Labs	16.3	19.3
951	Nursing Home Care	(60.0)	13.3
955	Family Planning	2.8	2.3
956	Abortion XIX	654.8	887.8
957	Sterilization (ALL OTHER)	23.2	18.2
958	Abortion GRM	4.8	4.4
	<b>TOTAL GRM OTHER SERVICES</b>	<b>1,151.0</b>	<b>1,576.8</b>
989	TPL Recovery Contract	16.3	2.9
	<b>TOTAL TPL RECOVERY CONTRACT</b>	<b>16.3</b>	<b>2.9</b>
	<b>TOTAL ALL GRM SERVICES</b>	<b>3,361.7</b>	<b>3,412.9</b>
<b>ALASKA LONGEVITY BONUS HOLD HARMLESS</b>			
790	ALB Hold Harmless	29.4	43.3
	<b>TOTAL ALB HOLD HARMLESS</b>	<b>29.4</b>	<b>43.3</b>
<b>PERMANENT FUND DIVIDEND HOLD HARMLESS</b>			
750	PFD Hold Harmless Non-Facility	122.8	139.4
760	PFD Hold Harmless Facilities	390.0	314.0
	<b>TOTAL PFD HOLD HARMLESS</b>	<b>512.8</b>	<b>453.4</b>
	<b>TOTAL MEDICAL ASSISTANCE</b>	<b>330,180.1</b>	<b>353,079.8</b>

	GRM		PFDHH		Medicaid	
FY97 Eligibles	856		764		87,977	
Race Distribution	White	74%	White	47%	White	45%
	Black	9%	Alaska Native	42%	Alaska Native	37%
	Hispanic	3%	Black	4%	Black	6%
	Asian	3%	Asian	2%	Hispanic	4%
	Unknown	2%	Hispanic	2%	Asian	3%
	Alaska Native	2%	American Indian	1%	Unknown	2%
	Pacific Islander	2%	Unknown	1%	Pacific Islander	2%
	American Indian	1%			American Indian	1%
Age	21-44	61%	21-44	75%	21-44	27%
	45-64	36%	45-64	13%	6-14	24%
	15-20	2%	65+	5%	1-5	19%
			15-20	3%	15-20	10%
			6-14	2%		7%
			1-5	1%	65+	6%
					45-64	6%
Eligibles by location	Anchorage	46%	Anchorage	25%	Anchorage	34%
	Fairbanks	11%	Fairbanks	7%	Fairbanks	7%
	Wasilla	8%	Wasilla	6%	Wasilla	5%
	Juneau	4%	Palmer	5%	Juneau	3%
	Palmer	4%	Emmonak	2%	Palmer	3%
	North Pole	3%	Kodiak	2%	Ketchikan	2%
	Soldotna	3%	Kipnuk	2%	Kenai	2%
	Ketchikan	2%	Togiak	2%	Soldotna	2%
	Sitka	2%	Nunapitchuk	2%	North Pole	2%
	Homer & Eagle River	1%	Delta Junction	2%	Kodiak	2%
	Kodiak & Big Lake	1%	Soldotna	2%	Homer	1%
Expenditure by Category of Service	Physician	41%	Nursing Home	65%	Hospital	32%
	Hospital	34%	Hospital	13%	Physician	17%
	Pharmacy	15%	Physician	9%	Nursing Home	12%
	Other	6%	Pharmacy	5%	Physician	17%
	Transportation	3%	Mental Health Clinics	3%	Mental Health Clinics	10%
	Nursing Home	1%	Other	3%	Other	3%
			Transportation	2%	Pharmacy	7%
					Waivers	5%
				EPSDT	4%	
				Transportation	3%	
Expenditures	\$3,412,364.51		\$453,441.69		\$349,170,283.57	

# Defining Medical Assistance

The Division of Medical Assistance, within Alaska's Department of Health and Social Services (DHSS), administers programs that are designed to help residents meet their medical needs: Medicaid and General Relief Medical (GRM). The Permanent Fund Dividend Hold Harmless (PFDHH) and the Alaska Longevity Bonus Hold Harmless (ALBHH) programs are also available to help Medicaid recipients maintain Medicaid eligibility. While the GRM, PFDHH and ALBHH programs are vital to the health care of many Alaskans, this report will emphasize the Medicaid program as it serves more people and requires greater expenditures.

## Overview of Medical Assistance

*Medicaid* is an "entitlement program" created by the federal government, but administered by the state, to provide payment for medical services for low-income citizens. People qualify for Medicaid by meeting federal income and asset standards and by fitting into a specified eligibility. Under federal rules, DHSS has authority to limit services as long as the services provided are adequate in "amount, duration, and scope" to satisfy the recipient's medical needs.

Medicaid began as a program to pay for health care for poor people who were unable to work. It covered the aged, the blind, the disabled, and single parent families. Over the years, Medicaid has expanded to cover more people. For instance, children and pregnant women may qualify under higher income limits and without asset limits. Families with unemployed parents may qualify, and families who lose regular Family Medicaid because a parent returns to work may continue to be covered for up to one year.

There have also been changes in the eligibility rules for people who need the level of care provided in an institution, such as a nursing home. Now, most Alaskans who need — but cannot afford — this expensive care may qualify for Medicaid. In addition, recent changes within the Alaska Medicaid program give some people who need an institutional level of care the opportunity to stay at home to receive that care.

*General Relief Medical* (GRM) is a 100% state-funded medical assistance program that pays for a very limited amount of health care services for very low income adults who do not qualify for Medicaid. Covered services include limited inpatient hospital stays and prescription drugs for individuals with certain chronic illnesses.

The Alaska Legislature created the *Permanent Fund Dividend Hold Harmless* program (PFDHH) to protect those Medicaid clients who would lose their eligibility as a result of receipt or retention of the Permanent Fund Dividend. Receipt of the PFD

## How it works

Eligibility for Medicaid is determined by the Division of Public Assistance according to federal and state rules. The case worker will look at age, income, assets, disability status, and other factors to determine what eligibility category will work. Once determined eligible, the individual will be assigned a unique identification number and issued a Medicaid coupon, which contains information on removable labels. For the most part, recipients are able to choose their own health care provider, but before Medicaid will pay the medical bill, the provider must be enrolled with the Medicaid program. When services are provided, the enrolled provider removes one of the labels and sticks it on a special claim form. Some providers are also able to submit claims electronically. All prescription drug claims are submitted electronically. Before Medicaid reimburses the provider, a claim review is done to make sure the claim fits within acceptable medical and fiscal guidelines. Reimbursement rates for physicians and other private practice providers are established according to a methodology that assigns a relative value to the service provided. Hospital and nursing home rates are established by a special rate setting commission. Except for established recipient cost sharing amounts, providers must agree to accept the Medicaid rate as full reimbursement and not require the recipient to pay more.

## GENERAL RELIEF MEDICAL (GRM) ASSISTANCE PROGRAM

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### WHO IS ELIGIBLE?

- A person with a monthly income of less than \$300 and less than \$500 in assets.
  - A person with an immediate need for medical care for a terminal illness, chemotherapy treatment for cancer, or a chronic condition such as diabetes, a seizure disorder, chronic mental illness, or hypertension, and therapeutic abortions.
- 

### WHAT SERVICES ARE COVERED?

- Hospital, nursing home care, physician services, laboratory, x-rays, prescription drugs, medical transportation, and outpatient surgical center services.
- Physician services are limited to 12 visits per year and hospitalization is limited to eight days per year.
- A GRM recipient must pay \$50 per day up to a maximum of \$200 per hospital admission, and \$1 copayment on each prescribed drug or medical supply item.
- Payment for facility services is limited to 28.7% of the Medicaid rate.

### DEMOGRAPHICS OF THE GRM PROGRAM

- 79% are White, 9% are Black, 3% are Hispanic - *What happened to Natives receiving abortions? 30%*
- \* • 53% are male
- 61% are between the ages of 21 and 44; 36% are between the ages of 45 and 64.
- 44% reside in Anchorage, 13% in Fairbanks, 7% in Wasilla, 4% each in Juneau and Palmer.

### FY97 EXPENDITURES

Hospital	\$ 684.5
Physician	\$1,148.6
Other services	<u>\$1,579.8</u>
TOTAL	\$3,412.9 - <i>Does this include P.F. hold harmless \$\$\$?</i>

**Applicable Statutes:****AS 47.25.230. Persons Liable For Support and Burial.**

Every needy person shall be supported while living and upon dying, shall be given a decent burial by the spouse, children, parents, grandparents, grandchildren, or siblings of the needy person, if they, or any of them, have the ability to do so, in the order named. Every designated person who fails to support the needy person when directed by the department to do so, or fails to give the needy person a decent burial shall reimburse the state or a municipality for the funds expended by either the state or a municipality for the relief or burial of the needy person, and these sums with interest and costs may be recovered by the state or a municipality of the state in a civil action.

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**AS 47.25.240. Action Against Person Liable For Care of Recipient.**

If, during the continuance of an allowance, the department ascertains that a person liable for the support of the recipient of assistance is able to provide the necessary care and support of the recipient, and the person liable for the care and support of the recipient fails or refuses to support and care for the recipient, the state has a claim for the assistance against the person liable for it. This claim may be enforced by civil action brought in the name of the state by the attorney general against the person liable for the recovery of the amount of money, with interest, paid to the recipient, together with the costs and disbursements of the action.

Abortion Services by Category of Service  
FY97

AGE Category of Service	Less Than 13		13-16		17-21		22-30		Over 30		Total	
	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars
Physician-43	3	\$985	82	\$14,128	494	\$89,458	788	\$134,592	314	\$45,644	1,681	\$284,807
Clinic-24	1	\$353	11	\$2,100	70	\$14,770	108	\$22,720	52	\$10,800	242	\$50,843
Inpatient-01	0	\$0	0	\$0	0	\$0	1	\$3,108	1	\$4,228	2	\$7,336
Outpatient-07	0	\$0	3	\$4,299	23	\$28,108	30	\$31,031	2	\$3,041	58	\$67,479
Other Services	0	\$0	103	\$7,173	470	\$35,511	538	\$39,098	202	\$14,391	1,313	\$96,174
<b>TOTAL</b>	<b>4</b>	<b>\$1,338</b>	<b>199</b>	<b>\$27,701</b>	<b>1,057</b>	<b>\$160,847</b>	<b>1,465</b>	<b>\$230,550</b>	<b>571</b>	<b>\$78,203</b>	<b>3,298</b>	<b>\$506,639</b>
Unduplicated Recipients	1		48		270		381		143		843	

RACE Category of Service	White		Native		Black		Hispanic		Other		Total	
	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars
Physician-43	625	\$136,055	465	\$88,368	197	\$27,243	77	\$14,821	17	\$20,319	1,681	\$284,807
Clinic-24	107	\$22,195	71	\$14,485	37	\$8,288	13	\$2,878	14	\$3,020	242	\$50,843
Inpatient-01	0	\$0	2	\$7,336	0	\$0	0	\$0	0	\$0	2	\$7,336
Outpatient-07	25	\$30,389	28	\$28,902	1	\$1,434	3	\$5,167	1	\$1,588	58	\$67,479
Other Services	547	\$38,952	654	\$41,010	83	\$8,431	33	\$2,827	88	\$8,953	1,313	\$96,174
<b>TOTAL</b>	<b>1,504</b>	<b>\$227,590</b>	<b>1,120</b>	<b>\$178,102</b>	<b>318</b>	<b>\$43,378</b>	<b>126</b>	<b>\$25,890</b>	<b>228</b>	<b>\$31,880</b>	<b>3,298</b>	<b>\$506,639</b>
Unduplicated Recipients	402		284		81		37		68		843	

IN/STATE/OUT of STATE Category of Service	Instate		Out of State		Total	
	# Claim Lines	Dollars	# Claim Lines	Dollars	# Claim Lines	Dollars
Physician-43	1,876	\$284,398	5	\$409	1,881	\$284,807
Clinic-24	242	\$50,843	0	\$0	242	\$50,843
Inpatient-01	2	\$7,336	0	\$0	2	\$7,336
Outpatient-07	58	\$67,479	0	\$0	58	\$67,479
Other Services	482	\$38,665	831	\$57,509	1,313	\$96,174
<b>TOTAL</b>	<b>2,460</b>	<b>\$448,721</b>	<b>836</b>	<b>\$57,918</b>	<b>3,298</b>	<b>\$506,639</b>
Unduplicated Recipients	785		78		843	

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAL ASSISTANCE

P.O. BOX 110560  
JUNEAU, ALASKA 99811-0660  
PHONE: (907) 465-3355  
FAX: (907) 465-2204

April 22, 1998

The Honorable Terry Martin  
Alaska House of Representative  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Martin:

I wanted to clarify the diagnosis code information provided to you on April 18th in the packet of General Relief Medical Assistance materials delivered to your office, as it seems to be causing some confusion.

The diagnosis codes were provided in order to allow legislators to review the conditions for which clients apply to the program for treatment. Diagnosis codes are required on the claim form submitted by the rendering provider in order to receive payment. The diagnosis codes are at the discretion of the provider, and multiple diagnosis codes are frequently submitted on a single claim to describe all of the physical factors the provider feels appropriate in describing the patient's condition. Because multiple diagnosis codes are submitted for treatment of a single patient, the number of diagnosis codes on the list exceeds the number of clients served by the program.

I apologize for not having clearly explained this with the transmission of the diagnosis code materials.

*But the heading  
clearly states  
"Unduplicated  
Recipients"*

Sincerely,

*Bob Labbe*

Bob Labbe,  
Director

MEMORANDUM

To: Senate Finance Members  
From: Representative Terry Martin  
Date: April 23, 1998  
Subject: GRM Information

-----  
The Department of Health and Social Services notes that "there is a desire for more detailed information about the General Relief Medical Assistance Program". This is well noted. We have gotten lots of information and it is has often been contradictory. I am thankful to DHSS that we are now getting their explanation of the differing numbers

---

At one point the DHSS reported 843 abortions for a cost of \$506,000 including transportation and lodging: *Abortion Services by Category of Service - FY 97* [See Attachment A-1]

Next the *Annual Report* and a Department memo tell us that these 843 abortions cost \$892,000 NOT including transportation and lodging. Yesterday, I learned that this cost may include transportation and that the numbers differ (by almost 50%) because of accounting techniques. [Attachment A-2]

The Department had given us the number of abortions as 843 but recently distributed a spreadsheet showing the number of unduplicated recipients at 1,079. The DHSS several days later clarified the report back to 843. [Attachment A-4]

So the most recent real numbers are 843 abortions for \$892,000 at \$1,058 per abortion and 26% of the GRM budget. (Not including ancillary costs?) [A-3]

The *Annual Report* said there were 856 GRM eligibles in 1997 [Attachment A-5]. The report then gives an expenditure summary on that page of \$3.4 million dollars and does not mention that \$892,000 of that amount paid for an additional 843 women to have elective abortions. So now we see there were 1,699 people using GRM!

The *Annual Report* on page 4 says that General Relief Medical is a "...medical assistance program that pays for a very limited amount of health care services for very low income adults who do not qualify for Medicaid". According to their own information (given to us later), one half (843 out of 1,699) of their GRM services were for elective abortions for people who do qualify for Medicaid (but want an elective procedure that Medicaid will not cover)! [Attachment A-6]

The summary of the General Relief Medical Program, by the Division of Medical Assistance, prepared February 27, 1998 gave demographics of the program. The report said that 53% of the GRM recipients were male. The report listed \$3.4 million dollars of expenditures and again decided not to inform the public that \$892,000 of this went for an additional 843 female recipients. Further digging by my staff reveals that the only 'pregnancy-related' service paid for by GRM is abortion. [Attachment A-7]

And further it appears that the Department of Health and Social Services does not follow existing State law (AS 47.25.230. and AS 47.25.240.) to fund emergency medical needs. These statutes require the state to identify persons liable for support of the recipient which

include the spouse, children, grandchildren, parents, grandparents, or siblings who are financially able to. The statute requires that the legally responsible relative reimburse the state (with interest) for any relief granted in the event that the relative fails to provide for the immediate need. How much money has the Division of Medical Assistance recovered from liable third parties? How much have they tried to recover? [Attachment A-8]

Failure to provide identification of a third party involved who may have a responsibility to pay is supposed to result in the applicant's ineligibility.

The Legislature has no reason to believe that the DHSS has yet provided complete and accurate information nor that it is following its own regulations or State law.

Pro-life legislators are being blasted because they have worked to eliminate funding for the GRM program. The most pressing accusation now is that "the sickest of the sick and the poorest of the poor" will have nowhere else to turn. Indeed, where will they go?

~~The answer to this can be found, logically, in the Department of Health and Social Services.~~ These people will go to the same places for service that the Department has sent them in past years when it has taken funding intended for their services and spent it on abortions instead.

In past years, the House Finance Committee has sought to stop abortion funding by asking the department how much it spends on abortions. It has then reduced the GRM budget by that amount, with the admonition that it was not to be used to fund abortions. But if the department persists in funding abortions--843 of them costing \$892,000 in FY 97--clearly they have had to turn away the sick and the poor who would have been helped by those funds. Where did these people go last year?

The House Finance Committee has increased appropriations for adoption services, foster family services and adult public assistance programs. Hysterical rhetoric of extreme emotions misleads the public and camouflages the ever-increasing free abortions paid for by the state.

Abortions by Diagnosis

Diagnosis	Description	Unduplicated Recipients	Claim Lines
63590	LEGAL ABORT UNCCMPL-UNSP	510	2,478
V617	UNWANTED PREGNANCY NEC	233	349
635	LEGALLY INDUCED ABORTION	59	59
V2502	INITIATE CONTRACEPT NEC	53	56
63592	LEGAL ABORT UNCCMPL-COMP	45	56
6359	LEGAL ABORT UNCOMPLICAT	39	93
30928	ADJ REACT-MIXED EMOTION	18	21
V2509	CONTRACEPTIVE MANGMT NEC	17	24
V259	CONTRACEPTIVE MANGMT NOS	17	27
V724	PREG EXAM-PREG UNCONFIRM	15	15
V2549	CONTRACEPT SURVEILL NEC	10	16
V2540	CONTRACEPT SURVEILL NOS	9	18
6561	RHESUS ISOIMMUNIZATION	6	10
6352	LEGAL ABORT W PELV CAMAG	4	4
6260	ABSENCE OF MENSTRUATION	3	7
65641	INTRAUTER DEATH-DELIVER	3	4
V222	PREG STATE INCIDENTAL	3	8
V7283	OTH SPCF FREOP EXAM	2	2
V22	NORMAL PREGNANCY	2	3
63572	LEG AB W COMPL NEC-COMP	2	2
63790	AB NOS UNCOMPLICAT-UNSP	2	2
6350	LEGAL ABORT W PELVIC INF	2	3
6358	LEGAL ABORT W COMPL NOS	1	3
63571	LEG AB W COMPL NEC-INC	1	1
63500	LEG ABORT W PELV INF-UNSP	1	2
6430	MILD HYPEREMESIS GRAVID	1	2
6268	MENSTRUAL DISORDER NEC	1	2
61610	VAGINITIS NOS	1	1
41519	PULM EMBOLINFARCT NEC	1	1
6351	LEGAL ABORT W HEMORRHAGE	1	1
65963	OTH ADVNCD MTRNL AGE ANT	1	2
V4589	POSTSURGICAL STATES NEC	1	1
V255	INSERTION OF IMPLANTABLE SUBDERMAL CONTR	1	2
V2542	IUD SURVEILLANCE	1	2
V2501	PRESCRIP-ORAL CONTRACEPT	1	3
V242	ROUT POSTPART FOLLOW-UP	1	1
6400	THREATENED ABORTION	1	1
7989	UNATTENDED DEATH	1	1
6371	ABORT NOS W HEMORRHAGE	1	2
65613	RH ISOIMMUNIZAT-ANTEPART	1	1
65501	FETAL CNS MALFORM-DELIV	1	1
6550	FETAL CNS MALFORMATION	1	1
64003	THREAT ABORT ANTEPARTUM OR POSTPARTUM	1	1
6387	ATTEMP ABORT W COMPL NEC	1	3
63791	AB NOS UNCOMPLICAT-INC	1	2
6379	ABORTION NOS UNCOMPLICAT	1	1
99553	CHILD MALTREATMENT SYNDROME	1	1

Total 1,079 3,296

	GRM		PFDHH		Medicaid
FY97 Eligibles	856		764		87,977
Race Distribution	White 74% Black 9% Hispanic 2% Asian 3% Unknown 2% Alaska Native 2% Pacific Islander 2% American Indian 1%		White 47% Alaska Native 42% Black 4% Asian 2% Hispanic 2% American Indian 1% Unknown 1%		White 45% Alaska Native 3% Black 6% Hispanic 4% Asian 3% Unknown 2% Pacific Islander 2% American Indian 1%
Age	21-44 61% 45-64 36% 15-20 2%		21-44 75% 45-64 13% 65+ 5% 15-20 3% 6-14 2% 1-5 1%		21-44 27% 6-14 24% 1-5 19% 15-20 10% 0 7% 65+ 6% 45-64 6%
Eligibles by location	Anchorage 16% Fairbanks 11% Wasilla 8% Juneau 4% Palmer 4% North Pole 3% Soldotna 3% Ketchikan 2% Sitka 2% Homer & Eagle River 1% Kodiak & Big Lake 1%		Anchorage 25% Fairbanks 7% Wasilla 6% Palmer 5% Emmonak 2% Kodiak 2% Kipnuk 2% Togiak 2% Nunapitchuk 2% Delta Junction 2% Soldotna 2%		Anchorage 34% Fairbanks 7% Wasilla 5% Juneau 3% Palmer 3% Ketchikan 2% Kenai 2% Soldotna 2% North Pole 2% Kodiak 2% Homer 1%
Expenditure by Category of Service	Physician 41% Hospital 34% Pharmacy 15% Other 6% Transportation 3% Nursing Home 1%		Nursing Home 65% Hospital 13% Physician 9% Pharmacy 5% Mental Health Clinics 3% Other 3% Transportation 2%		Hospital 34% Physician 17% Nursing Home 12% Physician 10% Mental Health Clinics 10% Other 8% Pharmacy 7% Waivers 5% EPSDT 4% Transportation 3%
Expenditures	\$3,412,304.51		\$453,441.69		\$349,170,293.57

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Sixth Edition

Effective October 1, 2001–September 30, 2002

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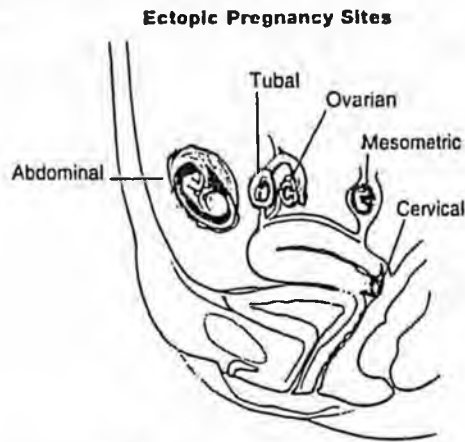
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         with hypertension — see Toxemia, of pregnancy  
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**ABO**  
     hemolytic disease 773.1  
     incompatibility reaction 999.6  
**Abocclusion 524.2**  
**Abolition, language 784.69**  
**Aborter, habitual or recurrent NEC**  
     without current pregnancy 629.9  
     current abortion (see also Abortion, spontaneous) 634.9 **65**  
     affecting fetus or newborn 761.8  
     observation in current pregnancy 646.3 **63**  
**Abortion (complete) (incomplete) (inevitable) (with retained products of conception) 637.9 **63****  

*Note — Use the following fifth-digit subclassification with categories 634-637:*

0	unspecified
1	incomplete
2	complete

 with  
     complication(s) (any) following previous abortion — see category 639 **63**  
     damage to pelvic organ (laceration) (rupture) (tear) 637.2 **63**  
     embolism (air) (amniotic fluid) (blood clot) (pulmonary) (pyemic) (septic) (soap) 637.6 **63**  
     genital tract and pelvic infection 637.0 **63**  
     hemorrhage, delayed or excessive 637.1 **63**  
     metabolic disorder 637.4 **63**  
     renal failure (acute) 637.3 **63**  
     sepsis (genital tract) (pelvic organ) 637.0 **63**  
     urinary tract 637.7 **63**  
     shock (postoperative) (septic) 637.5 **63**  
     specified complication NEC 637.7 **63**  
     toxemia 637.3 **63**  
     unspecified complication(s) 637.8 **63**  
     urinary tract infection 637.7 **63**  
 accidental — see Abortion, spontaneous  
 artificial — see Abortion, induced  
 attempted (failed) — see Abortion, failed  
 criminal — see Abortion, illegal  
 early — see Abortion, spontaneous  
 elective — see Abortion, legal  
 failed (legal) 638.9  
     with  
         damage to pelvic organ (laceration) (rupture) (tear) 638.2  
         embolism (air) (amniotic fluid) (blood clot) (pulmonary) (pyemic) (septic) (soap) 638.6  
         genital tract and pelvic infection 638.0  
         hemorrhage, delayed or excessive 638.1  
         metabolic disorder 638.4  
         renal failure (acute) 638.3

Abnormal — Abortion



**632 Missed abortion** Q  
 Early fetal death before completion of 22 weeks' gestation with retention of dead fetus  
 Retained products of conception, not following spontaneous or induced abortion or delivery  
**EXCLUDES:** failed induced abortion (638.0-638.9) fetal death (intrauterine) (late) (656.4) missed delivery (656.4) that with abnormal product of conception (630, 631)

**633 Ectopic pregnancy** Q  
**INCLUDES:** ruptured ectopic pregnancy  
 DEF: Fertilized egg develops outside uterus.

**633.0 Abdominal pregnancy** Q  
 Intraabdominal pregnancy

**633.1 Tubal pregnancy** Q  
 Fallopian pregnancy  
 Rupture of (fallopian) tube due to pregnancy  
 Tubal abortion

**633.2 Ovarian pregnancy** Q

**633.8 Other ectopic pregnancy** Q  
 Pregnancy: cervical Pregnancy: intraligamentous  
 combined mesometric  
 cornual mural

**633.9 Unspecified ectopic pregnancy** Q

**OTHER PREGNANCY WITH ABORTIVE OUTCOME (634-639)**

The following fourth-digit subdivisions are for use with categories 634-638:

- .0 Complicated by genital tract and pelvic infection**
  - Endometritis
  - Salpingo-oophoritis
  - Sepsis NOS
  - Septicemia NOS
  - Any condition classifiable to 639.0, with condition classifiable to 634-638
  - EXCLUDES:** urinary tract infection (634-638 with .7)
- .1 Complicated by delayed or excessive hemorrhage**
  - Afibrinogenemia
  - Defibrination syndrome
  - Intravascular hemolysis
  - Any condition classifiable to 639.1, with condition classifiable to 634-638
- .2 Complicated by damage to pelvic organs and tissues**
  - Laceration, perforation, or tear of: bladder uterus
  - Any condition classifiable to 639.2, with condition classifiable to 634-638

- .3 Complicated by renal failure**
  - Oliguria
  - Uremia
  - Any condition classifiable to 639.3, with condition classifiable to 634-638
- .4 Complicated by metabolic disorder**
  - Electrolyte imbalance with conditions classifiable to 634-638
- .5 Complicated by shock**
  - Circulatory collapse
  - Shock (postoperative) (septic)
  - Any condition classifiable to 639.5, with condition classifiable to 634-638
- .6 Complicated by embolism**
  - Embolism: NOS amniotic fluid pulmonary
  - Any condition classifiable to 639.6, with condition classifiable to 634-638
- .7 With other specified complications**
  - Cardiac arrest or failure
  - Urinary tract infection
  - Any condition classifiable to 639.8, with condition classifiable to 634-638
- .8 With unspecified complication**
- .9 Without mention of complication**

**634 Spontaneous abortion** Q  
**INCLUDES:** miscarriage spontaneous abortion  
 Requires fifth-digit to identify stage:  
 0 unspecified  
 1 incomplete  
 2 complete  
 DEF: Spontaneous premature expulsion of the products of conception from the uterus.

- 634.0 Complicated by genital tract and pelvic infection** Q
- 634.1 Complicated by delayed or excessive hemorrhage** Q
- 634.2 Complicated by damage to pelvic organs or tissues** Q
- 634.3 Complicated by renal failure** Q
- 634.4 Complicated by metabolic disorder** Q
- 634.5 Complicated by shock** Q
- 634.6 Complicated by embolism** Q
- 634.7 With other specified complications** Q
- 634.8 With unspecified complication** Q
- 634.9 Without mention of complication** Q

**635 Legally induced abortion** Q  
**INCLUDES:** abortion or termination of pregnancy: elective legal therapeutic  
**EXCLUDES:** menstrual extraction or regulation (V25.3)  
 Requires fifth-digit to identify stage:  
 0 unspecified  
 1 incomplete  
 2 complete

DEF: Intentional expulsion of products of conception from uterus performed by medical professionals inside boundaries of law.

- 635.0 Complicated by genital tract and pelvic infection** Q
- 635.1 Complicated by delayed or excessive hemorrhage** Q
- 635.2 Complicated by damage to pelvic organs or tissues** Q

**Abortion** — *continued*  
 failed — *continued*  
 with — *continued*  
 sepsis (genital tract) (pelvic organ) 638.0  
 urinary tract 638.7  
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 without current pregnancy 629.9  
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 damage to pelvic organ (laceration) (rupture) (tear) 636.2 253  
 embolism (air) (amniotic fluid) (blood clot) (pulmonary) (pyemic) (septic) (soap) 636.6 253  
 genital tract and pelvic infection 636.0 253  
 hemorrhage, delayed or excessive 636.1 253  
 metabolic disorder 636.4 253  
 renal failure 636.3 253  
 sepsis (genital tract) (pelvic organ) 636.0 253  
 urinary tract 636.7 253  
 shock (postoperative) (septic) 636.5 253  
 specified complication NEC 636.7 253  
 toxemia 636.3 253  
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 sepsis (genital tract) (pelvic organ) 635.0 253  
 urinary tract 635.7 253  
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 specified complication NEC 635.7 253  
 toxemia 635.3 253  
 unspecified complication(s) 635.8 253  
 urinary tract infection 635.7 253  
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 with  
 damage to pelvic organ (laceration) (rupture) (tear) 634.2 253

**Abortion** — *continued*  
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 with — *continued*  
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- ✓5<sup>th</sup> 635.3 Complicated by renal failure ○
- ✓5<sup>th</sup> 635.4 Complicated by metabolic disorder ○
- ✓5<sup>th</sup> 635.5 Complicated by shock ○
- ✓5<sup>th</sup> 635.6 Complicated by embolism ○
- ✓5<sup>th</sup> 635.7 With other specified complications ○
- ✓5<sup>th</sup> 635.8 With unspecified complication ○
- ✓5<sup>th</sup> 635.9 Without mention of complication ○
- ✓4<sup>th</sup> 636 **Illegally induced abortion** ○
  - INCLUDES** abortion:
    - criminal
    - illegal
    - self-induced
  - Requires fifth-digit to identify stage:
    - 0 unspecified
    - 1 incomplete
    - 2 complete
  - DEF: Intentional expulsion of products of conception from uterus; outside boundaries of law.
- ✓5<sup>th</sup> 636.0 Complicated by genital tract and pelvic infection ○
- ✓5<sup>th</sup> 636.1 Complicated by delayed or excessive hemorrhage ○
- ✓5<sup>th</sup> 636.2 Complicated by damage to pelvic organs or tissues ○
- ✓5<sup>th</sup> 636.3 Complicated by renal failure ○
- ✓5<sup>th</sup> 636.4 Complicated by metabolic disorder ○
- ✓5<sup>th</sup> 636.5 Complicated by shock ○
- ✓5<sup>th</sup> 636.6 Complicated by embolism ○
- ✓5<sup>th</sup> 636.7 With other specified complications ○
- ✓5<sup>th</sup> 636.8 With unspecified complication ○
- ✓5<sup>th</sup> 636.9 Without mention of complication ○
- ✓5<sup>th</sup> 637 **Unspecified abortion** ○
  - INCLUDES** abortion NOS
  - retained products of conception following abortion, not classifiable elsewhere
  - Requires fifth-digit to identify stage:
    - 0 unspecified
    - 1 incomplete
    - 2 complete
- ✓5<sup>th</sup> 637.0 Complicated by genital tract and pelvic infection ○
- ✓5<sup>th</sup> 637.1 Complicated by delayed or excessive hemorrhage ○
- ✓5<sup>th</sup> 637.2 Complicated by damage to pelvic organs or tissues ○
- ✓5<sup>th</sup> 637.3 Complicated by renal failure ○
- ✓5<sup>th</sup> 637.4 Complicated by metabolic disorder ○
- ✓5<sup>th</sup> 637.5 Complicated by shock ○
- ✓5<sup>th</sup> 637.6 Complicated by embolism ○
- ✓5<sup>th</sup> 637.7 With other specified complications ○
- ✓5<sup>th</sup> 637.8 With unspecified complication ○
- ✓5<sup>th</sup> 637.9 Without mention of complication ○
- ✓4<sup>th</sup> 638 **Failed attempted abortion** ○
  - INCLUDES** failure of attempted induction of (legal) abortion
  - EXCLUDES** incomplete abortion (634.0-637.9)
  - DEF: Continued pregnancy despite an attempted legal abortion.
- 638.0 Complicated by genital tract and pelvic infection ○
- 638.1 Complicated by delayed or excessive hemorrhage ○
- 638.2 Complicated by damage to pelvic organs or tissues ○

- 638.3 Complicated by renal failure ○
- 638.4 Complicated by metabolic disorder ○
- 638.5 Complicated by shock ○
- 638.6 Complicated by embolism ○
- 638.7 With other specified complications ○
- 638.8 With unspecified complication ○
- 638.9 Without mention of complication ○
- ✓4<sup>th</sup> 639 **Complications following abortion and ectopic and molar pregnancies** ○
  - Note: This category is provided for use when it is required to classify separately the complications classifiable to the fourth-digit level in categories 634-638; for example:
    - a) when the complication itself was responsible for an episode of medical care, the abortion, ectopic or molar pregnancy itself having been dealt with at a previous episode
    - b) when these conditions are immediate complications of ectopic or molar pregnancies classifiable to 630-638 where they cannot be identified at fourth-digit level.
- 639.0 **Genital tract and pelvic infection** 11 ○
  - Endometritis
  - Parametritis
  - Pelvic peritonitis
  - Salpingitis
  - Salpingo-oophoritis
  - Sepsis NOS
  - Septicemia NOS

following conditions classifiable to 630-638
- EXCLUDES** urinary tract infection (639.8)
- 639.1 **Delayed or excessive hemorrhage** 11 ○
  - Afibrinogenemia
  - Defibrination syndrome
  - Intravascular hemolysis

following conditions classifiable to 630-638
- 639.2 **Damage to pelvic organs and tissues** 11 ○
  - Laceration, perforation, or tear of:
    - bladder
    - bowel
    - broad ligament
    - cervix
    - perineal tissue
    - uterus
    - vagina

following conditions classifiable to 630-638
- 639.3 **Renal failure** 11 ○
  - Oliguria
  - Renal:
    - failure (acute) shutdown
    - tubular necrosis
    - Uremia

following conditions classifiable to 630-638
- 639.4 **Metabolic disorders** 11 ○
  - Electrolyte imbalance following conditions classifiable to 630-638
- 639.5 **Shock** 11 ○
  - Circulatory collapse
  - Shock (postoperative) (septic)

following conditions classifiable to 630-638
- 639.6 **Embolism** 21 ○
  - Embolism:
    - NOS
    - air
    - amniotic fluid
    - blood-clot
    - fat
    - pulmonary
    - pyemic
    - septic
    - soap

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Complications of Pregnancy, Childbirth, & Puerperium 635.3-639.6

Tabular List

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- V61.9 Unspecified family circumstance
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- V62.2 **Other occupational circumstances or maladjustment**  
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- V62.3 Educational circumstances  
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## Pregnancy — continued

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656.0 **525**  
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290-303, 305-316, 317-319) 648.4 **525**  
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more fetuses) 651.8 **525**  
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fetuses) 651.6 **525**  
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fetuses) 651.8 **525**  
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fetuses) 651.8 **525**  
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**28 P.3d 904 STATE V. PLANNED PARENTHOOD OF ALASKA, INC. (S. Ct. 2001)  
2001 Alas. Lexis 97**

**STATE OF ALASKA, DEPARTMENT OF HEALTH & SOCIAL SERVICES,  
KAREN PERDUE, Commissioner, Appellant,**

vs.

**PLANNED PARENTHOOD OF ALASKA, INC., JAN WHITEFIELD, M.D.,  
and SUSAN LEMAGIE, M.D., Appellees.**

Supreme Court No. S-9109, No. 5443

SUPREME COURT OF ALASKA

28 P.3d 904, 2001 Alas. LEXIS 97

July 27, 2001, Decided

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan,  
Judge. Superior Court No. 3AN-98-7004 CI.

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**JUDGES**

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

**AUTHOR: FABE**

**OPINION**

FABE, Chief Justice.

**I. INTRODUCTION**

Alaska's Medicaid program funds virtually all necessary medical services for poor Alaskans -- "regardless of race, age, national origin, or economic standing"<sup>1</sup> -- but it denies funding for medically necessary abortions. Alone among Medicaid-eligible Alaskans, women whose health is endangered by pregnancy are denied health care based solely on political disapproval of the medically necessary procedure. This selective denial of medical benefits violates Alaska's constitutional guarantee of equal protection. Our conclusion is supported by the majority of jurisdictions that have considered comparable restrictions on state

**funding of medically necessary abortions: these state courts have concluded that, under their state constitutions, government health care programs that fund other medically necessary procedures may not deny assistance to eligible women whose health depends on obtaining abortions.<sup>2</sup>**

This case concerns the State's denial of public assistance to eligible women whose health is in danger. It does not concern State payment for elective abortions; nor does it concern philosophical questions about abortion which we, as a court of law, cannot aspire to answer. We join the California Supreme Court in clarifying that "this case does not turn on the morality or immorality of abortion, and most decidedly does not concern the personal views of the individual justices as to the wisdom of the legislation itself or the ethical considerations involved in a woman's individual decision whether or not to bear a child."<sup>3</sup> Indeed, as the California Supreme Court emphasized, "similar constitutional issues would arise if the Legislature . . . funded [Medicaid] abortions but refused to provide comparable medical care for poor women who choose childbirth."<sup>4</sup> The constitutional issue in this case therefore "does not involve a weighing of the value of abortion as against childbirth, but instead concerns the protection of either procreative choice from discriminatory governmental treatment."<sup>5</sup> As the California court recognized, the issue presented is "not whether the state is generally obligated to subsidize the exercise of constitutional rights for those who cannot otherwise afford to do so."<sup>6</sup> Rather, the issue is whether the State, having enacted a benefits program, may discriminate between recipients in the manner attempted by the Department of Health and Social Services (DHSS) today. We hold that it may not. Once the State undertakes to fund medically necessary services for poor Alaskans, it may not selectively exclude from that program women who medically require abortions.

Although the State argues that courts may not enjoin unconstitutional use of the legislative appropriations power, this proposition is unsupported by case law from any jurisdiction. The legislature's spending power does not create license to disregard citizens' constitutional rights. In rejecting this part of the State's argument, we concur with every state and federal court that has considered this issue.

## **II. FACTS AND PROCEEDINGS**

Alaska provides medical services for poor Alaskans primarily through the Medicaid program.<sup>7</sup> Medicaid is a comprehensive health care program designed to provide medical assistance for all eligible poor persons in the state.<sup>8</sup> But a DHSS regulation, 7 Alaska Administrative Code (AAC) 43.140, imposes a limit on the state's health care funding: It denies Medicaid assistance for medically necessary abortions unless a pregnant woman is at risk of dying or her pregnancy resulted from rape or incest.<sup>9</sup> Because DHSS offers no other funding source for abortions, 7 AAC 43.140 ensures that a woman who medically requires an abortion will receive no assistance from the state.

The range of women whose access to medical care is restricted by the regulation is broad.

According to medical evidence provided to the superior court, some women -- particularly those who suffer from pre-existing health problems -- face significant risks if they cannot obtain abortions. Women with diabetes risk kidney failure, blindness, and preeclampsia or eclampsia -- conditions characterized by simultaneous convulsions and comas -- when their disease is complicated by pregnancy. Women with renal disease may lose a kidney and face a lifetime of dialysis if they cannot obtain an abortion. And pregnancy in women with sickle cell anemia can accelerate the disease, leading to pneumonia, kidney infections, congestive heart failure, and pulmonary conditions such as embolus. Poor women who suffer from conditions such as epilepsy or bipolar disorder face a particularly brutal dilemma as a result of DHSS's regulation -- medication needed by the women to control their own seizures or other symptoms can be highly dangerous to a developing fetus. Without funding for medically necessary abortions, pregnant women with these conditions must choose either to seriously endanger their own health by forgoing medication, or to ensure their own safety but endanger the developing fetus by continuing medication. Finally, without state funding, Medicaid-eligible women may reach an advanced stage of pregnancy before they can gather enough money for an abortion; resulting late-term abortions pose far greater health risks than earlier procedures.

In June 1998 the plaintiffs -- two medical doctors and Planned Parenthood of Alaska -- filed a complaint against DHSS. They sought to enjoin enforcement of 7 AAC 43.140 and also sought a judgment declaring that the State's denial of funding for medically necessary abortions violates Alaska's Constitution. Superior Court Judge Sen K. Tan granted summary judgment in favor of Planned Parenthood. Based on this court's holding that "reproductive rights are fundamental . . . [and] include the right to an abortion,"<sup>10</sup> **the superior court concluded that 7 AAC 43.140 impermissibly interferes with Medicaid-eligible women's constitutional rights to privacy. Because the State failed to articulate a compelling state interest for this interference, the superior court permanently enjoined DHSS from enforcing the regulation "so as to deny coverage for medically necessary abortions." The State now appeals.<sup>11</sup>**

### III. STANDARD OF REVIEW

We review a grant of summary judgment de novo, exercising our independent judgment to "determine whether the parties genuinely dispute any material facts and, if not, whether the undisputed facts entitle the moving party to judgment as a matter of law."<sup>12</sup> **On questions of constitutional law, we also apply our independent judgment.<sup>13</sup> We may affirm the superior court on any ground supported by the record.<sup>14</sup>**

### IV. DISCUSSION

#### A. The Challenged Regulation Violates Equal Protection.

By providing health care to all poor Alaskans except women who need abortions, the challenged regulation violates the state constitutional guarantee of "equal rights, opportunities, and protection under the law."<sup>15</sup> **The State, having established a health care program for the poor, may not selectively deny necessary care to eligible women merely because the threat**

to their health arises from pregnancy. Because we decide this case on state constitutional equal protection grounds, we do not review the superior court's privacy-based ruling. We do note, however, that our analysis today closely parallels that applied by many of the fifteen courts that have rejected similar restrictions.<sup>16</sup> Although other courts' decisions have rested on a variety of state constitutional provisions, including equal protection,<sup>17</sup> constitutional equal-rights-for-women clauses,<sup>18</sup> due process,<sup>19</sup> and privacy,<sup>20</sup> the underlying logic has been the same in decision after decision: "When state government seeks to act for the common benefit, protection, and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens."<sup>21</sup> As the Massachusetts Supreme Judicial Court observed, the constitutional principle at issue is straightforward: "It is elementary that 'when a State decides to alleviate some of the hardships of poverty by providing medical care, the manner in which it dispenses benefits is subject to constitutional limitations.'"<sup>22</sup> The State's spending discretion is limited by the constitution -- "while the State retains wide latitude to decide the manner in which it will allocate benefits, it may not use criteria which discriminatorily burden the exercise of a fundamental right."<sup>23</sup>

Alaska's constitutional equal protection clause mandates "equal treatment of those similarly situated;"<sup>24</sup> it protects Alaskans' right to non-discriminatory treatment more robustly than does the federal equal protection clause.<sup>25</sup> In analyzing a challenged law under Alaska's equal protection provision, we first determine what level of scrutiny to apply, using Alaska's "sliding scale" standard.<sup>26</sup> The "weight [that] should be afforded the constitutional interest impaired by the challenged enactment" is "the most important variable in fixing the appropriate level of review."<sup>27</sup> Second, we examine the State's interests served by the challenged regulation.<sup>28</sup> If the burden placed on constitutional rights by the regulation is minimal, then the State need only show that its objectives were legitimate for the regulation to survive an equal protection challenge.<sup>29</sup> But if "the objective degree to which the challenged legislation tends to deter [exercise of constitutional rights]"<sup>30</sup> is significant, the regulation cannot survive constitutional challenge unless it serves a compelling state interest.<sup>31</sup> Finally, if the State shows that its interests justify burdening the rights of citizens, for the regulation to survive constitutional challenge the State must demonstrate that the means it has chosen to advance those goals are well-fitted to the ends, and that its goals could not be accomplished by less restrictive means.<sup>32</sup>

The regulation at issue in this case affects the exercise of a constitutional right, the right to reproductive freedom.<sup>33</sup> Therefore, the regulation is subject to the most searching judicial scrutiny, often called "strict scrutiny."<sup>34</sup> We have explained in the past that such scrutiny is appropriate where a challenged enactment affects "fundamental rights," including "the exercise of intimate personal choices."<sup>35</sup> This court has specified that the right to

reproductive freedom "may be legally constrained only when the constraints are justified by a compelling state interest, and no less restrictive means could advance that interest."<sup>36</sup>

Judicial scrutiny of state action is equally strict where the government, by selectively denying a benefit to those who exercise a constitutional right, effectively deters the exercise of that right. In *Alaska Pacific Assurance Co. v. Brown*, we held the State to a "very high" burden to justify a statute that reduced workers' compensation benefits paid to workers who exercised their constitutional right to leave the state.<sup>37</sup> We concluded that the challenged regulation did not meet this high standard and thus violated equal protection.<sup>38</sup> Like the regulation at issue today, the challenged statute in *Alaska Pacific Assurance Co.* did not forbid individual exercise of constitutional rights; rather, it limited the government benefits distributed to the class of individuals who exercised that right.<sup>39</sup> As we explained in that case, we look to the real-world effects of government action to determine the appropriate level of equal protection scrutiny: "The suspicion with which this court will view infringements upon [constitutional rights] depends upon . . . the objective degree to which the challenged legislation tends to deter [the exercise of those rights]."<sup>40</sup>

We reached a similar conclusion in *Alaska Gay Coalition v. Sullivan*, holding that the Municipality of Anchorage could not constitutionally withhold a public benefit based on a potential recipient's beliefs and public expression.<sup>41</sup> The municipality had undertaken to publish a guidebook to public and private organizations in Anchorage, but excluded the Alaska Gay Coalition from the book.<sup>42</sup> We held that this exclusion violated the Coalition's constitutional rights to equal protection under the law.<sup>43</sup> We explained:

When the Municipality decided to publish a limited informational guide to public and private local resources, it did not thereby assume the obligation of providing space to every possible group. . . . Had the Municipality deleted groups at random or used criteria not related to the nature of the particular organizations, constitutional violations may not have resulted. In deleting the Alaska Gay Coalition . . . however, appellees denied that group access to a public forum based solely on the nature of its beliefs. In so doing, they violated appellant's constitutional rights to . . . equal protection under the law. [44]

Similarly, in the instant case, the State's obligations do not depend on whether the State has undertaken to provide limitless health care services to all poor Alaskans. Rather, DHSS is constitutionally bound to apply neutral criteria in allocating health care benefits, even if considerations of expense, medical feasibility, or the necessity of particular services otherwise limit the health care it provides to poor Alaskans.

The State argues in this case that it does not provide all necessary medical care to indigent Alaskans. For support, it cites 7 AAC 43.385, a regulation that excludes from Medicaid coverage such services as medically unnecessary inpatient treatment,<sup>45</sup> beautifying cosmetic surgery,<sup>46</sup> and transplants of organs other than kidney, cornea, skin, and bone marrow.<sup>47</sup> This

regulation has not been challenged, and the issue has not been thoroughly briefed by the parties, but the restrictions appear to relate to medical necessity, cost, and feasibility -- all politically neutral criteria. Such spending limits are irrelevant to the constitutional issue raised by the State's denial of coverage for medically necessary abortions. As the United States Supreme Court noted in *Shapiro v. Thompson* :

We recognize that the State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. [48]

Like *Alaska Pacific Assurance Co.*, *Alaska Gay Coalition* establishes that under Alaska's equal protection provision the government may not allocate state benefits so as to deter citizens' exercise of constitutional rights.

In this case, it is undisputed that 7 AAC 43.140 deters women from obtaining abortions. The State itself stated that eliminating public assistance for medically necessary abortions would cause about thirty-five percent of women who would otherwise have obtained abortions to instead carry their pregnancies to term, despite the associated threat to their health. Under *Alaska Pacific Assurance Co.*, such a restriction warrants the highest degree of judicial scrutiny.

In the seminal *Shapiro v. Thompson* decision, the United States Supreme Court also strictly scrutinized -- and ultimately held unconstitutional -- state programs that denied benefits to citizens based on their exercise of constitutional rights.<sup>49</sup> *Shapiro* invalidated state laws that denied welfare benefits to persons who had moved into the jurisdiction within the past year.<sup>50</sup> The Court found that "the prohibition of benefits . . . creates a classification which constitutes an invidious discrimination denying [new residents] equal protection of the laws."<sup>51</sup> The Court held that states could not constitutionally tailor their benefits programs to deter immigration from other states: "If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional."<sup>52</sup>

Although *Shapiro* and *Alaska Pacific Assurance Co.* applied strict scrutiny to reject restrictions like the one at issue in this case, 7 AAC 43.140 would fail equal protection analysis under any standard. Under the regulation, the State grants needed health care to some Medicaid-eligible Alaskans, but denies it to others, based on criteria entirely unrelated to the Medicaid program's purpose of granting uniform and high quality medical care to all needy persons of this state.<sup>53</sup> Thus, even if 7 AAC 43.140 did not affect constitutional privacy rights and we applied our most deferential standard of review, the regulation still could not withstand equal protection challenge. Under Alaska's rational basis standard,<sup>54</sup> differential treatment of similarly situated people is permissible only if the distinction between the persons "rests upon some ground of difference having a fair and substantial relation to the object of the legislation."<sup>55</sup> DHSS provides necessary medical care to all

Medicaid-eligible Alaskans except women who medically require abortions. This differential treatment lacks a fair and substantial relation to the object of the Medicaid program, and therefore violates equal protection.<sup>56</sup>

The United States Supreme Court reached a similar conclusion in *Shapiro* : although the Court invalidated states' differential treatment of similarly situated welfare recipients under strict scrutiny, it also noted that the differentiation would be deemed "irrational and unconstitutional" even under federal rational basis review.<sup>57</sup> In *United States Department of Agriculture v. Moreno*, the United States Supreme Court invalidated a similar restriction under rational basis scrutiny alone.<sup>58</sup> The Court found no rational basis for a statute denying food stamps to unrelated persons who shared a household; it therefore concluded that the statute violated equal protection.<sup>59</sup>

Lower court decisions have applied this principle to states' allocation of health care benefits, and concluded that "classification [among recipients] must be based upon some difference between the classes which is pertinent to the purpose for which the legislation is designed."<sup>60</sup> A California court found that the state violated equal protection by paying for attendant services by spouses of elderly and blind aid recipients, but denying payment for the same services by the spouses of otherwise disabled aid recipients.<sup>61</sup> And New York's highest court held that equal protection was violated by a statute that "effectively provided . . . that the aged, disabled, and blind are entitled to less public assistance than other needy persons."<sup>62</sup>

DHSS's differential treatment of Medicaid-eligible Alaskans violates equal protection under rational basis review as surely as it does under strict scrutiny. Under any standard of review, "the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent."<sup>63</sup>

Because 7 AAC 43.140 infringes on a constitutionally protected interest, the State bears a high burden to justify the regulation.<sup>64</sup> Unless the State asserts a compelling state interest, the statute will necessarily fail constitutional scrutiny.<sup>65</sup> The State has failed to demonstrate such an interest in this case. It primarily defends 7 AAC 43.140 on the ground that "medical and public welfare interests . . . are served by the legislature's decision to fund childbirth." But the regulation does not relate to funding for childbirth, and the State's decision to fund prenatal care and other pregnancy-related services has not been challenged. Indeed, a woman who carries her pregnancy to term and a woman who terminates her pregnancy exercise the same fundamental right to reproductive choice. Alaska's equal protection clause does not permit governmental discrimination against either woman; both must be granted access to state health care under the same terms as any similarly situated person. The State's undisputed interest in providing health care to women who carry pregnancies to term has no effect on the State's interest in providing medical care to Medicaid-eligible women who, for health reasons, require abortions.

The State also asserts an interest in minimizing health risks to mother and child, and submits that these interests are often closely aligned. But those interests are not aligned in precisely the situation contemplated by 7 AAC 43.140's Medicaid exclusion: when pregnancy threatens a woman's health. Under the U.S. Supreme Court's analysis in *Roe v. Wade*, the State's interest in the life and health of the mother is paramount at every stage of pregnancy.<sup>66</sup> And in Alaska, "the scope of the fundamental right to an abortion . . . is similar to that expressed in *Roe v. Wade*."<sup>67</sup> Thus, although the State has a legitimate interest in protecting a fetus, at no point does that interest outweigh the State's interest in the life and health of the pregnant woman.<sup>68</sup>

Because the State has not asserted an interest sufficiently compelling to justify denying medically necessary care to women who need abortions, we need not consider the means-ends fit of the challenged regulation. We conclude that 7 AAC 43.140 violates equal protection under the Alaska Constitution.

#### B. The Separation of Powers Doctrine Cannot Shield Unconstitutional Legislation.

The State argues that by holding the Medicaid program to constitutional standards, the superior court effected an appropriation of funds in violation of the separation of powers between branches of government. We disagree. Under Alaska's constitutional structure of government, "the judicial branch . . . has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature."<sup>69</sup> The superior court had not only the power but the duty to strike the challenged restriction and any underlying legislation if it found them to violate constitutional rights; the same duty mandates our decision today.

The separation of powers doctrine and its complementary doctrine of checks and balances are implicit in the Alaska Constitution.<sup>70</sup> In light of the separation of powers doctrine, we have declined to intervene in political questions, which are uniquely within the province of the legislature.<sup>71</sup> But under the same doctrine, we "cannot defer to the legislature when infringement of a constitutional right results from legislative action"; legislative intent is not paramount when that intent conflicts with the constitution.<sup>72</sup> And the mere fact that the legislature's appropriations power underlies Medicaid funding cannot insulate the program from constitutional review. As the California Supreme Court observed in rejecting nearly identical restrictions on abortion funding, the State's claim would remove all constitutional restraints from legislative exercise of the spending power:

There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper. [73]

Legislative exercise of the appropriations power has not in the past, and may not now, bar

courts from upholding citizens' constitutional rights. Indeed, constitutional legal rulings commonly affect state programs and funding. Many of the most heralded constitutional decisions of the past century have, as a practical matter, effectively required state expenditures. In *Green v. County School Board*, the United States Supreme Court ordered effective desegregation of public schools;<sup>74</sup> in *Gideon v. Wainwright*, it required funding of counsel for indigent criminal defendants;<sup>75</sup> and in *Shapiro v. Thompson*, it required states to give newcomers to the jurisdiction equal welfare benefits.<sup>76</sup> In each of these cases, a judicial decision upholding constitutional rights required state expenditures to support those rights. As appellee doctors and Planned Parenthood point out, the funding implications and separation of powers issue in this case would be identical if the State relied on other suspect criteria, such as race, to deny Medicaid benefits. Following the State's argument, the exclusion of one ethnic group -- or inclusion only of other specified groups -- within legislative Medicaid appropriations would be immunized from constitutional review, merely because the legislature had exercised its spending power. We emphatically reject such a claim. Like the Supreme Court decisions listed above, today's holding is squarely within the authority of the court, not in spite of, but because of, the judiciary's role within our divided system of government.

Our conclusion that the separation of powers doctrine supports today's decision is firmly supported by twenty-one other courts that have considered a state's exclusion of medically necessary abortions from state-funded health care programs.<sup>77</sup> The State has not identified a single state or federal case holding that the separation of powers precludes a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy.<sup>78</sup> Courts that have explicitly considered separation of powers challenges to holdings like the one we reach today have dismissed the challenges in no uncertain terms. The Massachusetts Supreme Judicial Court, for example, wrote:

We have never embraced the proposition that merely because a legislative action involves an exercise of the appropriations power, it is on that account immunized against judicial review. [We reject] the argument that either the doctrine of separation of powers or the political question doctrine requires that result. Without in any way attempting to invade the rightful province of the Legislature to conduct its own business, we have a duty, certainly since *Marbury v. Madison*, to adjudicate a claim that a law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution. "This," in the words of Mr. Chief Justice Marshall, "is of the very essence of judicial duty." [79]

We agree with this articulation of the court's fundamental powers and duties.

A federal case, *State of Georgia v. Heckler*, also directly supports our conclusion.<sup>80</sup> In that case, the state of Georgia sought reimbursement from the federal Department of Health and Human Services (HHS) for money spent by the state to fund medically necessary abortions. Although the Court of Appeals for the Eleventh Circuit ultimately denied Georgia's claim, it emphatically rejected HHS's argument that because Congress

had not appropriated money for medically necessary abortions, a district court could not compel HSS to pay the claims.<sup>81</sup> As the Eleventh Circuit court noted, the statute could preclude payment only if an interpreting court so determined.<sup>82</sup> "There is no doubt," the Heckler court concluded, "that if this Court decided that these payments were legally required, HHS would be authorized to make them."<sup>83</sup>

We agree with the Eleventh Circuit: It is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers doctrine.

## V. CONCLUSION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we AFFIRM the decision of the superior court.

## DISPOSITION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we AFFIRM the decision of the superior court.

## OPINION FOOTNOTES

1 AS 47.07.010.

2 See *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981); *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387 (Mass. 1981); *Women of Minnesota v. Gomez*, 542 N.W.2d 17 (Minn. 1995); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925 (N.J. 1982); *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 126 N.M. 788 (N.M. 1998), cert. denied, 526 U.S. 1020, 143 L. Ed. 2d 352 (1999); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658 (W. Va. 1993); but see *Renee B. v. State, Agency for Health Care Admin.*, 2001 Fla. LEXIS 1396, No. S.C. 00-989, 2001 WL 776533, So. 2d (Fl. July 12, 2001); *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166 (Mich. 1992); *Rosie J. v. North Carolina Dep't of Human Resources*, 347 N.C. 247, 491 S.E.2d 535 (N.C. 1997); *Hope v. Perales*, 83 N.Y.2d 563, 634 N.E.2d 183, 611 N.Y.S.2d 811 (N.Y. 1994); *Fischer v. Department of Pub. Welfare*, 509 Pa. 293, 502 A.2d 114 (Pa. 1985).

A number of lower state courts have also found that funding restrictions similar to those challenged today violated their state constitutions. See *Simat Corp. v. Arizona Cost Containment System Admin.*, [slip op.], No. CV1999014614 (Ariz. Super. May 23, 2000); *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134 (Conn. Super. 1986); *Roe v. Harris*, [slip op.], NO. 96977 (Idaho Dist. Feb. 1, 1994); *Doe v. Wright*, [slip op.], No. 91-CH-1958 (Ill. Cir. Dec. 2, 1994); *Clinic for Women v. Humphreys*, [slip op.], No. 49D12-9908-MI-1137 (Ind. Super. Oct. 18, 2000); *Jeannette R. v. Ellery*, [slip op.], No. BDV-94-811 (Mont. Dist. May 19, 1995); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon* 63 Ore. App. 41, 663 P.2d 1247 (Or. App. 1983), *aff'd on other grounds*, 687 P.2d 785 (Or. 1984) (declining to reach constitutional issue); *Low-Income Women of Texas v. Bost*, 38 S.W.3d 389 (Tex. App. 2000); *Doe v. Celani*, [slip op.], No. S81-84CnC (Vt. Super. May 23, 1986); but see *Doe v. Childers*, [slip op.], No. 94CI02183 (Ky. Cir. Aug. 7, 1995).

3 *Myers*, 625 P.2d at 780.

4 *Id.*

5 *Id.*

6 *Id.*

7 See AS 47.07; see also 42 U.S.C. § 1396-1396v (1997).

A second program, Chronic and Acute Medical Assistance (CAMA) complements Medicaid by providing some medical care for Alaskans who are poor but ineligible for Medicaid. See AS 47.08.150. CAMA's predecessor, the General Relief Medical program (GRM), funded abortions for eligible women when the procedure was necessary to protect their health or when pregnancy resulted from sexual assault, sexual abuse of a minor, or incest. See 7 AAC 47.200(a)(4)(F) (2000); 7 AAC 47.290(8) (2000). In 1998, after nearly 30 years of government support for medically necessary abortions through GRM, the legislature stopped funding the program and enacted CAMA as a replacement. CAMA covers essentially the same services as GRM, except that it does not fund any abortions. Compare AS 47.08.150 with 7 AAC 47.200.

8 See AS 47.07.010. Medicaid relies on joint state-federal funding, with the federal government paying a portion of the state's costs. See 42 U.S.C. §§ 1396b(a), 1396d(b). The "Hyde Amendment" limits federal Medicaid contributions for abortions: Federal funding is available for abortions in cases of rape or incest or where the woman's life is in danger, but not for abortions necessary to protect a woman's health. See Pub. L. No. 106-554, §§ 508-509, 114 Stat. 2763 (2000); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 928-29 (N.J. 1982) (discussing history of Hyde Amendment).

9 7 AAC 43.140 (2000) provides in part:

(a) Payment for an abortion will, in the department's discretion, be covered under Medicaid if the physician services invoice is accompanied by certification that the

- (1) life of the mother would be endangered if the pregnancy were carried to term; or
- (2) pregnancy is the result of an act of rape or incest.

10 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 946 P.2d 963, 969 (Alaska 1997).

11 For part of the time that this appeal was pending, DHSS continued to withhold funding for medically necessary abortions, despite the superior court's injunction. On Planned Parenthood's motion, the superior court held a show cause hearing to determine whether the Department was in contempt of court. The court heard DHSS's claim that funding was unavailable, and determined, after a "struggle", not to hold

the agency in contempt. However, the court issued a new injunction to reiterate the terms of the first injunction and explicitly direct that, while DHSS retained discretion over its use of resources, it should consider state Medicaid funds available to pay for medically necessary abortions. The parties on appeal presented records from these proceedings and additional related briefing.

12 *M.C. v. Northern Ins. Co. of N.Y.*, 1 P.3d 673, 674-75 (Alaska 2000).

13 See *Follins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 206 (Alaska 1999).

14 See *James v. McCombs*, 936 P.2d 520, 523 n.2 (Alaska 1997); see also *Dixon v. Dixon*, 747 P.2d 1169, 1175 n.5 (Alaska 1987).

15 Alaska Const. art. I, § 1.

16 See *supra* note 2.

17 See, e.g., *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134, 157-59 (Conn. Super. 1986); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 934-37 (N.J. 1982); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon*, 63 Ore. App. 41, 663 P.2d 1247, 1257-61 (Or. App. 1983), *aff'd on other grounds*, 297 Ore. 562, 687 P.2d 785 (Or. 1984); see also *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).

18 See, e.g., *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 850-57, 126 N.M. 788 (N.M. 1998); *Doe v. Maher*, 515 A.2d at 159-62.

19 See, e.g., *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 398-99 (Mass. 1981); *Doe v. Maher*, 515 A.2d at 146-57.

20 See, e.g., *Women of Minnesota v. Gomez*, 542 N.W.2d 17, 26-32 (Minn. 1995); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658, 664-66 (W. Va. 1993).

21 *Panepinto*, 446 S.E.2d at 667; see also *Myers*, 625 P.2d at 781 (addressing the narrow question "whether the state, having enacted a general program to provide medical services to the poor, may selectively withhold such benefits from otherwise qualified persons because such persons seek to exercise their constitutional right of procreative choice in a manner which the state does not favor and does not wish to support" and holding that it may not); *Gomez*, 542 N.W.2d at 28 (defining the "relevant inquiry" as "whether, having elected to participate in a medical assistance program, the state may selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected health care decisions with which the state disagrees," and concluding that the state may not); *Byrne*, 450 A.2d at 937 ("We hold that the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent."); *Johnson*, 975 P.2d at 856 ("Courts very rarely require the government to fund its citizens' exercise of their constitutional rights. . . . But that is not to say that when the Department elects to provide medically necessary services to indigent persons, it can do so in a way that discriminates against some recipients on account of their gender.").

22 *Moe*, 417 N.E.2d at 401 (quoting *Maher v. Roe*, 432 U.S. 464, 469-70, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977)).

23 *Id.*

24 *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984).

25 See *State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991).

26 See *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396 (Alaska 1997).

27 *Id.* (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269).

28 See *id.* ; *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

29 See *id.*

30 *Alaska Pacific Assurance Co.*, 687 P.2d at 271.

31 See *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396 (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269-70).

32 See 931 P.2d at 396-97.

33 See *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 968-69 (Alaska 1997).

34 See *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

35 *Id.*

36 *Valley Hosp.*, 948 P.2d at 969.

37 687 P.2d at 273-74.

38 See *id.* We have since applied more relaxed scrutiny where "the infringement on [the] right to travel is relatively small and would not be likely to deter a person from traveling." *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1131 (Alaska 1999). In this case the likelihood of deterring exercise of the right is very high: The State's own statistics and the findings of the superior court indicate that, under the challenged regulation, some women "will have no choice but to go forward with the pregnancy." We therefore follow *Alaska Pacific Assurance Co.* in applying strict scrutiny.

39 See 687 P.2d at 266-67.

40 *Id.* at 271.

41 578 P.2d 951, 960 (Alaska 1978).

42 *Id.*

43 *Id.*

44 *Id.*

45 7 AAC 43.385(2), (6), (9), (11) & (12).

46 7 AAC 43.385(4).

47 7 AAC 43.385(17).

48 394 U.S. 618, 633, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

49 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

50 See 394 U.S. at 621.

51 *Id.* at 627.

52 *Id.* at 631 (internal quotations omitted) (alteration in original) (quoting **United States v. Jackson**, 390 U.S. 570, 581, 20 L. Ed. 2d 138, 88 S. Ct. 1209 (1968)). This precedent was not discussed in the U.S. Supreme Court's later decision, in **Harris v. McRae**, that the Hyde Amendment was permissible under the federal constitution. 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980). But in **Valley Hospital**, we explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See 948 P.2d at 969. In that case, we rejected the plurality opinion of **Planned Parenthood v. Casey**, 505 U.S. 833, 877-78, 120 L. Ed. 2d 674, 112 S. Ct. 2791 (1992), in order to declare that a woman's right to an abortion is fundamental. See **Valley Hosp.**, 948 P.2d at 969. We now join the majority of state courts in concluding that the federal Supreme Court's decision in **McRae** provides inadequate protection under our state constitution.

53 In the "Purpose" section of the Medicaid statute, the legislature "declares as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing." AS 47.07.010.

54 See **Sonneman v. Knight**, 790 P.2d 702, 705 (Alaska 1990) (using term "rational basis" to describe lowest standard of review under Alaska's sliding scale).

55 **Isakson v. Rickey**, 550 P.2d 359, 362 (Alaska 1976) (quoting **State v. Wylie**, 516 P.2d 142, 145 (Alaska 1973)). **Isakson** establishes that Alaska's rational basis review is more rigorous than that of the United States Supreme Court. *Id.*

56 We note that the United States Supreme Court reached the opposite conclusion regarding the analogous federal regulation in **Harris v. McRae**, 448 U.S. 297, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980). However, as noted above, federal rational basis review is a less rigorous standard than Alaska's rational basis review. See **Isakson**, 550 P.2d at 362. We have explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See **Valley Hospital**, 948 P.2d at 969. The United States Supreme Court in **Harris v. McRae** did not consider the discriminatory allocation of government benefits cases, **Shapiro v. Thompson**, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969) and **United States Department of Agriculture v. Moreno**, 413 U.S. 528, 37 L. Ed. 2d 782, 93 S. Ct. 2821 (1973), discussed in this opinion.

57 **Shapiro**, 394 U.S. at 638.

58 413 U.S. at 538.

59 See *Id.* The Court noted legislative history indicating congressional intent to exclude "so-[-]called 'hippies' and 'hippie communes'" from the food stamp program. *Id.* at 534. But it concluded:

The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government interest. As a result, [a] purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest, justify the [challenged] amendment.

*Id.* at 534-35 (internal quotations omitted, third alteration added).

60 **Vincent v. State**, 22 Cal. App. 3d 566, 572, 99 Cal. Rptr. 410 (Cal. App. 1971).

61 See *Id.*

62 **Lee v. Smith**, 43 N.Y.2d 453, 373 N.E.2d 247, 248, 402 N.Y.S.2d 351 (N.Y. 1977); see also **White v. Beal**, 555 F.2d 1146, 1149-50 (3d Cir. 1977) (finding equal protection issue sufficient to support jurisdiction, but not deciding on equal protection grounds, where remedial eye-care was available only if a person's visual impairment resulted from eye disease or pathology); **County of Orange v. Ivansco**, 67 Cal. App. 4th 328, 337-38 (Cal. App. 1998) (finding equal protection violation where parents supporting noncustodial children received different benefits depending on the children's eligibility for AFDC); but see **Moreno v. Draper**, 70 Cal. App. 4th 886, 888-89 (Cal. App. 1999) (analyzing same regulation as in **County of Orange** and finding no equal protection violation).

63 **Right to Choose v. Byrne**, 91 N.J. 287, 450 A.2d 925, 937 (N.J. 1982).

64 See **Matanuska-Susitna Borough School Dist.**, 931 P.2d 391, 396-97 (Alaska 1997) (outlining State's burden for justifying regulations); **Valley Hosp. Ass'n v. Mat-Su Coalition for Choice**, 948 P.2d 963, 971 (Alaska 1997) ("Since the right is fundamental, it cannot be interfered with unless the interference is justified by a compelling state interest.").

65 See **Matanuska-Susitna Borough Sch. Dist.**, 931 P.2d at 396-97.

66 410 U.S. 113, 163-64, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

67 **Valley Hospital**, 948 P.2d at 969.

68 **Accord Byrne**, 450 A.2d at 935 (holding, based on *Roe*, that "at no point in pregnancy may [the state's interest in protection of potential life] outweigh the superior interest in the life and health of the mother").

69 **Malone v. Meekins**, 650 P.2d 351, 356 (Alaska 1982); see also **Marbury v. Madison**, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

70 See **State v. Dupere**, 709 P.2d 493, 496 (Alaska 1985), modified, 721 P.2d 638 (Alaska 1986) ("The separation of powers doctrine must be considered along with the complementary doctrine of checks and balances."); **Alaska State-Operated Sch. Sys. v. Mueller**, 536 P.2d 99, 103 (Alaska 1976); **Public Defender Agency v. Superior Court**, 534 P.2d 947, 950 (Alaska 1975).

The United States Supreme Court recently discussed the division of powers within the federal system of government. See **United States v. Morrison**, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000). It reiterated the duty of courts to limit acts of legislation when those acts conflict with rights guaranteed by the Constitution, explaining that the framers of the Constitution divided power among the three branches of government so that the Constitution's provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the legislature's self-restraint. It is thus a permanent and indispensable feature of our constitutional system that the . . . judiciary is supreme in the exposition of the law of the Constitution.

120 S. Ct. at 1753 n.7 (internal quotations and citations omitted).

71 See **Aboud v. League of Women Voters**, 743 P.2d 333, 338 (Alaska 1987); **Malone**, 650 P.2d at 356-57.

72 **Valley Hosp. Ass'n v. Mat-Su Coalition for Choice**, 948 P.2d 963, 972 (Alaska 1997).

73 **Committee to Defend Reprod. Rights v. Myers**, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).

74 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968).

75 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

76 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

77 See *supra* note 2.

78 A single justice in a concurring opinion stated that the judiciary may not, under the equal protection clause of Michigan's constitution, require legislative funding for medically necessary abortion. *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166, 182-83 (Mich. 1992) (Levin, J., concurring). To our knowledge, his is the sole dissenting voice on this issue.

79 *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 395 (Mass. 1981) (internal citations omitted); see also *Committee to Defend Reprod. Rights v. Cory*, 132 Cal. App. 3d 852, 183 Cal. Rptr. 475, 478 (Cal. App. 1982) ("When there is an unconstitutional restriction in an existing appropriation, it offends no constitutional principle to direct that the disputed payments be made from funds already appropriated for the same general purpose."); *Clinic for Women, Inc. v. Humphreys*, No. 49D12-9908-MI-1137, Slip Op. at 12 (Ind. Super., Oct. 18, 2000) ("If the challenged enactments violate the state Constitution, the Court can grant relief even if doing so means that state funds will be spent in a manner not explicitly approved by the Legislature. The Court has the power to shape appropriate remedies and the Legislature has a duty to appropriate funds to meet its constitutional obligations."); *Low-Income Women v. Bost*, 38 S.W.3d 689, 702 (Tex. App. 2000) ("The relief sought by Low-Income Women -- funding medically necessary abortions -- cannot be characterized as a new appropriation. They do not ask for a new appropriation of funds to the Medical Assistance Program. Rather, they seek declaratory and injunctive relief against unconstitutional restrictions placed on the use of funds already appropriated pursuant to a pre-existing law authorizing funds to be used for health care under the program.").

80 768 F.2d 1293 (11th Cir. 1985).

81 See *id.* at 1295-96.

82 See *id.* at 1296.

83 *Id.*

VALLEY CHIROPRACTIC  
CLINIC  
400 N. Main Street  
Wasilla, AK 99654  
FAX # 373-2029  
FAX # 373-2029

facsimile transmittal

To: Heather Nobrega Fax: 1-907-465-2040

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From: Date: 05/10/02

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Re: Senate Bill 364 Pages:

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CC:

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**Pass SENATE BILL 364**

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## PASS SENATE BILL 364

RE: Senate Bill No. 364

TO: Representative Rokeberg,  
Chairman of Judiciary Committee

By signing this memo I am stating my desire for Senate Bill No. 364 to be passed. This is more than a matter of choice. It sets forth a necessary guideline that protects the mother and child. In a moment of emotional turmoil a hasty decision could be made and acted upon not only ending a child's life but also possibly causing untold mental anguish when living with the end result. Guidelines are demanded here to avoid the proverbial "smoking gun".

I am requesting that you vote to pass this bill and protect the lives of mother and child.

*DeeDee Jonrowe*

~~DeeDee~~ DeeDee Jonrowe

P.O. Box 272

Willow, Alaska

99688

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

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*Laurel Beaulieu*

LAUREL BEAULIEU  
465 Ravenswood Cp

wasilla, AK 99654

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

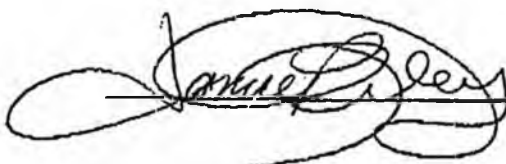
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JANICE RILEY  
HC 5 BOX 6748  
PALMER, AK 99645

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

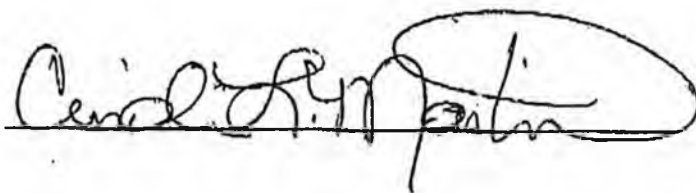
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I am requesting that you vote to pass this bill and protect the lives of mother and child.

A handwritten signature in cursive script, appearing to read "Carol A. Martin", written over a horizontal line.

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

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Dawn M. MacIver

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

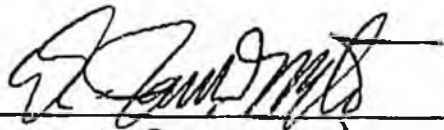
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TO: Representative Rokeberg,  
Chairman of Judiciary Committee

By signing this memo I am stating my desire for Senate Bill No. 364 to be passed. This is more than a matter of choice. It sets forth a necessary guideline that protects the mother and child. In a moment of emotional turmoil a hasty decision could be made and acted upon not only ending a child's life but also possibly causing untold mental anguish when living with the end result. Guidelines are demanded here to avoid the proverbial "smoking gun".

I am requesting that you vote to pass this bill and protect the lives of mother and child.



DR. JAMES D. MARTIN  
400 N. MAIN ST.  
WASILLA, AK

- CC: Representative Ogan
- Representative James
- Representative Coghill
- Representative Meyer
- Representative Berkowitz
- Representative Kookesh

99654  
907 373-2022

## PASS SENATE BILL 364

RE: Senate Bill No. 364

TO: Representative Rokeberg,  
Chairman of Judiciary Committee

By signing this memo I am stating my desire for Senate Bill No. 364 to be passed. This is more than a matter of choice. It sets forth a necessary guideline that protects the mother and child. In a moment of emotional turmoil a hasty decision could be made and acted upon not only ending a child's life but also possibly causing untold mental anguish when living with the end result. Guidelines are demanded here to avoid the proverbial "smoking gun".

I am requesting that you vote to pass this bill and protect the lives of mother and child.

Tanya Nicole Nielsen

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

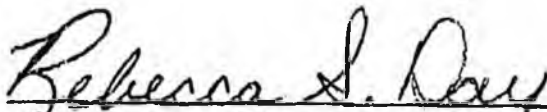
## PASS SENATE BILL 364

RE: Senate Bill No. 364

TO: Representative Rokeberg,  
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I am requesting that you vote to pass this bill and protect the lives of mother and child.

  
\_\_\_\_\_  
Rebecca S. Day  
1801 Bayview Dr Wasilla AK

CC: Representative Ogan  
Representative James  
Representative Coghill  
Representative Meyer  
Representative Berkowitz  
Representative Kookesh

**Subject: SB 364**

**Date: Fri, 10 May 2002 10:34:56 -0800**

**From: "Chris & Susan Kepler" <kepler@mtaonline.net>**

**To: <Heather\_Nobrega@legis.state.ak.us>**

I am in favor of SB 364.

K.Chris Kepler  
HC5 Box 9763  
Palmer, AK 99645

**WILLIAM W. RESINGER, M.D.**

P.O. BOX 839  
PALMER, ALASKA 99645-0839  
FAX: (907) 746-1763

**FACSIMILE COVER SHEET**

RE: SB 364

Date: 5/10/02 Time: 10:45AM No. of Pages (including cover sheet): \_\_\_\_\_

To:

Name: HEATHER NOBREGA, STAFF

JUDICIARY COMMITTEE - House of Rep.

Company: Chair: Rokeberg  
members: Ogan, James, Coghill, Meyer, Berkowitz, Korteck

City: Juneau

Telephone No.: \_\_\_\_\_

Telefax No. (907) 465-2040

Comments:

As a pro-life physician,  
I strongly support this bill  
which specifies the definition  
of "medically necessary."

Physicians who adhere to the Oath  
of Hippocrates would, of course,  
not perform abortions at all.

→ WWR

[Fwd: HB 522]

**Subject:** [Fwd: HB 522]

**Date:** Wed, 08 May 2002 11:04:48 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** HB 522

**Date:** Wed, 8 May 2002 14:52:04 EDT

**From:** Upick2@aol.com

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

I very much appreciate that you not move this bill out of your committee today or any other day.

Best regards,  
Anna Davidson  
2200 Gambell St.  
Anchorage, AK 99503  
HMO: 907-653-7675  
Cell: 907-227-7034

**Subject:** [Fwd: PREVENT HB522 FROM BECOMING LAW--Defining "Medically Necessary"]  
**Date:** Wed, 08 May 2002 11:04:31 -0800  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** PREVENT HB522 FROM BECOMING LAW--Defining "Medically Necessary"  
**Date:** Wed, 08 May 2002 09:32:29 -0800  
**From:** Eric McCallum <ericrobin@customcpu.com>  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

I am a moderate Republican and I am pro-choice. I urge you to stop HB522 in your committee. The legislature has no business defining what is a "medically necessary" abortion. This is a physician's job, based on his/her best judgement.

HB522 is MEAN SPIRITED. There is no consideration for severe fetal anomalies. No consideration if a fetus is dead. Why should the legislature force women to carry such pregnancies to term?

This bill cuts deep into the doctor/patient relationship. It sets a precedent. Do you really want the legislature making healthcare decisions for you because you are person with a low income. Would Rep.Ogan want the legislature determining what care he really needs?

I believe it is unethical to force a woman to carry an unwanted child to term.

Eric McCallum  
14100 Jarvi Drive  
Anchorage, AK 99515

**Subject:** [Fwd: HB 522 (SB 364)]  
**Date:** Wed, 08 May 2002 11:04:12 -0800  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** HB 522 (SB 364)  
**Date:** Wed, 8 May 2002 08:13:02 -0800  
**From:** Jean Kollantai/CLIMB <climb@pobox.alaska.net>  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Our family urges you not to move this bill out of the Judiciary Committee. The Legislature has much more important things to do than micromanage what goes on in women's wombs and in the doctor's office, and needs to put its energy towards the real problems and issues in a forward-looking way, not something like this that reflects the philosophical agenda of some.

Jean Kollantai  
Anchorage

**Subject: SB 364**

**Date:** Fri, 10 May 2002 08:37:27 -0800

**From:** "Mark Ortega" <ortegaml@worldnet.att.net>

**To:** <Heather\_Nobrega@legis.state.ak.us>

Please help pass the SB 364 referring to "medically necessary" abortions. Very few (if any, except ectopic pregnancies which are a different thing altogether) abortions are medically necessary. We need to get people to see that human life is important from beginning to end and can't just be arbitrarily done away with because someone decides it is "medically necessary" often referring to emotional, mental, or financial distress involved. Being a medical necessity is a life and death issue only not one based on feelings. People with these other kinds of problems can get help. There are many individuals and groups that want to help. Thank you.

Mark and Lori Ortega, Eagle River

**Subject:** [Fwd: Opposed to SB 364]  
**Date:** Thu, 09 May 2002 09:42:22 -0800  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Opposed to SB 364  
**Date:** Thu, 09 May 2002 12:56:20 -0400  
**From:** ftblg@netscape.net (Brandee Gerke)  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Scott\_Ogan@legis.state.ak.us, Representative\_John\_Coghill@legis.state.ak.us,  
Representative\_Jeannette\_James@legis.state.ak.us,  
Representative\_Kevin\_Meyer@legis.state.ak.us,  
Representative\_Ethan\_Berkowitz@legis.state.ak.us,  
Representative\_Albert\_Kookesh@legis.state.ak.us

I am writing to express opposition to SB 364 which would narrowly define the medical necessity of abortions for poor women. I urge you to leave the determination of "medical necessity" to qualified physicians rather than to bureaucrats. Choices concerning the potential harm or even death of a woman or her fetus are EXTREMELY sensitive, emotional, and very personal decisions that must be made on an individual basis as circumstances are sure to be unique in each and every case! Such decisions should not be based on cut and dry, widely applied legislative language that leaves no room for consideration of individual circumstances. In time critical situations, it would be possible for medical procedures that are urgent and necessary to be held up in the bureaucratic process. I urge you to vote in opposition to SB 364.

Brandee Gerke  
17415 Christine Ave.  
Juneau, AK 99801  
(907)789-5766

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**Subject: comment re Bill SB 364**

**Date:** Fri, 10 May 2002 03:28:25 EDT

**From:** COALWELLT@aol.com

**To:** Heather\_Nobrega@legis.state.ak.us

5/9/02

Alaska Senate Judiciary Committee,

This letter is in SUPPORT of SB 364 on limitations of Abortion funding to cases of severe need and not for Abortion on Demand.

Although I do not do OB at this time in my practice in Anchorage, I did do OB while I lived and practiced in Barrow. I have seen too many families fighting to maintain a pregnancy. I prefer that public funds are not used to terminate pregnancies that could have been prevented by the common methods of birth control (condoms, birth-control pills, IUD's ) or with very cheap, easily obtainable "morning after pills". I would rather see the funds used for more positive purposes.

I'll keep it short and sweet,

Tim Coalwell, MD  
2421 Scarborough Dr.  
Anchorage, AK 99504  
coalwellt@AOL.com

**Subject:** Bill SB364

**Date:** Fri, 10 May 2002 06:12:02 -0700

**From:** dihawkins@seward.net

**To:** <Heather\_Nobrega@legis.state.ak.us>

I am writing in support of the above bill. I strongly object to the use of public funds for ANY abortion, and while I realize that this view is neither politically correct or supportive of constitutionally mandated, "abortion rights" it is I believe the only morally mandated stance. I am a nurse and remember early in my nursing career participating in the care of an individual who had had a "medically mandated abortion." The emotional devastation that that situation held for all involved, primarily the mother will not be forgotten, though it occurred over twenty years ago. Doctors will be the first to object to any limitation of their practice, though it has been clearly shown that their profession is not immune to abuses and poor decision making, let alone self-serving interests. Public funds should be used with utmost care and caution and a sense, particularly in the medical field, of deep social concern. The more regulation of this disturbing practice the better. There are VERY few cases of legitimate medically mandated abortions. Please hold the medical profession to a high standard. Sincerely, Ina Hawkins.

**Subject: SB 364**

**Date:** Fri, 10 May 2002 07:45:15 -0800

**From:** "Chris & Susan Kepler" <cskepler@hotmail.com>

**To:** heather\_nobrega@legis.state.ak.us

I am in favor of SB 364, which tightens the definition of "medically necessary" abortions.

Susan D. Kepler  
HC5 Box 9763  
Palmer, Alaska 99645

---

Chat with friends online, try MSN Messenger: <http://messenger.msn.com>



April 26, 2002

The Honorable Norman Rokeberg  
Chairman of the Judiciary Committee  
of the House of Representatives  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Re: HB 552

Dear Representative Rokeberg:

On behalf of the Alaska Catholic Conference, I urge favorable report on HB 552, which limits public abortion funding to those cases of medical necessity as required by the Alaska Supreme Court.

The consistent Catholic position on human life is that each individual deserves protection, especially, where the issue is as fundamental as life or death. We are prohibited by our judiciary from extending full protection, but we are not required by the Court to fund elective abortions. Where these significant and deep moral objections among Alaska's citizens, as there is regarding abortion, public funds that belong to all should not be used.

Passage of HB 552 is good public policy and the right moral choice.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Roger L. Schwietz".

†Roger L. Schwietz, OMI  
Archbishop of Anchorage

**Subject:** [Fwd: Stop HB 522 & SB364]

**Date:** Wed, 01 May 2002 08:28:33 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Stop HB 522 & SB364

**Date:** Tue, 30 Apr 2002 19:26:46 -0800

**From:** Anne Millbrooke <anne@nome.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Email

Content-type: text/plain; charset="US-ASCII"

Content-transfer-encoding: 7bit

House Bill 522 and Senate Bill 364 stink! Alaska does not need hostile legislation, anti this group of people or anti that group, and taking money from the poorest only guarantees that the bottom will keep sinking. All of Alaska would benefit if we raised the lowest level a tier or two or three!  
Anne Millbrooke

**Jan Whitefield, M.D.**

4115 Lake Ous Parkway, Anchorage, AK 99508  
007-682-7228

April 28, 2002

The Honorable Representative N. Rokeberg, State of Alaska

Dear Sir:

House bill 522 and Senate bill 364, the new bills introduced into the House and Senate are dangerous to the women of Alaska.

Consider a woman with Class D diabetes who becomes pregnant. She may develop blindness during pregnancy secondary to retinal detachment, or may develop renal failure. She has an increased incidence of Pregnancy induced hypertension in pregnancy that may cause her to have a seizure and subsequent stroke. While I can tell a woman of these risks, I am not able to predict the future and tell her whether she will or will not get any or all of these problems. I am simply aware of the increased risk compared to other women and can counsel her to these risks. As a physician I cannot state with 100% assuredness that a woman will or will not develop a particular problem. The same is true of many other problems in pregnancy such as hypertension, seizure disorders, Lupus, and many other disorders too numerous to list.

Similarly, if I put a patient on a particular medicine in pregnancy to treat a disorder such as Lupus, hypertension, or depression, I cannot tell the patient with 100% surety that a particular drug will or will not affect her baby. Just read any package insert of most drugs, and the manufacturers will discuss the risks of a drug in pregnancy. It becomes very clear that there are no guarantees in medicine. Prednisone is commonly used to treat Lupus and asthma in pregnancy. The Physician's Desk references says:

"Since adequate human reproduction studies have not been done with corticosteroids (prednisone), the use of these drugs in pregnancy, nursing mothers, or women of childbearing potential requires that the possible benefits of the drug be weighed against the potential hazards to the mother and embryo or fetus. Infants born of mothers who have received substantial doses corticosteroids during pregnancy should be carefully observed for signs of hypoadrenalism"

I may see an unmarried woman who works to support herself and her three children, and she may relate that she is severely distressed over a current pregnancy. She may request an abortion, or wonder about being placed on an antidepressant. All antidepressants have possible risks to the fetus. Consider Prozac, a commonly used antidepressant. In the book "Drugs in Pregnancy and Lactation", a standard reference text in this field by Gerald Briggs, PhD in Pharmacy, the following quote can be read:

"Because at least one animal study has shown that fluoxetine (Prozac) can produce changes, perhaps permanent, in the fetal brain, the maternal benefits must be carefully weighed against the potential embryo and fetal risks before exposing a pregnancy to this drug."

• Page 2

April 28, 2002


Should I or should I not give this drug to this patient? Will it affect her fetus? Is this drug dangerous to the fetus? Will her life be negatively affected or endangered if I do not give her the drug? You may be able to answer those questions, but I can't. I am a physician, not a soothsayer.

These are only two of an infinite number of examples that can be presented with equally ambivalent answers. As physicians we can anticipate possible outcomes, but cannot predict with 100% certainty any specific outcome.

This law, if enacted, will surely eliminate the payment of many abortions by the State of Alaska. However, the pregnant women, with their difficult problems and uncertain outcomes will remain and they suffer the consequences. They are the ones who will lose their sight, or have the stroke, or have their kidneys fail. If the word "would" were replaced with "could" throughout the bill, it may be a workable bill. As it is, it is only a transparent effort to eliminate payment of abortion by the State at the expense of the patient and fetus. While it may gain a politician some points with certain constituents, the women of Alaska will suffer.

Please consider the health of the women and do not allow this bill to pass through the general body of the Senate and House.

Sincerely,

  
Jan Whitefield  
OB/GYN

**Subject:** [Fwd: HB522]

**Date:** Mon, 29 Apr 2002 08:05:45 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** HB522

**Date:** Mon, 29 Apr 2002 08:55:48 -0700 (PDT)

**From:** David Comins <alaskamd@yahoo.com>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

I am writing to strongly urge you to oppose HB522 and its attempt to narrowly define what a medical necessity is for poor women who feel they need an abortion. It interferes with the doctor-patient relationship and is virtually impossible to reliably diagnose. It will lead to many more unwanted and disabled babies being born. This will, in turn, lead to many years of unhappiness for the individuals involved and incredible expense for the rest of us who must support their needs after birth. I know what I am talking about--I have adopted two babies at birth and have worked with special needs children and troubled adolescents for years.

Yours very truly,  
Mikell Murphy, EdD.

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Do You Yahoo!?

Yahoo! Health - your guide to health and wellness

<http://health.yahoo.com>

**Subject:** [Fwd: Oppose HB522]

**Date:** Mon, 29 Apr 2002 07:59:57 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Oppose HB522

**Date:** Fri, 26 Apr 2002 17:09:31 -0800

**From:** Robin Smith <ericrobin@customcpu.com>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Please stop HB522 in your committee. I appreciate your effort in creating the Patient's Bill of Rights. I hope you will continue to defend the doctor/patient relationship by opposing this bill. The legislature has no business defining what is "medically necessary".

Some people say they do not want their tax dollars paying for abortions. I object to the "death penalty", and yet my government participates in this act.

I am writing to you because I do not believe Senator Ward or Rep. Green (my current representatives) will seriously consider my opinion. Thank you for persistent work for good government.

Robin Smith  
14100 Jarvi Drive  
Anchorage, AK 99515

**Subject:** [Fwd: HB522/SB364]  
**Date:** Wed, 01 May 2002 08:28:49 -0800  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** HB522/SB364  
**Date:** Tue, 30 Apr 2002 19:41:08 -0800  
**From:** "Marcia Hongsermeier" <marciasnow@msn.com>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Sir

I highly encourage you to not hold a hearing of HB522 and/or SB364

Marcia Miller  
Anchorage AK

**Subject:** [Fwd: HB522]

**Date:** Wed, 01 May 2002 16:59:17 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** HB522

**Date:** Wed, 1 May 2002 10:46:23 -0800

**From:** "Igloo Mom" <Igloomom@gci.net>

**Organization:** Domestic Engineer

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,

Please hear and pass HB 522!

Thank you,  
Colana K. Hutchinson  
Anchorage, AK  
VP AK Right to Life

**Subject:** [Fwd: Stop HB522]

**Date:** Fri, 03 May 2002 08:45:18 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Stop HB522

**Date:** Thu, 2 May 2002 20:47:31 -0800

**From:** "Henderson" <hndrsn@gci.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,  
stop HB522. He is the  
as Chair of the Judiciary committee, this is a request to please stop HB 522.

HB522 wants to narrowly define a "medically necessary" abortion and will restrict low-income women's access to medicaid coverage for this procedure and is not the answer to a very serious problem.

This bill interferes with the doctor/patient relationship. It is written so broadly the women would have to be on death's door for the physician to act. It also does not take into consideration fetal anomalies.

Respectfully submitted,  
Denise C Henderson

**Subject: SB364**

**Date:** Fri, 10 May 2002 07:39:56 -0800

**From:** "Sharon Mach" <machfam@cyberlynx.ak.net>

**To:** <Heather\_Nobrega@legis.state.ak.us>

Hello Heather,

Would you please pass this msg on to Rep. Rokeberg.

I am a supporter of SB364. I am very saddened by the testimony of pro-abortion doctors

who think "medically necessary" means you can kill your baby if it is an "inconvenience" in your life.

Especially after the first trimester. I hope they are showing these woman what they take out of them before they throw it away.

Maybe this would make them realize, "I don't ever want to do this again".

I am currently pregnant with my 6th child.

We struggled a little with this since my husband is 40 and I am 39 and

we realized our baby would graduate when we're almost 60.

We will seem more like his grandparents then his parents.

But we NEVER once thought of the option to abort this baby.

How in the world can anyone take the life away from a tiny little being who is growing inside them.

I just feel this is morally wrong.

I don't think there is ever any reason to have an abortion.

I would give up my life for my babies life if I had to.

I have lived long enough in this world and my babies life is just beginning. Just beginning to learn . . .

I had a miscarriage before this pregnancy and it was a very sad time for us as parents and for my children, the babies siblings. Even though we had never seen this baby, he had become a member of the family.

Please pass this bill so we can slow down the unnecessary abortions and save a few of these precious little beings.

Sincerely,

Sharon Mach

PO Box 876707

Wasilla, AK 99687

**Subject: Please support bill SB 364**

**Date:** Fri, 10 May 2002 00:03:16 -0700

**From:** "Everett & Troya Williamson" <etw@gci.net>

**To:** <Heather\_Nobrega@legis.state.ak.us>

Dear Heather Nobrega,

Please communicate to Representative Rokeberg that it is important that bill SB 364 pass. The passing of this bill will save more babies' lives. It is abhorant to me that our state funds abortions for any reason at all. We need to tighten the definition of medically necessary so that more babies can live. These babies deserve this gift of life.

When I was 17 years old, in 1974, right after Roe vs Wade came into being, I became pregnant. And it was oh so easy to have that abortion. I remember wishing I could go to a home for unwed mothers but having an abortion was promoted as a quick and easy solution to my problem. And I went for it. And destroyed a life. If an abortion would have been more difficult to obtain and any other solutions would have been offered I would have allowed that child to live.

Please make it more difficult to take a baby's life. For the sake of that child and for the sake of the mother and father.

Thank you for considering this.

Respectfully,

Troya Williamson

[etw@gci.net](mailto:etw@gci.net)

**Subject: SB 364**

**Date:** Thu, 9 May 2002 22:02:34 -0800

**From:** "Frank & Rosalie" <tadda@gci.net>

**To:** <Heather\_Nobrega@legis.state.ak.us>

Dear Rep. Rokeberg

Please vote to pass SB 364 to tighten the definition of medically necessary so that innocent babies are not aborted.

Thank you

Frank & Rosalie Tadda  
Anchorage Ak 99507

**Subject:** [Fwd: Please Oppose SB 364 & HB 522]  
**Date:** Thu, 09 May 2002 14:18:39 -0800  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Please Oppose SB 364 & HB 522  
**Date:** Thu, 9 May 2002 13:29:29 -0800  
**From:** "Jeff & Susan Sloss" <jssloss@gci.net>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
<Representative\_Scott\_Ogan@legis.state.ak.us>,  
<Representative\_John\_Coghill@legis.state.ak.us>,  
<Representative\_Jeannette\_James@legis.state.ak.us>,  
<Representative\_Kevin\_Meyer@legis.state.ak.us>,  
<Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
<Representative\_Albert\_Kookesh@legis.state.ak.us>

Dear Chairman Rokeberg and members of the House Judiciary Committee:

These two new bills now attempt to narrow the definition of medical necessity to such an extreme that many poor women who need abortions will in fact be excluded from coverage under Medicaid. Because the definitions of medical necessity in the bill are vague and unworkable, the bills use vague adjectives in phrases such as "**serious adverse physical condition**," "[condition would be] **significantly aggravated** by continuation of the pregnancy," "**seriously endanger** [the woman's health]," and "**highly dangerous** to the fetus..." Who decides what is a serious danger? What is a significant health consequence? Significant to whom -- shouldn't the patient make that determination, since *she* will be the one suffering the "significantly aggravated" health problem? This bill would have a bureaucrat at DHSS making these determinations, thereby potentially undermining physician autonomy and the doctor-patient relationship.

This legislation has serious problems and should be shelved. No doubt there are many more pressing issues facing us today.

Sincerely, Jeff & Susan Sloss, 740 5th St., Juneau, AK 99801

Jeff and Susan Sloss <jssloss@gci.net> Jeff & Susan Sloss
--

**Subject:** [Fwd: SB 364 and SB 183]

**Date:** Thu, 09 May 2002 09:33:32 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** SB 364 and SB 183

**Date:** Wed, 08 May 2002 15:24:58 -0800

**From:** sherrie <apca@aptalaska.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,

The women of Alaska are counting on you to protect their constitutional rights!

Please do not take up SB 364 when it is referred to House Judiciary. It interferes with the doctor-patient relationship and is an illegal attempt to restrict the rights of a Medicaid-eligible women to terminate a pregnancy.

I have been grateful for your support of women's rights in the past and hope I can continue to count on you. I have become concerned since you moved SB 183, a bill all but eliminating public interest lawsuits, from your committee last week without an opportunity for the public to be heard. This measure will make it even more difficult for us to fight for our rights in court when anti-choice legislators have their way.

I hope we can count you as a NO vote when SB 183 is brought to the floor for a vote.

Please do not be pressured to trade women's rights away in an end-of-session deal.

Please vote pro-woman. Thank you for your consideration.

Sincerely,

Sherrie Goll  
PO Box 261  
Haines, AK 99827

**Subject:** [Fwd: SB364 hearing]

**Date:** Thu, 09 May 2002 12:19:15 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

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**Subject:** SB364 hearing

**Date:** Thu, 9 May 2002 11:14:19 -0800

**From:** "Litia Garrison" <litia.garrison@ppfa.org>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**CC:** <Representative\_Scott\_Ogan@legis.state.ak.us>,  
<Representative\_John\_Coghill@legis.state.ak.us>,  
<Representative\_Jeannette\_James@legis.state.ak.us>,  
<Representative\_Kevin\_Meyer@legis.state.ak.us>,  
<Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
<Representative\_Albert\_Kookesh@legis.state.ak.us>

Dear Representatives,

I write to urge you ***to not let this bill move out of your committee***, and to inform you of my strong opposition to this bill, which I feel represents patent unequal treatment of the state's Medicaid funds. I feel it also represents a particular group's intent on claiming the ability to downplay the concept of medical necessity, by taking the decision making out of the hands of the patient and her healthcare provider, and allowing a bureaucrat to determine what is or is not medically necessary. While the group that is sponsoring the passage of SB 364 objects morally to the concept of abortion, I object to their concept that they can be the moral determinants of the life circumstances of those financially unable to seek options in their healthcare needs. Again, I urge you to not let this bill move out of your committee.

Thank you for your consideration,

Litia Garrison  
Planned Parenthood of Alaska  
Sitka Center Clinic Manager

**Subject:** [Fwd: STOP THIS BILL-POSTED ON NET]

**Date:** Thu, 09 May 2002 09:42:37 -0800

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

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**Subject:** STOP THIS BILL-POSTED ON NET

**Date:** Thu, 9 May 2002 10:10:51 -0700 (PDT)

**From:** AFJS@webtv.net (ss)

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

A GREAT TIME FOR AN ELECTION:

**Subject:** The Fascist- Sen. Pete Kelly is at it Again-Re Abortion  
**Date:** Thu, May 9, 2002, 8:40am

Pete Kelly Just can't seem to keep his nose out of a woman's vagina. Maybe it's because he wants one so much. He is one of those hardcore, way over the top, right-wing religious freak conservatives, who not only thinks he has the God-given Right to tell a woman what to do with her body, but also the Legal Right to make Laws that will affect a woman her entire life.

This Same Pete Kelly who is stating that a woman who wants an abortion is "Fraudulently" Using public Medicaid funds and "Abusing the System" is the SAME Pete Kelly who ILLEGALLY and fraudulently used \$14 MILLION dollars of these Same Medicaid funds to raise the Salaries of State Employees in 2000, which was all done behind "Closed Doors" in a "Special Session" called, Just to take up the State Employee contracts.

That "Special Session" was televised by Juneau's KTOO, Gavel-to-Gavel, of which I taped. Even Sen. Robin Taylor (R), was NOT invited to that "Closed Door Session" stating that some kind of "deal" was up and the legislature is going to be asked to vote on "some amendment" which no one has seen, nor discussed.

Sure enough out pranced Kelly, Theirault and the other Right-wingers who stated that they JUST miraculously FOUND \$14 Million dollars so they could give the State Employees a salary raise. It was Federal Medicaid money that by LAW, is mandated to go into a trust fund and Only used for Federally mandated medical programs, knowing that over 119,000 Alaskans HAVE NO MEDICAL INSURANCE. Instead, these corrupt politicians have been putting these Federal Funds into the General (all-purpose) Fund.

I wrote to the entire legislature about this blatantly illegal act and to the Feds. At the very first Senate Finance Committee meeting in January of 2001, Pete Kelly, Chairman of this Committee and Sen. (let the public pay for my breast surgery and I'll deny the poor) Lyda Green (R) stated that she Wanted to change the practice of putting Federal Medicaid Funds into the Gen. Fund, like it was Just a nice thing to do, rather than, TOTALLY ILLEGAL. I have this on tape also.

CAN THERE BE ANY WORSE CORRUPT SLIME THEN THIS IN THE ALASKA LEGISLATURE? THIS IS WHY THOSE OF YOU WHO LIVE IN OR KNOW PEOPLE IN FAIRBANKS, MUST GET RID OF PETE KELLY. (Note the below in Kelly's B.S. stating that MOST of Alaskans are AGAINST abortions and then he refers to the State of Michigan.

Kelly's blatant ARROGANCE of Power and Rages are constantly demonstrated AGAINST WOMEN AND ALASKA NATIVES...HE IS A certifiable lunatic and FASCIST, hungry for Power.

This Bill is going to be heard TODAY, May 9th at 4:00 p.m. by the House Judiciary.

To email the H-Judiciary here are their addresses:

Representative\_Pete\_Kott@legis.state.ak.us  
Representative\_Joe\_Green@legis.state.ak.us  
Representative\_Jeannette\_James@legis.state.k.us  
Representative\_Lisa\_Murkowski@legis.state.ak.us  
Representative\_Norman\_Rokeberg@legis.state.ak.us  
Representative\_Eric\_Croft@legis.state.ak.us  
Representative\_Beth\_Kertula@legis.state.ak.us

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The legislature has a NEW Web Teleconference capability, If you want to Hear this or any other committee meeting. Go to:  
[http://www.legis.state.ak.us/tc\\_audio/tc\\_audio.htm](http://www.legis.state.ak.us/tc_audio/tc_audio.htm) MAY 14th IS THE LAST DAY OF THIS SESSION. (ONLY TWO WORK DAYS) YOU CAN EXPECT THE WORST OF ALL LEGISLATION TO GET PUSHED THROUGH QUICKLY SO THE PUBLIC ISN'T AWARE.

Go to

<http://www.legis.state.ak.us/textonly/textonly.htm> AND FIND OUT WHAT BILLS YOU ARE ABSOLUTELY AGAINST AND SAY SO BEFORE IT'S TOO LATE. SS:-O

Pete Kelly

Session:

State Capitol, Room 518

Juneau, AK 99801-1182

Phone: (907) 465-2327

Fax: (907) 465-5241

Send Public Opinion Message

Interim:

119 N. Cushman St., Suite 201

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Kelly Bill Defines 'Medically Necessary' Abortion For Immediate

Release: May 8, 2002

(JUNEAU) - A bill defining the term "medically necessary" as it relates to state funding of abortions has passed the Senate floor. Sponsored by Sen. Pete Kelly (R-Fairbanks), Senate Bill 364 will help curb the potential for fraud and abuse of state funds for on-demand abortions, by more clearly defining the term "medically necessary." "Most Alaskans agree it is inappropriate to use state funds to provide on-demand abortions," said Kelly.

"Unfortunately under our current system an abortion doctor can deem nearly anything as medically necessary and have the state pay for it, including just being "stressed out" over being pregnant." Kelly's office has received reports about an inordinately large number of young women receiving multiple "medically necessary abortions," and having the cost picked p by the state, costs which often include airline passage for two, hotel stays and ground transportation. Citing figures from the state of Michigan, which

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keeps close track of abortions performed in their state of more than 9 million people, only 33 out of the 26,000-plus abortions performed in that state last year were deemed "medically necessary." Kelly compares this figure to Alaska, which has a population of 600,000, but performed roughly 600 state funded abortions deemed "medically necessary."

"I am not sure why the Centers for Disease Control is not up here with gas masks and rubber suits trying to figure out why women in this state can't be pregnant here without having some horrible medical problems," Kelly mused.

"The fact is women aren't having medical problems, we just have a regulation that is too broad, which allows women to get state-funded abortions that are elective under the guise of medical problems." With passage of SB 364 the Department of Health and Social Services will

finally have clear guidelines on what constitutes a medically necessary abortion.

The current federal standard on this issue is the "Hyde Amendment," which only allows the use of Medicare funds for abortion when the pregnancy puts the mother's life at risk or if the pregnancy was caused by rape or incest.

SB 364 would expand on the federal standard to provide guidelines on medical conditions in which state funds may be used to terminate a pregnancy.

# # #

Attachments:

Print Friendly Version

Requires Adobe Acrobat Reader - 1 page(s) - 15k Broadcasters Note: Audio comments are available on the Majority Actuality line: 1-800-478-6540 or below.

Related Links

· Kelly Bill Defines Medically Necessary" Abortion · HB 160  
: Reporting of Abortions

· SB 91 : Abortion: Informed Consent; Information · SB 210 :

Limits on Right to Privacy

· SB 364 : Medicaid Payments for Abortion Email A Friend Should someone else know about the information on this page? Tell them about it now!

**Jan Whitefield, M.D.**

4115 Lake Otis Parkway, Anchorage, AK 99508  
907-563-7228

May 1, 2002

Senators and Representatives, State of Alaska

Dear Sir or Madam:

House bill 522 and Senate bill 364, the new bills introduced into the House and Senate are dangerous to the women of Alaska.

Consider a woman with Class D diabetes who becomes pregnant. She may develop blindness during pregnancy secondary to retinal detachment, or may develop renal failure. She has an increased incidence of Pregnancy induced hypertension in pregnancy that may cause her to have a seizure and subsequent stroke. While I can tell a woman of these risks, I am not able to predict the future and tell her whether she will or will not get any or all of these problems. I am simply aware of the increased risk compared to other women and can counsel her to these risks. As a physician I cannot state with 100% assuredness that a woman will or will not develop a particular problem. The same is true of many other problems in pregnancy such as hypertension, seizure disorders, Lupus, and many other disorders too numerous to list.

Similarly, if I put a patient on a particular medicine in pregnancy to treat a disorder such as Lupus, hypertension, or depression, I cannot tell the patient with 100% surety that a particular drug will or will not affect her baby. Just read any package insert of most drugs, and the manufacturers will discuss the risks of a drug in pregnancy. It becomes very clear that there are no guarantees in medicine. Prednisone is commonly used to treat Lupus and asthma in pregnancy. The Physician's Desk references says:

**"Since adequate human reproduction studies have not been done with corticosteroids (prednisone), the use of these drugs in pregnancy, nursing mothers, or women of childbearing potential requires that the possible benefits of the drug be weighed against the potential hazards to the mother and embryo or fetus. Infants born of mothers who have received substantial doses corticosteroids during pregnancy should be carefully observed for signs of hypoadrenalism"**

I may see an unmarried woman who works to support herself and her three children, and she may relate that she is severely distressed over a current pregnancy. She may request an abortion, or wonder about being placed on an antidepressant. All antidepressants have possible risks to the fetus. Consider Prozac, a commonly used antidepressant. In the book "Drugs in Pregnancy and Lactation", a standard reference text in this field by Gerald Briggs, PhD in Pharmacy, the following quote can be read:

**“Because at least one animal study has shown that fluoxetine (Prozac) can produce changes, perhaps permanent, in the fetal brain, the maternal benefits must be carefully weighed against the potential embryo and fetal risks before exposing a pregnancy to this drug.”**

Should I or should I not give this drug to this patient? Will it affect her fetus? Is this drug **dangerous** to the fetus? Will her life be negatively affected or **endangered** if I do not give her the drug? You may be able to answer those questions, but I can't. I am a physician, not a soothsayer.

These are only two of an infinite number of examples that can be presented with equally ambivalent answers. As physicians we can anticipate possible outcomes, but cannot predict with 100% certainty any specific outcome.

This law, if enacted, will surely eliminate the payment of many abortions by the State of Alaska. However, the pregnant women, with their difficult problems and uncertain outcomes will remain and will suffer the consequences. They are the ones who will lose their sight, or have the stroke, or have their kidneys fail. While it may gain a politician some points with certain constituents, the women of Alaska will suffer.

Please consider the health of the women and do not allow this bill to pass through the general body of the Senate and House.

Sincerely,

Jan Whitefield, M.D.  
OB/GYN

# Valdez Medical Clinic

Andrew R. Embick, M.D.  
Kathleen G. Todd, M.D.  
John S. Cullen, M.D.  
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(907) 835-4811  
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Jennifer Rudinger, ACLU Fax 907 258-0288

I will try to be at the Valdez LHO at 9AM, but I have patients starting at 9 so will be unable to stay very long. I cannot come at 3PM unless someone cancels.

Here's a statement to read for me:

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I urge you not to pass Senate Bill 364 (House Bill 522) limiting abortion funding. This bill excludes any consideration of fetal anomalies as a legitimate reason for abortion, which I assure you, are high on many women's list of legitimate reasons for abortion. Should my patient whose fetus had multiple congenital anomalies incompatible with life caused by a known exposure to a teratogenic agent be required to carry to term? This bill also requires an impossibly high burden of proof to protect the mother's health. We in medical care are often faced with chances, not certainties. This bill would require certainty before action was taken, thus precluding most action. Abortion/pregnancy must remain a decision made by individuals who can assess risk and weigh those risks based on their own value systems.

In thinking about abortion funding, we need to keep in mind where fairness lies. Those who argue against spending government money on abortion as something they don't agree on believe in. Forget that other people also have deeply held beliefs. It's against my convictions to knowingly carry to term a grossly deformed baby or to try to carry septuplets or to endanger my life for the sake of a fetus. I wouldn't do it and I wish that state

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money wasn't spent on these kinds of pregnancies. However, I don't think that the state should cut off all funding to a woman who doesn't have an abortion in these circumstances. She might believe differently than I do. The government needs to stay neutral, not allowing anyone to impose abortion on women, including the poor, but likewise not allowing anyone to impose pregnancy on them.

Kathleen G. Todd MD